

**SEEKING ASYLUM FROM SEX PERSECUTION:
CHALLENGING REFUGEE POLICY AND POLICY-MAKING OF CANADA IN THE
LATE TWENTIETH CENTURY**

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ABSTRACT

Canada's 1993 refugee policy Guidelines for Women Refugees Fearing Gender-Related Persecution reinterpret the 1951 UN Convention Relating to the Status of Refugees to radically expand state-responsibilities for women's human rights. The evolution of this novel inter-state responsibility departed from established models of policy-making in some important respects. This study explores how asylum seekers challenged Canada to align domestic policies on violence against women with humanitarian responsibilities in refugee policy, shaping their own eligibility criteria and rights to state protection. These stateless persons and foreign nationals drew upon both human rights and Canadian citizenship rights in order to make claims upon the state and influence policy. Their influence has implications not only for women's rights to inter-state protection, but for non-citizen participation in policy-making.

The participation of non-citizens in policy-making has been neglected in academic social policy. Here their role in policy-advocacy networks is explored through an analytic framework that draws on migration system theory and collective action theories. This illuminates the inter-state structural context, interactions between grassroots actors and government, and the interplay of national and supranational identity and rights issues. The study then identifies the structural context and key political opportunities that opened up for women seeking asylum and challenging refugee policy. Case studies are analysed to describe how emerging opportunities were used by the particular asylum seekers and their core network of supporters between 1991 and 1997, and to what effect.

Insight is provided into: *how* refugee policy-making involves asylum seekers whose roles are expanding in complicated and dynamic relationships with receiving-states; *why* a new international migration flow based on age-old structural persecution emerged in the late twentieth century and *who* these asylum seekers really are; the *ways* they influenced policy; and the extent and implications of their influence, for policy and policy-making.

The thesis suggests that academic social policy may need to rethink nationally bound policy and policy-change frameworks and their traditional basis in citizenship, which globalisation is calling into question. It suggests that citizenship and human rights discourses and state-responsibilities are merging through the influence of stateless persons and foreign-nationals who make expressly political use of new policy advocacy opportunities, both institutional and extra-institutional, and through transnational identity and rights issues of which feminism is a strong example. It indicates that Canada's policy guidelines are not the end of the road – refugee policy needs to move in a direction that recognises both 'gender-related' and 'sex' persecution at the heart of asylum seekers' claims.

It is worth noting that the argument against recognizing gender-based persecution that proved the most powerful was the "floodgate" argument: the threat lies in women doing something, getting up and walking, rather than sitting still and being awarded concessions.

(Janet Dench, CCR, speech to Boston College Law School, 23 March 1994)

I ask you: if we don't listen to women now, when are we going to listen to them? When are they going to be taken seriously? Women around the world are suffering, and governments use all their powers not to develop, but to repress their people... This is the time for Canada to take a stand for the human rights and fundamental freedoms of oppressed women.

("Nada", refugee claimant, *The Ottawa Citizen* 11-03-93)

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ACRONYMS:

CACSW	Canadian Advisory Council on the Status of Women
CCR	Canadian Council for Refugees
CIC	Citizenship and Immigration Canada
EIC	Employment and Immigration, Canada
ICHRDD	International Centre for Human Rights and Democratic Development
IRB	Immigration and Refugee Board, Canada
NAC	National Action Committee on the Status of Women
NOIVMW	National Organisation of Immigrant and Visible Minority Women
RAM	Refugee Action Montreal
TCMR	Table De Concertation Des Organismes de Montreal au Service des Refugies
UNHCR	United Nations High Commissioner for Refugees

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To my parents, my heartfelt thanks for their amazing support, encouragement and understanding! And a very special thank you goes to my sunshine Nuno, for just about everything.

PART I.

SEEKING ASYLUM FROM SEX PERSECUTION: THE GLOBAL CHALLENGE

CHAPTER 1.

SEEKING ASYLUM FROM SEX PERSECUTION: A CHALLENGE TO SOCIAL POLICY

The immigration officer came inside. He said: 'Madame, when was the last letter you got from your husband? ... Your lawyer, she talks about a letter that was written to you about a 'wedding dress'. What does it mean?' I said '-- oh. This means that when I come back from Canada... if I don't stay here in Canada I have to go back with a wedding dress. But in our culture, when we die we dress in white. I am already married to him, why do I have to bring a wedding dress? This is it: for me to die in.'

Thérèse (refugee claimant). Interview, Montreal July 1995

In a country of 65,000 people, there is not a single shelter for victims of conjugal violence. And the courts there treat domestic violence as private family matters. So tell me, who will protect Thérèse?

Marie-Louise Côté (Thérèse's lawyer), *Montreal Gazette* 17/11/94

I. Introduction

Thérèse's experience, as she and her lawyer describe above, is both typical and atypical for an asylum seeker. All asylum seekers may experience life in the balance as their claims to refugee status are judged for legitimacy and eligibility for international protection. And all inland asylum seekers must bear the "burden of proof" in establishing the legitimacy of their claims to safeguard their formal status as "refugees" in the host country. A good lawyer will help to do so. The atypical nature of Thérèse's experience, and asylum seekers like her, emerges in the explicit ways their claims and claim-making processes lay bare some important assumptions in refugee policy and policy-making generally.

These asylum seekers revealed culturally relativist and sexist eligibility criteria inherent to Canadian refugee policy and based on the standard setting 1951 UN Convention Relating to the Status of Refugees (hereafter referred to as the 1951 Convention). They argued they are persecuted *because* they are female or *in ways specific to* females, and accordingly claimed they were seeking asylum from sex persecution despite its absence from the 1951 Convention and standard state applications of it. Thus at the time, such claims were typically considered illegitimate even in Canada with its progressive humanitarian and women's rights reputation. Yet these asylum seekers argued for the rights and benefits of membership in Canada, namely equivalent protection from violence against women that residents of Canada are entitled to receive. In so doing, as this study shows, they helped change policy.

Instated in March 1993 and revised in November 1996, Canada's internationally path-breaking policy *Guidelines for Women Refugees Fearing Gender-Related Persecution* (hereafter referred to as the Guidelines) apply the 1951 Convention to female-specific forms of

persecution. They do so by interpreting recognised structural causes through a 'gender-related' lens. As often remarked, they constitute a radical departure from established interpretations of international law on human rights, refugees and state responsibilities. And as this study shows, the role of asylum seekers and their means of influence in this policy development process constitute an important departure from traditional policy and policy-making frameworks.

This study illustrates and explains the challenge which women seeking asylum from sex persecution faced and posed to refugee policy and policy-making through their claim-making and campaigning in Canada between 1991 and 1997. It reveals that non-citizens can profoundly challenge – and help change – national policy, and with it state responsibilities toward the welfare of noncitizens. More specifically, this unique case shows how noncitizens helped shape their own eligibility criteria for membership as laid out in refugee policy by elaborating the links between human rights based asylum seeking and social rights associated with citizenship. Thus their participation in and means of policy advocacy raises important questions for academic social policy regarding long-standing assumptions about the idea of 'citizenship' underlying policy and policy-making frameworks, and subsequently about the scope and aims or justification of social policy in a world deeply affected by globalisation.

Several observable aspects of the campaigns were particularly striking and shaped this study, inspired as I witnessed the peak period of campaigning based primarily in Montreal where I resided, and secondarily in Toronto. Foremost, campaigns evolved around a series of asylum seekers like Thérèse who, individually and in groups, *make public* their claims for state protection and the negative decisions they had already received in institutional status-determination processes. These claimants made their life stories public through the mass media, and did so in an explicitly politicised way in order to argue for rights to protection in Canada. Second, they did this through a necessary structure of support that mobilised around them. A wide range of nongovernment organisations and specialists rallied around claimants, forming a dense network of support and suggesting important advocacy relationships were formed between established residents and noncitizens. Third, the campaigns brought into stark relief the pervasiveness and salience women's rights supported in national and global level institutionalising structures as powerful legitimating and facilitating vehicles, and at the same time the dramatic unevenness in implementation of women's rights across the world and subsequently the continuing pervasiveness of violence against women. Fourth, in what emerged as a strategy for addressing the aforesaid disjuncture, debates raised by asylum seekers and supporters explicitly invoked both

citizenship and human rights norms and legal frameworks in an interesting and complex dynamic that served both to ground policy demands within these pre-existing institutions and to expand them to encompass and safeguard more *ideal* types of rights in a global world – in this case pertaining to women’s rights.

Finally, and not insignificantly, the campaigns actually succeeded and in a dramatic fashion. They brought about a complete turn-around in government opposition to proposed policy changes. That is, their influence was obvious, as Canadian officials, academics and activists remarked. Many claimants who went public were granted immediate acceptance, others were granted stay of deportation until their claims could be reviewed under more appropriate policy. The *Guidelines* were instated a few months later and the government agreed to hold national consultations on Gender Issues and Refugees, and to present the Guidelines internationally. The Guidelines were first presented at the Vienna Conference on Human Rights (June 1993), and over the following years the United Nations High Commission for Refugees (UNHCR) and a number of countries instated similar policy guidelines of their own. In 1996 an *Update* to the Canadian Guidelines was passed to better reflect the growing jurisprudence on gender-related refugee claims, Canada’s Immigration and Refugee Board (IRB) Chairperson explained (Mawani,1997).

All of these aspects indicate that noncitizens can participate in policy-making, with profound impact on policy and state responsibilities, and that social rights linked to citizenship – in this case policies and programs on violence against women – are being transnationalised. New pressures are arising for the expansion of nationally-bound citizenship rights supported in social policies.

Academic discourse in social policy is unable to account for the above aspects of the policy campaigns or their implications, despite the discipline’s revived interest in the role and relevance of ‘citizenship’ since the 1980s as Section II of this chapter shows. That section illuminates the issues at stake for social policy in light of the consequences of mass transnational migration, drawing on migration studies and citizenship debates in other disciplines, and suggesting why asylum seeking trends in particular urge us to look further. As Section III demonstrates, in both popular and scholarly discourses dealing specifically with the policy process surrounding the Guidelines, the implications of asylum seekers’ influence were obscured from the onset and their participation was soon forgotten. Thus this qualitative study aimed to explore and explain these noncitizens’ challenge to policy and policy-making, and in so doing to illuminate possible implications for the study and application of social policy.

To explore these asylum seekers' roles in policy change and how national and international levels were bridged, the study looks at asylum seekers' extra-institutional actions (going 'public'), their relationships with supporters and use of existing moral and legal resources to transnationalise their rights. These dimensions are further investigated within the broader structural context in an attempt to explain the generation and impact of asylum seekers' challenge. Thus it sees asylum seeking and the campaign process as embedded within the wider structural environment of constraints and opportunities, which explain their influence as a factor of an environment both facilitating their actorhood and also vulnerable to their particular claims. It discloses the pre-existing and changing parameters of seeking asylum and challenging refugee policy in the particular case, and how asylum seekers negotiated these parameters. In this it highlights inter-relations between asylum seekers' *extra-institutional* actions (i.e. 'going public' on a national level) and *institutionalised* access to claim-making, both as asylum seekers and as residents of Canada. At institutional and extra-institutional sites key political opportunities and national and international rights facilitating and legitimating their claims are illuminated, helping to explain more broadly why refugee policy actually expanded in a time of world-wide cutbacks and constraints on immigration.

The analytical framework developed thus explores asylum seekers' roles in policy development in light of broader changes occurring in the international and national structural contexts of constraints and opportunities for asylum seekers to challenge refugee policy. It explains why asylum seekers may develop decidedly political roles in traditional and newly emerging claim-making processes in the late twentieth century. These political roles relate both to policy-making and to policy; they question noncitizen rights and state responsibilities at the cross-roads between human rights beyond borders and cultural relativism within nationally-bound citizenship rights. Through symbolic and strategic means, they inherently invoke identity issues to develop links with both national and supranational rights. Section IV of this chapter sets out the study and the organisation of the thesis in detail.

Based on this study the thesis suggests that to account for the consequences of globalisation, assumptions about citizenship as an underlying justification for social policy may need to be revised and policy and policy-making frameworks correspondingly expanded. The study provides an important illustration of one way the ideas and institutions of citizenship and human rights interact, namely in a symbiotic rather than hierarchical relationship, highlighting asylum seekers' particular role in this developing dynamic. It also offers, for the first time, a specific approach to the study of asylum seekers' participation in refugee policy-making, and presents a rich empirical description of the emergence of a 'new'

refugee flow, the particular policy process, and the unique asylum seekers as refugees and as policy actors. This example may be a useful consideration for social policy and citizenship debates more generally when questioning just what role citizenship plays, the nature of transformations currently occurring, and possible implications for the future.

II. CITIZENSHIP & SOCIAL POLICY IN THE AGE OF MASS TRANSNATIONAL MIGRATION

The central questions which asylum seekers' influence upon refugee policy raises for social policy are two tier: In the broader context, how far has social policy taken on the consequences of globalisation? What *are* the consequences of an inter-state system deeply affected by transnational migration? More specifically, in what ways does asylum seeking inform the idea of citizenship and the dialogue of rights and duties between individuals and states underlying academic social policy, in an increasingly global system of nation-states with interstate responsibilities?

The social policy literature demonstrates a marked absence of theory and research regarding the effects of globalisation (Deacon,1997). More specifically, it neglects implications for state responsibilities toward citizens and non-citizens alike: their rights and participation in society. This is an important oversight considering the diverse and increasing impact of globalisation today, and given that citizenship has long been an underlying assumption and central justification for social policy. While the former is well recognised and subject to much investigation (see Held et al,1999) the latter remains highly taken for granted.

In Britain the idea of citizenship was largely introduced into academic social policy by T.H. Marshall's lectures on *Citizenship and Social Class* (1949). Marshall's idea of citizenship is concerned less with national allegiance (Rees,1995) or formal legal status (Bottomore1992 in Marshall and Bottomore 1992) of the kind arising through birth, allegiance and/or residency, and more with a social and qualitative kind of status bestowing equality of rights to social integration as "full members of a community"(Marshall 1963:87). But it is also a *means* of achieving such social integration. Marshall calls citizenship a "developing institution" between state and society created by investing citizenship *status* with "rights and duties". In so far as society creates "an ideal citizenship against which achievement can be measured and towards which aspiration can be directed", expressed through rights and duties which come to embody the *institution* of citizenship, citizenship is a "status bestowed" (1963:87,124). Ideally it confers equality among those who possess it.

Marshall went on to reveal successive stages in the progression of this developing institution, each stage marked by the growth of a different type of citizenship right.

According to his periodisation of history, civil and political rights developed in the 18th and 19th centuries respectively, culminating in social rights championed by 20th century welfare states. The idea, said Marshall, was that citizenship rights and the state-citizen dialogue accruing from those rights would equalise men of different social classes by enabling them to become full members of a community, i.e. enjoying full citizenship. The working classes could be integrated into what Marshall called 'civilised' society not by being lifted out of their class, but through equality of civil, political and social rights and the general quality of life these rights could foster. Thus Marshall argued the growth of social rights embodied in the welfare state need not conflict with the social class system and the rise of capitalism. He believed that the inherent tension between democratic and welfare rights on one hand, and the distribution of power and incomes by the market on the other, could be managed. Focusing particularly on social rights, Marshall treated citizenship as a central justification and aim of the welfare state.

Marshall's conception of citizenship was much discussed and in many ways taken for granted in the decades following first publication in 1950. But as we shall see, while it remains a turnstone of social policy today it has more recently been criticised on several grounds: its inherent parameters of inclusion and exclusion, its Englishness, and the sweeping historical analysis underlying both. Subsequently, Marshall's conceptualisation of the relationship between citizenship and social rights in particular has been expanded upon in some important respects both in theory and in practice. However, in this the consequences of globalisation upon citizenship as a justification for social policy, rights to it and participation in its development, remains for the most part unexplored.

Some distinctions are helpful to this analysis. Most importantly, the ideal and institution of citizenship involves both a formal membership element and a substantive rights element. The social policy literature tends to neglect this distinction and focus primarily on substantive rights as did Marshall. Bottomore (in Marshall and Bottomore 1992) underlined this observation, drawing upon studies of international migration by Brubaker (1989,1992) which illuminate changing relationships between formal and substantive elements. In *Citizenship and Immigration* Brubaker explains:

The 'sociologization' of the concept of citizenship in the work of Marshall and Bendix and theorists of participation has indeed been fruitful [but] it has introduced an *endogenous* bias into the study of citizenship. Formal membership of the state has been taken for granted... But the massive immigration of the last quarter-century to Western Europe and North America, leaving in its wake a large population whose formal citizenship is in question, has engendered a new politics of citizenship, centered precisely on the question of membership in the nation-state. (1992:38)

The conflict and complexity that arises when formal status and substantive rights of citizenship are treated synonymously emerges in the case of massive immigration in the late twentieth century. Thus begins Brubaker's comparison of immigration and citizenship in six industrial countries, demonstrating that citizenship status is derived differently in countries with different immigration traditions. The 'politics of citizenship' varies across countries because it bears various relations to conceptions of nationhood.

Immigration raises questions about criteria for access to civil, political and social citizenship rights, both formally and informally. Brubaker explains clearly two types of grey areas in *the relation between* formal and substantive citizenship, which are organisationally helpful. He states (1992:36-38): "That which constitutes citizenship – the array of rights or the pattern of participation – is not necessarily tied to formal state-membership. Formal citizenship is *neither a sufficient nor a necessary condition* for substantive citizenship..." (emphasis added). Thus the first grey area arises when formal citizenship "is not a sufficient condition" for substantive rights and participation:

one can possess formal state-membership yet be excluded (in law or in fact) from certain political, civil, or social rights or from effective participation in the business of rule in a variety of settings... (Ibid,36-38)

The second grey area, which Brubaker notes is "less clear", arises when formal citizenship "is not a necessary condition of substantive citizenship":

...while formal citizenship may be required for certain components of substantive citizenship (e.g. voting in national elections), other components... are independent of formal state-membership. Social rights, for example, are accessible to citizens and legally resident non-citizens on virtually identical terms, as is participation in the self-governance of associations, political parties, unions, factory councils, and other institutions (Ibid,36-38).

Keeping these two grey areas in mind we may now further explore social policy, first regarding access to "the array of rights" and later regarding "patterns of participation" specifically in policy-making. Later we will delve even farther into these two grey areas, to consider questions raised by the access to rights and participation by *status-seeking non-citizens*, and subsequently the implications of their potential policy influence.

RIGHTS AND BENEFICIARIES

In the first grey area, where formal membership is not a sufficient condition for substantive citizenship rights ("in law or in fact"), academic social policy has been quite thorough. Not so the second grey area, although foreign born populations have various types of access to both formal citizenship status and substantive rights in host countries.

The social policy literature now shows that citizenship rights unfold differently in different national contexts and for different segments of society, in relation to social class and market forces. Calls to extend Marshall's concept of citizenship have thus been voiced in many ways. In the 1970s it was recognised that socialisation comes to bear upon whether citizenship is fully enjoyed, enhanced, or even diminished. In *Social Theory and Social Policy* (1971) Pinker argued that contrary to what Marshall suggested, "citizenship" has not been on a one way track toward enhancement through social welfare or social rights. In some cases it may actually be diminished. For example, society often stigmatises people for receiving state welfare benefits, preventing some and socially penalising others for doing so. Pinker emphasised that underlying social structures profoundly affect the level of integration or enjoyment of citizenship rights across different segments of society. By posing barriers that include some citizens and exclude others from attaining substantive citizenship rights, socialisation and stigma undermine the universalism of the welfare state which Marshall envisioned through citizenship and the fruition of social rights. Yet, while Pinker referred to the concept of citizenship as an "intellectual conceit" as far as substantive rights go, citizenship remained the underlying justification for social rights, taking formal citizenship status for granted as a basis for substantive rights.

As Rees (1995) pointed out in *The Other Marshall*, Marshall's later works (1981) were increasingly pessimistic of the universalism of the welfare state as an equaliser of citizens of different social classes. Indeed, in the 1970s others argued that the welfare state merely reproduces class society (for example O'Connor,1973). Along the same lines as Pinker, some suggested that access to substantive social citizenship rights needs to be broadened by rethinking the social and intellectual assumptions underlying social policy, and reinvesting it with values that, in essence, broaden the concept of citizenship: "to adapt our social and political institutions to a new and more inclusive idea of citizenship that reflects the interconnected social world we live in..." (Glennerster,1983:222). This revived interest in Marshall pursued the problematics of "citizenship" which inheres in underlying structures of social inequality. It built upon Marshall's original use of the concept but identified both its Britishness and its unstated structural bias, or what Hill (1997) calls the "deep structures" of social policy, which in effect make some people 'second-class' citizens. Bulmer and Rees provide a forum in *Citizenship Today* (1996) for the ways social policy analysis has transcended the inherent parameters of citizenship set out by Marshall in both these respects.

In terms of 'deep structures' of citizenship and social policy, Marshall's framework virtually ignored minorities and women whose civil, political and social rights have unfolded

differently from that of white males, and in various ways in different countries. In so doing, it failed to recognise and indeed framed persisting social inequality based on sex and race as well as class. In response, feminist research has generally concentrated on the ways gender divisions between paid and unpaid labour underpin the structure of the welfare state and uphold women's structural inequality and dependency. Much of Land's work in writing about "the structure of dependency" in welfare systems (Land,1989) uncovered 'the myth of the male breadwinner', in which assumptions about marriage and women's financial dependency underpin the structure of British social security. Lewis (1992) and others have referred to the 'male-breadwinner model' of welfare states, comparing and contrasting the evolution of 'gender welfare regimes' in different states. Welfare regimes undervalue the informal caring work generally done by women in lieu of or alongside paid labour (Ungerson 1983).

Subsequently, the idea of citizenship underpinning welfare regimes may be inherently patriarchal and thus incompatible with a feminist agenda. On the other hand, building upon the citizenship analysis developed by political scientists such as Pateman (1988,1989) and Walby (1990) feminist social policy research suggests that by attending to the ways citizenship underwrites women's economic independence, social policy could be strengthened to enhance women's social citizenship rights (see Ungerson and Kembar,1997). As Vogel (1991), Lister (1997) and others have observed, in so far as gender divisions between public and private or domestic labour have been upheld in social policy, social rights have been predicated upon full and continuous labour market participation from which women have been excluded or devalued, thus undercutting women's substantive citizenship rights. However, in this feminist scholarship *formal* citizenship status is generally not at issue.

Feminist research also became increasingly concerned with the multiplicity of women's experiences and identities, drawing from research on race and ethnicity. Williams (1989) and others have shown how both gender and race bias underpin the welfare state. Analysis centres on inclusion and exclusion from substantive rights due to structural disadvantages and discrimination. Similar to gender bias, racism and nationalism underpins the welfare state, for example by barring restricting immigration to those able to prove they will be financially independent (Cohen,1985), relying on cheap immigrant labour to support the national economy, and prohibiting full minority and immigrants' full access to rights – thus cementing an informal 'second-class' citizen status (see Williams,1989; Gordon,1989a). An early use of the term 'denizen', for example, to describe the experience of citizenship by black Americans. While the literature pertaining to the problems of citizenship in relation to colour and ethnicity, including international migrants with citizenship status, is less developed

than feminist lenses in social policy, it has clearly indicated that formal citizenship status is not matched by the full range of substantive rights which are supposed to accompany it.

On the other hand, the too common experience of inequality of substantive rights among non-naturalised international migrants more closely matches the notion that access to rights comes with formal citizenship status, whether or not it should. For example guest workers were long used to meet labour shortages while being denied full social benefit rights, particularly in 'old' world countries of immigration. Compared to "settlement" countries of the 'new' world, European countries have not historically been duly concerned with long term residence or the naturalisation of new arrivals, as international migration policy analysts have long observed (Papademetriou and Boutang,1994). Access to rights before attaining formal citizenship status was long in coming for all types of international migrants. It has even been argued that immigration policy has historically been affected by the strong tie between welfarism and nationality; for example the 1905 Alien Act in Britain prohibited established immigrants from receiving aid and deported those who became homeless or whose living situation deteriorated (see Cohen,1985).

Social policy has increasingly observed that international migrant labour market participation contributes to the welfare state (through taxation) and society (through economic and cultural contributions), and should be matched with access to substantive rights (Anderson and Marr,1987; Vogel and Moran,1991). There has been concern about increasing competition for resources and inequality in substantive citizenship rights actually enjoyed by international migrants. But this important expansion in understanding how exclusion occurs still neglects corresponding conflicts that arise around lack of citizenship status and positive access to rights. Deacon (1997:220) rightly observes that alongside other international trends, the implications of international migration for citizenship laws and transnational social policy issues have been under-researched in social policy. Meanwhile sociologists and political scientists have observed that international migrants' substantive rights have gradually increased regardless of status (Layton-Henry 1990), with direct implications for the citizenship question. Migrants are now 'incorporated' into host polities in a variety of ways (Soysal 1994). Global migration is changing access to substantive citizenship rights and perhaps the basis of nation-state membership – or 'rights to rights' – itself.

Types and levels of substantive rights enjoyed by different segments of the population at different times also indicate a fault in Marshall's periodisation of rights, both in Britain and in other countries. The unfolding of civil, political and social rights again generally reflects the experience of white males in England, and was not always replicated in other

countries, as Mann (1996) and others have pointed out. Women and ethnic minorities gained rights in various sequences and to different extents in different countries (see Vogel and Moran, 1991), while international migrants tended to attain social rights before other rights (Soysal, 1994:131). Thus social policy's traditionally ethnocentric and sexist focus on conflicting claims to social services among established citizens ignored 'denizens' or those groups in society whose progressive attainment of rights does not follow the same trajectory as that of 'mainstream' citizens. While inequalities of substantive citizenship rights enjoyed by different segments of the population have been considerably elaborated in an attempt to equalise them as members of the same citizenry, the consequences of globalisation have been considered only in terms of discrimination against established international migrants or the increased competition for resources they may create.

Globalisation has, however, influenced research *method* by encouraging comparative cross-national studies of the nature of welfare states and their development. This has given rise to the identification of global political economy as a factor of welfare state development and social citizenship rights. Esping-Anderson's *The Three worlds of Welfare Capitalism* (1990) revealed different welfare state types and their patterns of development. There we see that citizenship rights supported by welfare states are indeed historical in their dependence upon (for example) a particular state's political economy and political party coalitions – factors shaping welfare states themselves. However, the common characteristics of the three welfare regimes Esping-Anderson identifies still take *formal* citizenship for granted. Esping-Anderson contends that social rights and social stratification are “part and parcel of welfare states”, which aim to decommodify citizen status. He explains (1990:3): “The outstanding criterion for social rights must be the degree to which they permit people to make their living standards independent of pure market forces. It is in this sense that social rights diminish citizens' status as 'commodities.’”

In *Welfare States in Transition* (1996) Esping-Anderson considers whether social citizenship is the inevitable outcome of democratisation, and what alternative post-industrial models of social citizenship the future might hold. He argues that the global economy deeply influences the different paths newly emerging industrial democracies are taking toward welfare state development.¹ But Esping-Anderson is not concerned with who actually enjoys or is entitled to substantive citizenship rights, or whether individuals must be full-fledged

¹ Esping-Anderson (1996) argues that the global economy influences governments' freedom “to design discrete social policies”, wage competition and the loss of jobs to state economies with cheaper labour, different conceptions of equality that welfare states pursue, and different politics of welfare.

citizens to influence policy. Rather the question is how the global political economy influences welfare states, and subsequently, the social rights established citizens may enjoy.

Comparative studies in social policy have also been encouraged by the formation of the European Union, with explicit implications for citizen rights. Citizens' access to rights, the nature of their rights, the administration and financing of rights both *in* states undergoing reforms and *across* states, have been changing (Meehan,1993; Kleinman and Piachaud,1993). But European rights are discussed precisely in terms of formal citizenship status within contracting member states, for the most part excluding consideration of aliens and noncitizens (Sivanandan,1993; Gordon,1989b).

Broader implications for transnational rights and a more global social policy analysis arising from international trends such as the global political economy, regional and international institutions, and international migration, have been taken up by a only a few in social policy, most notably de Swaan (1994), Deacon (1997), Midgely (1997) and more recently Mishra (1999). They suggest social policy shift toward the global arena, with broadened state responsibilities, co-ordination with international institutions, and globalised conceptions of welfare needs. While they are less concerned with implications for 'citizenship' or working out the details of conflicts that will arise around formal membership status, they tend toward advocating a reconceptualisation of citizenship at the supranational level; maintaining the idea of citizenship appears largely unproblematic, it is merely extended. As we shall see later, this view fails to address a number of questions, not least how such a system would work without global governance while states still feel compelled to regulate their borders. But more fundamentally, this view leaves untouched the underlying justification of social policy – equality of membership associated with citizenship in the nation-state. Thus *the second grey area* where formal citizenship “is not a necessary condition of substantive citizenship”, remains unexplored.

The assumption that substantive rights require or may assume formal citizenship status in some state, or that rules of inclusion and exclusion will not remain fundamental determinants of access to rights in many respects, is clearly contradicted by the experience of temporary and permanent noncitizen residents, i.e. immigrants, refugees, students and visitors (see Layton-Henry,1990). In most advanced democratic countries naturalisation rates have been falling. In some countries, particularly the United States, vast numbers of illegal migrants have secured basic benefits and rights, although not without controversy. At the same time, immigration regulations have been tightening all over the world. At present, social policy largely ignores the theoretical implications of the broken union between formal

citizenship status and access to substantive rights. How has this affected non-citizen participation in policy-making processes, which both *draw upon* and *define* rights and access to them?

POLICY-MAKING AND POLICY ACTORS: PATTERNS OF PARTICIPATION

In *The Policy Process in the Modern Capitalist State* (1984), Ham and Hill asserted that greater attention to the nature of the policy process, rather than policy content and 'prescription', was essential if the latter was to be grounded "in the real world where policy is made", thus providing a firmer basis for building, analysing and changing policy. Subsequently, from a rather formulaic unidimensional textbook understanding of policy-making 'stages', a proliferation of approaches and a recognition of its complexity sprang up. By the third edition of their book Hill (1997) was remarking that the pursuit of policy-making processes had run into an atmosphere of "pessimistic realism". The plea to take up a little studied process that once seemed relatively straightforward turned into an urging not to abandon its ever-unfolding complexity: "we must continue to try to understand the policy process – however irrational or uncontrollable it may seem to be – as a crucial first step towards trying to bring it under control." (1997:5).

The heuristic 'stages of policy-making' approach, characterised by rational and prescriptive elite decision-making, has been surpassed 'systems' models. Like others advocating a 'systems' approach, Hill emphasises that it is crucial to understand policy-making as a political process within structures of power in society and between society and the state. In *Change, Choice and Conflict in Social Policy* (1975) Hall, Land, Parker and Webb brought out the crucial point that conflict is as important to policy-making as is consensus; political struggles occur in the policy-making and political environment where policy decisions are made. They built on Easton's classic system model (1965) in which demands and supports feed into decision-making processes where authorities produce policy outputs, generating information that feeds back into future inputs in a policy cycle. This process occurs within a larger environment of different types of systems, including social and ecological systems. "Supports" were essentially made of the bargaining power or leverage points citizens can employ by giving or withdrawing their political support – their vote – for authorities making policy decisions, replacing authorities if need be with others who will uphold citizens' values. Needless to say, conflict and consensus in policy-making takes place in a pluralist national environment, between citizens, politicians and state authorities.

Incremental approaches to policy-making have since elaborated the types of political leverage or "supports", kinds of government and nongovernment interactions, and the range

of actors within political and policy-making environments. Changing conceptions of power framed the new-found actors and their inter-actions with decision-makers. Bachrach and Baratz (1962) had pointed out that the traditional pluralist framework of power, in which overt conflicts occur between actors and key issues in an accessible political system, failed to recognise the power of “nondecision-making” by elites in political systems that are structurally informed and not equally accessible to all. Lukes (1974) criticised both pluralist and elitist conceptions of power (or “democratic elitism”) for neglecting the “latent conflict” inherent not only to overt nondecision-making (as in Bachrach and Baratz’ account), but also to covert nondecision-making by elites who shape the very awareness and interests of others.

Different policy-making models have subsequently explored the variety of ways complex relationships between groups and the state are played out, within different types of structural conflict in society and between competing groups (as Neo-Marxists pointed out). For example, Public Choice theory narrows in on the notion of groups competing for public support in a political market place. ‘State-centred’ theories emphasise the ways institutions of the state influence policy processes (Evans, Rueschemeyer and Skocpol,1993), or how the very design of political institutions influence policy processes (March and Olsen,1984). However policy-making remains a nationally bound project among actors whose formal citizenship is never in question. Citizenship is taken for granted, implicitly and often explicitly stated to identify actors as members of a specific polity, namely the state.

While many approaches evolve around state institutions and bureaucracy (see Hill 1993,1997), others have increasingly sprung up which offer more detailed descriptions of both inter-governmental (i.e. federal, local) and nongovernment layers (citizens, NGOs), and their interaction. They increasingly blur the boundaries between traditional ‘insider’ (i.e. government) and ‘outsider’ (i.e. nongovernment) divisions in policy-making processes. Policy networks (Marsh and Rhodes,1992), policy communities (Jordan and Richardson,1979) and policy coalitions (Smith and Sabatier,1994) are a few models that draw out the range of locations, actors, strategies and processes in policy-making. These models are not concerned with whether rights of participation correspond with citizenship status. Yet they tend to refer to non-state actors as citizens, and to overlook international influences.

One exception to state-defined boundaries of policy-making in the literature is the increasing concern with the global political economy as a kind of uncontrollable force or actor in its own right, predetermining the thrust of neo-conservative turns and cut-backs in social policy. While not everyone agrees that the global economy makes certain types of policy choices inevitable, it does describe how policy-making processes occur within an

environment composed of 'systems' that may be international. Here the world economy is no longer seen as a threat to welfare states but as a centrifugal force (see Esping-Anderson,1996).

Another significant exception is attention to the rise of regional and international institutions and laws that influence policy and provision, most notably in the European Union. This has filtered into Levin's work (1997), who in describing components of the British policy-making environment adds a section on EU institutions, in particular the role of the 1989 Social Charter. Similarly, there have been empirical studies of the impact and influence of regulation, economic reforms, and redistribution upon policy and welfare systems among recent member states (for example Kleinman and Piachaud,1993; Ferrera and Gualmini,1999). There is less of an attempt to conceptualise how such international elements figure into or change policy-making models and ideas about citizenship as an underlying justification.

Notably, Deacon (1997:2) contends that social policy needs to account for "supranational and global actors" in "explanations of changing social policy", as do Midgeley (1997) and Mishra (1999). They include institutions such as the IMF and World Bank to account for influences upon less developed countries and relations between more and less developed countries linked through the global economy. By "actors" they refer explicitly to organisations and institutions, not *individuals* with transnational policy influence, i.e. foreign nationals, noncitizens or stateless persons. In the emerging citizenship literature within social policy, transnational issues such as the environment and subsequent pressures to conform with international standards justified on the basis of citizen rights in other countries, or even unborn or future citizens' rights within a country (see Van Steenberg,1994). They assume formal citizenship or ignore the difficulties posed by the problematic union between formal status and substantive rights.

It is notable that despite considerable expansion since the 1980s, the literature on policy-making is as yet limited in its accounts of the consequences of globalisation. Diverse approaches have sprung up to describe inter-action between state and society, but in this the formal citizenship of policy actors has not been in question, nor the underlying ideal of citizenship itself. Citizenship remains an underlying assumption and central justification for social policy.

Social policy should consider the growing importance of supranational and foreign-national trends and forces that break the mould of nation-state defined boundaries of policy-

making rooted in formal citizenship status, and states' welfare responsibilities toward 'citizens'. In this the globalisation of migration is a contending force. Like the global political economy, global migration spans national and international policy 'systems'. It involves national and international legislation regarding rights and limitations upon noncitizens' entry and access to resources. And it involves *individuals*. We need to look more explicitly at individuals without formal citizenship status who engage in policy debates and policy-making, and consider the implications for social policy.

Refugee policy-making is particularly interesting for social policy despite the little attention it has received. It clearly straddles foreign and domestic affairs. It is geared toward the welfare of non-citizens (stateless persons and foreign nationals) rather than fulfilling domestic needs (such as labour migration), and sends important messages to other countries about human rights. It also helps shape current and future receiving-country constituencies and their access to membership benefits, subsequently shaping receiving-country responsibilities. It draws upon both national and international legislation and rights, increasingly including both human rights and substantive citizenship rights, as we shall see. It is particularly relevant given the tremendous increase of refugees making claims from within receiving-countries and making *new types* of claims upon states since the late twentieth century, which we shall now consider.

ACCESS TO RIGHTS AND PARTICIPATION BY STATUS-SEEKING MIGRANTS

Questions raised by asylum seekers

Residency, as we now know, increasingly involves substantive citizenship rights (Layton Henry,1990) and incorporation into host polities (Soysal,1994) whether or not accompanied by formal citizenship status. Thus *established* migrants lacking formal citizenship, including illegal immigrants (see Jacobson,1996), have potential access to various rights and types of political organisation and participation in host countries, although our policy-making models have not been amended to account for them. This is true also of *status-seeking* individuals making claims for entry and membership in potential host countries. Status seekers, as opposed to established migrants, are particularly interesting but have been less remarked upon. This may be no surprise since many international migrants must apply for residence status from outside host countries, and the majority of international migrants *are* established (at least short-term). Moreover, in the past few decades most countries have implemented increasingly restrictive entry policies (i.e. increasing application fees, visa requirements, eligibility stringency, state rights to detain migrants) and complicated rules determining rights

while awaiting determination (i.e. in some cases being refused work permits but given welfare benefits). These differ for different types of international migrants in different countries.

Asylum seekers are one type of status-seeking migrant whose *inland claims* have been dramatically increasing. Annual claims in the OECD countries rose from 25,000 in 1973 to 550,000 applications in 1990 (the majority in Germany). In Canada annual inland claims rose from 600 in 1976 to 18,280 in 1986, and 36,000 in 1990 (Dirks,1995:77). While asylum seekers face many restrictions they have rights to make claims and have also gained access to a range of both formal and substantive *citizenship* rights, resources and participation avenues *while making and awaiting decisions on their claims*. Some of these have been accounted for in the literature on the incorporation of international migrants in particular countries, specifically regarding rights to welfare benefits (for example, Faist 1992:255-6).² Other rights are similar to those of established migrants, including constitutional rights and more informal access to resources (such as information and community networks). Asylum seekers' unique position also provides rights other migrants do not enjoy and leaves other rights open to question. The evolution of such rights in theory and practice may better enable asylum seekers to make claims, and challenge not only decisions on their claims but the content of refugee policy that excludes them.

In the past few decades, the growth of inland asylum seeking and receiving countries' inability to manage their claims quickly and efficiently, often leading to long delays, has created a new class of international migrants. They have rights under international law to make asylum claims upon receiving countries. The 1951 Convention requires receiving-countries to establish refugee status determination processes, and forbids receiving-countries from deporting asylum seekers unless lack of well-founded fear of persecution in sending-countries can be ascertained (the principle of non-refoulement) through the established refugee status determination process.

Inland refugee status determination systems have evolved to an extent that refugee claims in many receiving countries are heard in judicial settings with a number of levels to which claimants may appeal decisions, drawing upon an elaborate framework of international and national law. Moreover, as far as possible claimants are *required* to provide testimonies and evidence of their inability to reside in the country of origin, and are provided (or may hire) lawyers to present their case. International politics and changing global migration trends influence the types of claims being made as well as the numbers of claims being made,

² On the USA and Germany Faist (in Zolberg et al 1996:255-6) describes asylum seekers' access to: social assistance, unemployment benefit, workers' compensation, social security and old age pensions.

neither of which receiving-countries can adequately control. And, while making refugee applications, undergoing the various stages of the status determination processes and awaiting decisions, claimants reside in the host country where they may access resources and rights typically available to citizens and other residents as well as resources developed specifically for immigrants and refugees. These resources and rights may help claimants in the claim-making process and in challenging it.

Claim-making is important for individual claimants, groups of claimants of similar types and claimants as a whole because court decisions may either support the status quo or contribute to the growth of jurisprudence which fundamentally alters it. Jurisprudence may increasingly change the application of the law, or suggest that the law itself should be changed. Or, the status determination process itself may be altered, paving the way for future claimants. An example of this occurred in the case of *Singh vs. MEI* in 1985, in which the Supreme Court of Canada granted refugee claimants the right to a full oral hearing, leading to a complete overhaul of Canada's system from an administrative to a judicial model. The decision also explicitly raised citizenship debates, as it was based on the Canadian Charter of Rights and Freedoms – intended for Canadian 'citizens' (See Knowles, 1992:174). However, as would be expected, the case studied confirms that generally more than jurisprudence may be necessary to alter refugee policy. For example, creating a public debate and raising domestic political support is important.

Asylum seekers' access to both institutional and extra-institutional rights, resources and participation avenues challenges models of policy-making which exclude non-citizens. It is unlike that of other transnational actors, for instance in the fields of development and environmental policy which involve citizens making claims on foreign states (typically through international organisations). Refugee movement involves stateless persons and foreign nationals making claims upon host countries and willing to give up residency and citizenship of their country of origin. While their rights to resources in host countries are hotly contested, their actual use of all kinds enabling their participation in refugee policy development have not been explored, and subsequently neither have the implications for social policy.

While asylum seeking is not traditionally a subject of social policy, which typically deals with welfare rights and needs of people already inside 'the gates of admission', globalisation is making increasingly insupportable the current blindness toward the challenges posed by noncitizens. Asylum seeking, in its institutionalised environment, is a site where

international rights and national welfare systems meet on domestic terrain. Deacon (1997:220) explains:

Increased migration for economic and political reasons has generated a set of pressures on citizenship laws, and a set of problems concerning the rights to and social consequences of asylum seeking. Social policy analysts need to work with refugee studies experts to divine the emerging practices in this field. At the same time the impact on national social policy making of the diaspora is an under-researched topic.

What exactly might be the implications of status-seekers' access to and use of rights and corresponding policy participation avenues? Would it necessarily contradict the idea of citizenship as a central justification for rights upheld in social policy, access to them and participation in shaping them? Theories of current transformations of citizenship suggest two approaches to these questions..

Possible theoretical implications

Social policy analysts are increasingly considering the effects of international trends upon particular welfare states, particularly Europeanisation (see Kleinman and Piachaud,1993; Liebfried,1994) and global economic competition (for example Huber and Stevens,1993; Esping-Anderson,1996). A few have pointed toward a 'global social policy' (Deacon,1997; de Swaan,1994; Midgley,1997). The corresponding prescription for the ideals and institution of citizenship tends to be in favour of its expansion. But as Deacon (1997:1) observes,

The implications for national, supranational, and transnational social policy of this present phase of globalisation is an under-theorised and under-researched topic within the subject of social policy.

In sociology, political science, international migration studies and international relations, one theory of the transformation of citizenship under globalisation is that the concept of citizenship is indeed *expanding*. Citizenship is taking on or ought to take on enlarged rights and memberships, often by reaching toward human rights ideals or focusing on transnational identities, thus increasing state responsibilities or requiring more global forms of governance. Thus we see, for example, rights of cultural, ecological, European, corporate and global citizenship, to name just a few (for example Turner,1994; VanSteenbergen,1994; Meehan,1993; Falks,1994). These tend to be less concerned with formal citizenship status and admissions processes, and more with substantive rights. Some concentrate more on how substantive citizenship rights are to be enforced institutionally. In *The Consequences of Modernity* Giddens (1990) argues that globalisation is a fundamental consequence of the *institutional* transformations of modernity marked by, in particular, the

nation-state and systemic capitalist production. In turn, he argues, globalisation is likely to alter “polyarchy”, or “government responsiveness to the preferences of its citizens considered as political equals”, thus making forms of democratic participation and political institutions increasingly global. Citizenship status and the parameters for inclusion or exclusion are not in question, but governing institutions and subsequently forms of citizen’s democratic participation are. In a detailed manner Held (1995) prescribes rights and both institutional and political participation expanding in new forms of global democracy encompassing global citizenship through increased and systematic interaction between states and supranational institutions. Increasingly significant, as generally agreed, are principles of universal personhood, or human rights.

In contrast, another theory is that citizenship is being *replaced* by new postnational or transnational forms of membership. A strong body of evidence has emerged in favour of this view, particularly as demonstrated by international migrants without formal citizenship status (for example Soysal,1994; Baubock,1997; Jacobson,1996). In this some contend states' roles may increase as citizenship is replaced with human rights, while others maintain states' roles will decrease as international bodies increasingly govern human rights encompassing citizenship. In both cases political participation by, for example, ‘postnational’ (Soysal,1994) or ‘transnational’ (Baubock,1997) members draws increasingly on principles of universal personhood and upon increasing interaction between national and supranational governance.

It is evident that as ideas about citizenship are argued and contested, further exploration is warranted regarding the relationship between citizenship and more universal rights (both formal and substantive kinds) as the basis for state responsibilities toward individuals. For social policy the implications of the above debates lead us back to T.H.Marshall’s conception of citizenship, in which social rights are fundamental to full citizenship, and full citizenship is an underlying aim or ideal, therefore, of social policy. As we saw earlier, citizenship was deemed by Marshall to be linked to right of membership in a community or to a shared social heritage. Citizenship, by Marshall’s time, was widely understood as involving formal membership in a nation-state. However, the above debates indicate that whether citizenship is (or should be) expanding, or is being replaced, new international rights, actors and influences on policy-making may disrupt the traditional citizenship assumption and alter the underlying justification of social policy.

The relationship between citizenship and human rights is particularly interesting when we consider the development of the very policies and laws governing rules of inclusion and exclusion to those rights – in other words access to formal membership status. The

relationship is even more interesting if influenced by people seeking formal membership in the first place – status-seeking noncitizens, in this case asylum seekers. In advanced democratic countries a trend may be emerging in which the typical nature of status determination processes combined with changing opportunities for seeking asylum, are leading to more atypical types of claims being made that expand state responsibilities and bring citizenship and human rights principles increasingly into contact, creating new debates and negotiating new boundaries. This study illustrates a case of noncitizens explicitly drawing upon both social citizenship rights and human rights to influence national policy and gain membership. It thus affirms the need for social policy to self-consciously ground itself in a more global framework and theoretical justification, and illuminates the evolving dynamic between citizenship and human rights which social policy may need to better understand. It returns, in conclusion, to Marshall’s conception of citizenship to assess its compatibility with international trends and influences, and revisits citizenship debates in light of citizenship-human dynamics rights observed in the study, to suggest future directions for social policy.

We now need to consider what is involved in exploring the particular policy process at centre of this study. The following sketches the campaigns and the Canadian scene during instatement of the Guidelines, and reviews previous accounts of the particular policy process. This illuminates important dimensions of the process as well as significant oversights in the literature. The contributions of this study in its approach to the particular policy-process are then described.

III. THE CANADIAN CAMPAIGN AND PERSPECTIVES ON THE POLICY PROCESS

In the early 1990s a series of women facing deportation made their refugee claims public in Canada, with the support of a wide range of local, national and international organisations and prominent individuals. The media was filled with headlines such as "Is sexual equality a universal value?: debate rages over giving refugee status to abused women" (*Montreal Gazette* 15-02-93), and "Canada not planning to widen refugee rules to cover sex bias: women fleeing abuse would strain system, Valcourt says" (*Globe and Mail* 15-01-93). It was asked whether women's rights to safety from violence typically considered 'private' in nature and perpetrated by non-state actors, such as family violence and traditional practices of female circumcision, are culturally-relevant rights or 'human rights' that transcend nations. The demands that were made and the public debate and negative government publicity that ensued forced Immigration Minister Valcourt to publicly announce whether or not he would

personally intervene in the publicised cases and stop their deportation through special Ministerial powers, and initiate refugee policy change to recognise persecution based on sex.

The neo-conservative government was strongly in favour of protecting the security and interests of the state (economic, demographic, and in relations with other countries) before those of the particular asylum seekers. One way of achieving this was simply to adhere closely to the public/private demarcation as a guide to state responsibility – the standard interpretation of international law. In this light, refugee policy change was painted as, somewhat paradoxically, either threatening or unnecessary. This confusion was perhaps best expressed when Randy Gordan, assistant to the Immigration Minister, stated that opening the door to one abused woman would be "opening a can of worms" which apparently the government would prefer to leave closed (NOW magazine 12-92).

State recognition of female-specific persecution is threatening firstly because it makes 'private violence' into a public responsibility. This destroys the public/private demarcation traditionally defining state responsibility and state sovereignty (See Romany 1993; Charlesworth et al 1991; Cook 1994; Chapter 4 presents a detailed discussion). Secondly, it questions the legitimacy of cultural relativism. Opening the doors to refugees for gender reasons could be culturally judgmental, imposing "Western" gender roles on "non-western" countries. The Federal government's position remained unfailingly clear up to and including Valcourt's statement to the press on 16 January 1993: "I don't think Canada should unilaterally try to impose its values on the rest of the world. Canada cannot go it alone, we just cannot (*London Free Press*, 16-1-93, *Montreal Gazette* 16-1-93). He went on to emphasise the paradox of the situation, saying:

The laws of general application in countries of the world are not necessarily laws that we in this country would want to promote because of our values but will Canada act as an imperialist country and impose its values on other countries around the world? (*The House*, CBC Radio, 16-1-1993).

It also was posited that accepting violence against women as persecution might open the "floodgates" for vast numbers of women around the world who face chronic structural violence and who lack protection. Canada's refugee system would not be equipped to deal with such an influx, and tremendous pressures would be put on Canada's welfare system.

At the same time Federal government maintained that existing refugee policy and determination frameworks were "gender neutral" and therefore capable of meeting females' needs. The gender nature of the public/private distinction in international law was thus dismissed altogether.

Less than two weeks after his statement on cultural relativism, Valcourt made three announcements: a Saudi Arabian woman by the pseudonym “Nada” would be accepted in Canada for gender-related reasons, policy Guidelines to address the question of gender-related persecution would be forth-coming, and a national Consultation on Gender Issues and Refugees would be called to determine further administrative and legal solutions. Soon after, speaking for the Immigration Minister, Randy Gordan announced: “If there was a consensus on this gender issue in this country, and it was brought back to the government, the government could consider making representations on this issue to the United Nations” (*Ottawa Citizen* 25-01-93).

A year later a number of asylum seekers again went public, including two who had previously done so. Their continuing difficulty being accepted as refugees cast doubt on the adequacy of the Guidelines or their application, particularly in cases involving domestic violence. Media headlines included statements such as “Cameroon woman in hiding tests new immigration guidelines” (*Montreal Gazette* 11-01-95). This second phase of campaigning involved fewer asylum seekers and more sporadic publicity over a two-year period, and its effects were more mixed than the first phase. Not all the asylum seekers were accepted into Canada. However, in 1996 the Guidelines were revised, one important change being to address more specifically claims involving domestic violence.

These brief snapshots of government responses indicate how radical its change of position was between December 1992 and March 1993 when the *Guidelines for Women Refugees Fearing Gender-Related Persecution* were instated. What were asylum seekers’ roles in this radical change? What were their roles in the 1996 revision?

Looking to the post-instatement literature, we see that government and the Guidelines have been both applauded and criticised in the mass media, scholarly publications, and speeches given by advocates and activists. Information about female-specific persecution as cause for refugee status has proliferated rapidly from what was previously a sparse assortment of articles and reports. But interest in the Guidelines has been predominantly ‘static’, focusing on product (real or ideal policy content) rather than process. This is perhaps due to the continuing sense of ambiguity and need to legitimate just exactly who ‘gender-related’ refugees really are, usually in favour of the Guidelines or future expansions of the refugee definition. Law articles and government documents recognise or

lay out the framework for either "sex", or "gender", or "gender-related" persecution as a receiving-country responsibility through refugee status determination systems.³

Less attention has been paid to why and how the Guidelines were developed and instated. While no in-depth empirical studies have been undertaken, the few articles that have emerged –including two government documents - illuminate several important themes by attempting to describe and explain the instatement process. However, these accounts and analyses are problematic in a number of ways. First, they tend to separate government and nongovernment influences too much. This occurs in two ways. Foremost, there is little exploration of the interplay between government and non-government forces, just a statement of positions. Why and how did they actually influence one another? Failure to account for this dynamic leads to narrow visions. Some accounts explain the Guidelines as an Immigration and Refugee Board (IRB) initiative, while failing to account for the fact that government was divided on whether to take responsibility for female-specific persecution at all, as indicated by Immigration Minister Valcourt's clearly negative stance at the onset. Other accounts recognise overwhelming public pressure that was brought to bear without looking at how it was achieved, by whom and with what methods and implications.

Second, the existing accounts leave asylum seekers out of the analysis almost completely. This occurs in considerations of how IRB might have come to take certain initiatives, namely based on their experiences with asylum seekers making claims in the institutional realm. It also occurs in considerations of how nongovernment forces gained so much public support and influence, namely through extra-institutional actions in which asylum seekers were prominent. In both scenarios, asylum seekers are for the most part portrayed almost as victim by-standers or simply the beneficiaries of events. Important case-files are at times cited, either for their precedent-setting value or the publicity they achieved, but the active roles taken by people behind the cases are considered only in one account. In all accounts, the implications of their participation are overlooked or not of concern.

Enquiries into the policy change process, and the relation between process and product, have mainly been very recent and very cursory, usually within articles with other aims. Kuttner (1997:16) writes:

In the early 1990s, a series of controversial IRB decisions rejecting gender-related persecution claims brought the issue to the public eye. Refugee and women's rights advocates managed to bring significant media attention to these decisions and to the

³ Particularly important are speeches by IRB Chairperson Mawani (1993a,c, 1994, 1995a,b); articles by Beasley and Thomas 1994, Pope and Stairs 1990, MacMillan 1993, TCMR 1993, Schenke 1996, Indra 1987. Relevant Canadian government documents appear in Bibliography on National instruments.

systemic gender-bias within the refugee determination process as it then operated. There was a significant public outcry which put politicians under the spotlight; their initial rejection of the need for change was badly received. Political pressure increased, and eventually a new official position was taken to change national criteria such that gender-related persecution claims became an accepted basis on which to grant refugee status within the Canadian system... Thus, the Guidelines can be said to have emerged from a complex process of interaction with domestic Canadian groups, an international institution (UNHCR), international law (international human rights standards and jurisprudence from other jurisdictions) and transnational issue networks (academic articles and reports of international human rights NGOs).

Kuttner's description is valuable as one of the few that exists. However, she does not examine the "complex process of interaction", but is content to explain the strengths of advocates' arguments based on formal legal norms of equality and non-discrimination strengthened by "preliminary developments on the issue of gender-related persecution at the international level" (Ibid,16). The fact that these arguments were framed and presented to the public through the examples provided by asylum seekers willing to talk with the media, attend press conferences, have their life-stories discussed nationally, is absent.

In similar fashion, Macklin (1999:302) reports: "In the end, a constellation of forces within Canada precipitated the Canadian Guidelines, which was then instrumental in motivating similar action in the United States and eventually Australia." What this "constellation" was and how it precipitated the Guidelines into being, is never explained. She does however provide an insightful comparative analysis of the Canadian, American and Australian Guidelines.

Gilad (1999) states explicitly that she endeavours to explain "how the protection of refugee women because they are women came about in Canada." As both an anthropologist and a former IRB member, she draws an insightful analysis of particular cases, demonstrating their legal strengths and the need for status determination processes to rely more on ethnographic types of documentary evidence. However her explanation of developments is highly government-centred. The Guidelines are presented primarily as an initiative of the IRB Working Group on Refugee Women. As is well recognised, this group was indeed at the forefront, highly active and influential within the IRB for identifying refugee women's needs and developing a framework for responding which could be fairly easily and quickly implemented. However, refugees from whose experiences the framework for the Guidelines was developed, are never treated as actors making claims upon the state, but as victims to whom the state should respond. Pressure brought to bear upon government by NGOs *and* asylum seekers, in the period leading up to, and during, the drafting of the Guidelines and culminating just before their instatement, is not indicated. Nor is the fact that NGOs were

consulted on the draft version and made significant additions. Finally, whether the Guidelines would actually have been instated, or merely written up as a recommendation by a working group lacking decision-making power, if public pressure had not mounted and radicalised, is not at all clear.

Young (1994) from the Library of Parliament (Research Division) provides a more thorough descriptive account of the Guidelines' instatement. Young explains that publicity and protest surrounding a refugee claimant taking the pseudonym 'Nada', alongside other claimants, prompted widespread and diverse support for the issue in Canada. Government was criticised and embarrassed by women's groups, immigrant and refugee groups and international human rights organisations concerned by pending deportations of asylum seekers to countries where persecution was immanent. The role of advocacy groups and their interactions with state are revealed in snapshots of their dialogue through mass media, evolving as it did around particular asylum seekers who went public. The particulars of "Nada's" case are discussed, pointing out legal and theoretical arguments that persuaded government to grant her acceptance despite the initial rejection of her refugee claim. Still, supporters and the arguments they used overshadow the role of asylum seekers like Nada. They are not actors themselves, and the implications of their challenge to policy and policy-making are not at issue.

Government documents and NGO reports arising from the *National Consultations on Gender Issues and Refugees*, between 1993 and 1994, have also been candid about the profound influence upon government's search for "consistent policy responses" by advocacy groups, media, and research on women refugees in Canada. These Consultations did not aim to explore how policy change came about, but involved many key participants in the preceding campaigns and debates. One of the steering committee's aims was indeed to have each sector represented (Agenda setting meeting, July 1993). Thus the influences that brought government to the Consultation table were accredited in a more well-rounded manner. For example, the expansion of the interpretation of gender-persecution occurring in the private sphere, a turn-stone of the Guidelines' radicalisation in addressing domestic violence, was accredited to NGO and Experts' recommendations on the draft guidelines. What is not recognised is that when these NGO members and experts made recommendations they had been working with asylum seekers making claims public. However, the documents report that asylum seekers themselves participated in the Consultations process, providing 'expert witness' accounts of the hearing process and needs of women refugees.

One exception to the above trend, and indeed among the earliest attempts to account for developments in Canada, is a speech to Boston College Law School (23 March 1994) by Janet Dench from the Canadian Council for Refugees, who actively campaigned for changes in refugee policy and status determination processes. She rightly observed:

Nada was in fact courageous in the decisive actions she took – in coming to Canada and making a refugee claim, in seeking ways to press her case once rejected and in agreeing to take on the media and talk publicly about her situation. The heart of her story would nevertheless be the bullying of a vulnerable young woman by the two Board Members, both male, who heard her refugee claim, and by the Minister who refused initially to intervene.

This statement describes the touchstone of the proposed study, addressing the *active* participation of asylum seekers in campaign, and through in-depth research expanding upon crucial dimensions of the particular policy process observed above: the formative conflict between government and nongovernment actors and international influences; the structure and force of the campaigns rooted in their organisation around individual asylum seekers going public; debates between ‘women’s rights’ and ‘human rights’ foundations of state responsibility. It also delves into the links between institutional and extra-institutional structural contexts and asylum seeking processes.

It is evident that the accounts reviewed offer important observations but also contains significant gaps, some of which correspond to the gaps in the social policy literature discussed earlier. However it fair to say that none of the above accounts aimed to reveal the implications of the campaigns and resultant policy for ideas of citizenship. Moreover they were not concerned with fitting into policy-change models in social policy – where neither the international influences they observed nor asylum seekers would fit in. Finally, all but the last account correspond with theories of international migration and refugee policy development, which do not account for asylum seekers’ policy roles (as Chapter 3 shows).

Several important dimensions of the policy process explored in this study thus constitute original contributions to the literature on gender-related persecution specifically and on refugee policy development more generally, but are aimed at illuminating implications for social policy. First, as the literature on gender-related persecution is impoverished for historical background and empirical analysis of the particular asylum flow, neither long-term nor shorter-term policy development processes have been studied in relation to actual asylum seeking trends and processes. The study addresses these empirical gaps and in so doing raises questions about the relationship between asylum flows and changes in the structural context for seeking asylum and challenging policy. Refugee flows must be approached in global, inter-state and receiving-country contexts to understand their development and details

in relation to policy, including their *abilities to influence* the asylum seeking context – namely policy. Migration systems theory (Fawcett and Arnold, 1987) advocates a long-term structural approach to explaining the rise of refugee movements and refugee policy development; the same approach can be taken to study the rise of asylum seekers' abilities to seek and influence policy. This framework is essential to elaborate the details of the particular policy-process since refugee policy is not a typical focus of social policy. Chapter 3 analyses the evolution of refugee policy in relation to theories of international migration, and then develops the missing dimension – asylum seekers' roles – creating a novel expansion and application of migration systems theory and an original analytical framework for studying refugee policy development.

Second, asylum seekers' involvement in the policy process must be explored in both institutional and extra-institutional dimensions, *neither* of which are recognised in previous accounts of the Guidelines' instatement or in migration theories generally, and which social policy inherently excludes due to asylum seekers' noncitizen status. Claimants like Nada who went public (in extra-institutional tactics) represent a less visible majority of claimants whose presence in institutional claim-making processes makes immigration officials aware of female-specific persecution, and whose case-precedents can alter policy interpretation and occasionally lead to policy revision. Asylum seekers' abilities to use institutional and extra-institutional tactics can be understood arising from the context of national and international level rights and resources and their inter-relation, which the study illuminates.

Third, the *basis* for new inter-state responsibilities and rights of membership in the particular case has important implications that have not been explored. Asylum seekers' involvement in policy change needs to be explored *in light of* their noncitizen status to explain international influences on membership eligibility and associated benefits, and subsequent implications for the scope and basis of social policy. In this the dynamic between citizenship and human rights, at national and international levels, is fundamental. This dynamic highlights the disjuncture between equality rights considered universal *within* a host country population (i.e. women's rights), versus host countries' nonuniversal stance on those same rights when considering responsibilities for contrary practices in other countries. It also raises questions about the implementation of inter-state responsibilities, which a more global social policy would need to consider. For instance should receiving-countries be responsible for root causes of persecution or only the symptoms (i.e. should they provide humanitarian aid and expand social programs to noncitizens to prevent circumstances that could result in

persecution, or simply accept refugees thereby protecting their well-being through already established welfare systems?).

By exploring how the particular claimants in Canada participated in policy-development, this study illuminates an unexplored process generally (how the policy process involves asylum seekers themselves, although noncitizens) and an unexplored refugee movement in particular. And it questions the broader implications of international migrants shaping policies describing their own eligibility for residency and citizenship rights, with particular implications for countries with advanced social welfare systems.

IV. THE CASE STUDY

Having set out the broad issues addressed in the thesis and some of its contributions to the literature, specific questions may now be posed for study, and the manner they will be approached set out. What is the role of asylum seekers in refugee policy development? What are the changing structural constraints and opportunities for asylum seekers' roles, and how have they been used? To what extent have asylum seekers influenced refugee policy, and with what implications?

ASYLUM SEEKERS AND POLICY DEVELOPMENT IN THE UNIQUE CASE STUDIED

Convention refugees

Policy development in the case of the asylum seekers studied is somewhat unique compared to other 'untraditional refugees' such as those fleeing civil war, natural disaster and economic persecution. In Western countries policy recognition of the latter has been occurring without altering the definition provided in the 1951 Convention. Instead, distinct "humanitarian" categories have been created that provide asylum on an ad hoc basis for 'extra-Convention refugees' arriving from countries in a well-recognised state of crisis. These 'refugee-like' categories allow huge inlets of people fleeing persecution, but their ad hoc nature and lack of formalised rights or guidelines both contributes to the unmanageability of mass flows and fails to provide an equitable status determination system. In contrast, recognition of "gender-related" refugees developed in national interpretations of the Convention definition. Such asylum seekers may now actually receive *Convention* refugee status.

Canada: grassroots campaigns and policy pioneer

Canada's precedent-setting experience with gender-related refugees was soon followed in other countries. In 1994 both the United Kingdom and the United States saw similar types of

claims being made in similar ways (*The Guardian*,8-1-94; *Associated Press, Washington*,20-3-94). In 1995 the US and Australia adopted policy Guidelines similar to those in Canada, and the UN adopted Guidelines of its own.⁴ Denmark and Switzerland followed in 1996 and France, Germany and Sweden began negotiating ways to handle cases coming to light. In March 1999 the UK took a significant step in that direction when the House of Lords decided in favour of granting refugee status to two Pakistani women accused of adultery and facing persecution (*Islam v. Secretary of State for the Home Department; Reg. v. Immigration Appeal Tribunal and Another, Ex Parte Shah (Conjoined Appeals)*). These developments signal major changes not only in the application of refugee law, but also in state responsibilities toward non-citizens and state vulnerability to the claims of non-citizens.

This study traces the asylum seeking and policy process in the Canadian case, which not only pioneered the particular policy change, making it a key country to study, but also involved the most intense and protracted public pressure tactics and debates. Although studies have not been conducted of the other countries, public campaigning appears to have been very slight (usually only around one or two cases); instead claimants have set judicial precedents through institutional means alone, and policy-makers have drawn on the success of Canada's policy guidelines to deal with them. Thus the Canadian case demonstrated in a particularly explicit way the roles asylum seekers may play in shaping ideology and policy that defines their own membership eligibility criteria, despite the current climate of increasingly restrictive border controls. It subsequently illuminates the challenge noncitizens can pose to policy and policy-making.

Inland claimants in Canada

The asylum seekers studied were *status-seeking international migrants* making claims from *within the receiving-country*. They were neither citizens nor permanent residents of Canada, nor were they temporary residents in the way of guestworkers, visitors or students although they sometimes fell into these categories at some point. They were not illegal migrants, though some became illegal by defying deportation orders. They were international migrants awaiting decisions, from within Canada, on whether they could remain legally and permanently in the

⁴ In its *Conclusions on the Development of Appropriate Guidelines (1995)*, the UNHCR Executive Committee stated: "In accordance with the principle that women's rights are human rights, these guidelines should recognise as refugees women whose claim to refugee status is based upon well-founded fear of persecution for reasons enumerated in the 1951 Convention and 1967 Protocol, including persecution through sexual violence or other gender-related persecution."

host country. As such, they held particular rights and had access to others, and were under special constraints and pressures.

The study focuses on the processes surrounding 'inland' refugee claimants as opposed to overseas selection, countries of resettlement or overseas humanitarian aid. By accepting inland claims Canada is known as a 'first country of asylum' (Dirks,1995); it accepts asylum seekers who proceed directly to Canada rather than be selected at Canada's overseas immigration offices or who passing through other countries first. This illustrates processes and concerns typical to advanced democratic countries with advanced welfare systems, which are very different from countries such as Africa that experience mass regional flows. The study concentrates on receiving-country refugee policy development in relation to inland claim-making processes.

The receiving-country orientation is narrowed by the exclusive focus on a very particular group of untraditional refugees, as noted earlier, but on the other hand this group is considered broadly with no constraints according to their countries of origin. This makes the group studied more representative, and indeed is quite unlike most refugee studies which concentrate on particular groups who necessarily arrive from a particular country or set of countries due to specific events occurring there. In this study claimants who went public came from 12 different countries across 5 different regions of the world, and asylum seekers who used the Guidelines after their instatement arrived from over 100 countries. Therefore while more representative, the lack of sending-country constraints does exclude the possibility of accounting for the influence of *particular* sending and receiving-country relations (i.e. historical ties or political relations) upon the shape and influence of asylum flows and receiving-country policy responses. Instead I consider asylum seekers' use of the broader transnational and national structural contexts of trends converging around the particular issue (female-specific persecution) and asylum seekers in order to influence Canada's policy responses.

For the above reasons the particular case provides an opportunity to explore the evolution of the Convention refugee definition and asylum seekers' roles in it, in a pioneering country under conditions specific to advanced democratic countries with advanced welfare systems. Perhaps most notably, it is an opportunity to study a *successful* case. Asylum seekers' not only challenged the Convention refugee definition in explicit ways, they actually changed its use. The case is chosen *because* of its success, and because of the relative *uniqueness* of such success, in which asylum seekers were explicitly involved. In contrast, the merits and limitations of undertaking a comparative study with other countries that instated similar

policy guidelines or with other untraditional claimants in Canada who *failed* to influence policy, are discussed in Chapter 2 on methodology. For reasons discussed there, a comparative approach could not be undertaken in this study. Moreover, this study had somewhat different aims than a comparative study might have. It does not attempt to definitively identify causal factors that would be crucial for the success of other cases (in Canada or elsewhere), as comparison with negative cases might, although it can indicate factors that may be crucial. Rather, it concentrates on a unique positive case in order to challenge existing theory that excludes noncitizen influence on policy and policy-making, and more specifically asylum seekers' influence on refugee policy. It documents how policy was challenged in the particular case, including factors at national and international levels that were crucial in facilitating such a challenge and were actually *used* by asylum seekers (as the study shows), thus enabling their success. By examining the particular case within its structural context, the study helps illuminate why refugee policy actually expanded when international migration policies have been tightening all over the world. In this the effects of globalisation are paramount, in particular for asylum seekers' changing abilities and legitimacy to claim 'right' to social rights in receiving-countries, bringing together citizenship-based social policy and human rights based refugee policy. Thus the study illuminates broader trends that may also come to bear in other cases, however it must be kept in mind that such cases invoke complex processes taking place under various conditions that can never be exactly duplicated and could therefore could alter the outcome.

OVERVIEW OF THE STUDY

The study explores the inter-state and national structural context to uncover inherent and emerging opportunities for the particular asylum seeking and policy advocacy process. It then examines how asylum seekers in Canada negotiated and made expressly political use of these opportunities to influence national refugee policy determining their inclusion or exclusion from membership. This illuminates the complicated and dynamic relationship between asylum seeking and national refugee policy development, and provides an important illustration of one way globalisation may be affecting policy-making and welfare state responsibilities, in particular by altering the ideal and institution of citizenship. The thesis does not attempt to resolve the problems thrown up by citizenship, but offers a clear directive for social policy to begin to engage more with citizenship debates in other fields, and considers various possibilities for the beginning of a more globally aware social policy.

The analytical framework developed to explain the relation between asylum seeking and policy development (Chapter 3) is comprised of three parts. First it identifies asylum

seekers as part of broader processes of social change wherein they may be political actors in receiving-countries. It situates both refugee policy and asylum seeking within historical settings and identifies the dynamic tension between underlying *ideals* of refugee policy – rooted in human rights – being static or universal, whilst asylum seeking causes and contexts change and subsequently call these ideals into question. It describes how citizenship and human rights may interact in the case of asylum seeking, and how asylum seeking may challenge this developing dynamic.

Second, it describes the implications of asylum seeking taking place in a structural context. Asylum seekers play a political role in which they claim a particular identity invoking particular rights in host countries. The process of linking identity with rights and further associating those rights with a particular state is a political one. It takes place in a particular structural environment that may increase or decrease conflict and political struggle over meaning, identity, rights and responsibilities. Claimants must seek support and prove the legitimacy of their claims, while historically specific circumstances allow some claimants greater opportunities than others, and favour some types of claims over others. Subsequently, what we think of as the ‘refugee’ is a historically specific creation that may be successfully challenged under certain conditions, sometimes with policy implications.

Third, it broadly identifies the international and national structural context within which refugee policy is made and in which asylum seeking takes place, drawing out the main elements of their reciprocally shaping relationship and describing asylum seekers as political *agents* within it. It describes the increasing viability of asylum seekers’ political agency within an institutionalist framework where national and transnational cultural and legal norms and values legitimate and facilitate their new claims and actions. It offers a basic axis for exploring how they negotiate the more tangible elements of the structural context (i.e. international refugee regimes, national refugee regimes and host country resources) in political ways, drawing upon collective action theory to illuminate both strategic and symbolic discursive dimensions. This approach reveals the long-term and inter-state structural context of interactions between grassroots actors and government, and emphasises cross-national identity-issues underlying policy goals and the ideologies and strategies used for their attainment in particular contexts.

Thus in this analytical framework the intertwining of identity politics, refugee policy and the politics of policy-making suggest that the challenge asylum seekers pose is both symbolic and strategic. It is symbolic in that it involves the creation of meaning and identity and how we think about power structures, social relations and responsibilities. It is strategic

in that it involves seeking and using particular instruments for political persuasion to influence policy development around those identities and meanings.

The study then examines the structural context for both stable and more recently changing aspects as sites or opportunities for policy to be challenged by the particular asylum seekers, and explores how challenges were actually made and to what effect. In so doing, a previously unstudied refugee movement is also revealed and further policy recommendations are made based on cases examined.

The structural context comprises both international and national, and institutionalised claim-making procedures and extra-institutional public campaign tactics. Refugee policy challenges by asylum seekers typically occur incrementally through institutionalised status determination processes and the growth of jurisprudence. However they may be enhanced by extra-institutional tactics. The latter were used by Thérèse (quoted in introduction to this chapter) and eighteen others, who took the challenge out of private court rooms of refugee hearings. The study shows that this group in particular was politically conscious, made important decisions about taking certain actions, and took expressly political actions. Their engagement in Canadian politics thus does not conform to the traditional conception of refugees as simply 'forced' migrants and passive beneficiaries of receiving-country policies of protection, nor of participation in policy processes being confined to citizens. Their actual influence on policy through overarching campaign and claim-making processes, which the study illustrates, reinforces this finding. The means and outcomes of their influence reveal important aspects of policy-making under international influences.

Claimants' ability to draw on both human rights foundations of refugee policy and substantive citizenship rights in Canada as they made claims, awaited decisions and challenged them, was a crucial element of the policy process. Asylum seekers and supporters made use of and furthered the increasing overlap between citizenship and human rights discourses and state-responsibilities to argue the legitimacy of their claims and create public pressure. Two conflicting sets of ideologies and Canadian policies were brought face to face: Canada's domestic policies condemning violence against women and implementing social and legal interventions; and Canada's foreign policy, treating violence against women as a "private" or non-state issue, remaining silent on the maltreatment of women in many countries and failing to provide refuge for women fleeing female-specific persecution. In an unusual twist, Canadian women's rights were exposed as culturally relative rather than universally upheld by their own state. The Canadian government was called upon to rectify this situation. State responsibilities previously reserved for citizens were extended to

noncitizens by enlarging human rights applications. By changing the application of refugee policy, Canada explicitly recognised that women's rights are human rights, regardless of where women live. Women therefore can claim protection from female-specific human rights violations by seeking asylum.

Asylum seekers' grassroots social change may be explained as occurring within institutionalised cultural contexts that lend legitimacy and opportunity to individual and collective actions (Meyer,1994; Powell and DiMaggio,1991), and which are marked by increasing interaction between national and global levels, or what is often described as a process of *globalisation* (Held,1999). It may also be described as furthering this interaction. Furthermore, while national and transnational institutional frameworks are mutually reinforcing in some respects, the conflicts and contradictions between them also make the political actorhood of noncitizens viable. This emerges particularly regarding the conflicts between the citizenship and human rights of particular groups. Women's rights are powerfully supported in many national and international legal codes and enjoy widespread and diverse support by many different publics, even compared to other social rights issues. However, it is evident that a driving force behind these asylum seekers' claims was *both* the stronghold and pervasiveness of ideas about women's rights, and their continuing unevenness in substance, implementation, dispersion and rate of development across the world, like many issues affected by globalisation today (see Held et al,1999). Thus these asylum seekers could bring nationally specific citizenship discourses and rights regarding females face to face with human rights, strategically drawing on the most helpful established elements within each and attracting substantial popular support that no doubt was fundamental to their success.

The combination of increasing global interdependency involving global level rights of persons, and concurrent unevenness in acceptance and enforcement of rights, poses a new challenge for national welfare systems. The irony is that while welfare states are under attack, they are also facing pressures to extend their responsibilities toward more transnational issues and beneficiaries and greater inter-state co-operation (Deacon 1997; on the EU, for example, see Meehan 1993). Similarly, while national refugee regimes are becoming increasingly restrictive in important respects, some are also broadening their coverage as new types of claims emerge and are legitimated and accepted, as the case of 'gender-related refugees' demonstrates. Asylum seekers' leverage and unique access for making claims upon potential host countries for the rights and benefits associated with authorised entry and 'citizenship', by which they argued that national welfare rights should be international or human rights,

bring these two arenas of 'rights' face to face. The outcome of campaigns depended on previous advances regarding women's rights, but also further internationalised them.

The extent of asylum seekers' influence on policy content is measured both by the aims and outcomes of publicised policy demands, and also by the quieter evolution of policy interpretation and administration through on-going institutional claim-making processes. Findings suggest that the implications of their policy influence were profound both ideologically and institutionally, but that strategy demanded some compromises be made. The Guidelines were not campaigners' ideal policy solution but did serve to preserve high priority policy aims through a flexible framework open to future revision. Subsequently, since instatement the Guidelines have been incrementally expanded and in no small part due to challenging new twists in gender-related claims made through them, which the study also examines. However, analysis of claims also indicates that further policy change may be warranted, to recognise not only female-specific *forms* of 'gender-related' persecution but also structural sex-specific *causes* of 'sex persecution'.

By illuminating the above processes, trends and outcomes, the thesis demonstrates that non-citizens, foreign nationals and stateless persons can indeed be instrumental in shaping their own eligibility criteria and rights to state protection and other benefits of membership laid out in national policy. It explains why this was possible in the particular case, and considers broader implications for citizenship as the underlying justification for social policy and states' social welfare responsibilities. The thesis suggests that in the field of social policy academics may need to rethink nationally bound policy and policy-change frameworks rooted in traditional notions of citizenship rights, which globalisation is fast calling into question. It suggests possible directions for a more global social policy which explicitly incorporates noncitizens, re-reading Marshall's theory of citizenship in light of findings of the study and building upon citizenship debates outside social policy.

ORGANISATION OF THE THESIS

The thesis is organised into two Parts reflecting the two-tier global/national aspect of the analytical framework but keeping a firm eye on their inter-relations. The remaining chapters in *Part I* of the thesis elaborate the inter-state structural approach of the study and of the challenges faced and posed by the particular asylum seekers.

Chapter two presents a detailed account of the research strategy, data and methods of collection. A qualitative case study approach was used to describe and explain the particular asylum flow, the asylum seeking process in relation to policy development, the extent of its influence and its implications. The research method combines historical documentary

techniques, interviews, analysis of mass media coverage, NGO and government documents, and analysis of gender-related claims and court decisions. By triangulating data sources I identify the asylum seekers, illuminate the structural context and changing political opportunities, and explore how they were used by asylum seekers and supporters.

Chapter three sets the international context of migration 'systems' and theories of refugee policy-making, showing why and how asylum seekers' policy roles in receiving-countries were previously neglected, and developing the analytical framework summarised earlier to explain the relationship between asylum seeking and national refugee policy development. Chapters four through nine reflect this framework. They explore the structural context and processes through which the particular asylum seekers negotiated the conflicts between theory and opportunity that shape the refugee definition in law and policy, thus making the transition from 'self-identified' to 'state-identified' refugees, challenging prevailing political norms about rights and responsibilities, and influencing policy. They examine nature of asylum seekers' roles and extent of influence in the case studied, and what the policy process and outcomes might tell us about the evolving inter-state system and idea of citizenship.

Chapter four reveals the embeddedness of asylum seekers' symbolic and strategic challenges within international refugee law, reflected in the Canadian policy and determination system, both generally and in the particular case of women fleeing female-specific persecution. It argues that claim-making is a linchpin of refugee policy development due to the structure of international migration systems and status determination processes. It reveals the roles refugee claimants are inherently required to play in evolving interpretations of 'persecution' and state responsibilities (which sit at the crux of the refugee definition) despite embedded structural constraints against them.

Chapter five explores the evolution of three inter-related international trends with important implications for the particular asylum seekers before 1992: the 'feminisation of migration', the corresponding evolution of refugee policy discourses from general to female-specific causes and needs, and the internationalisation of conceptions of state responsibility for female-specific violence through the human rights movement. A rapid evolution and underlying tension between progressive and static conceptions of women's rights, and between continuing constraints and rising opportunities for migration by women is revealed in refugee policy discourses that just stopp short of women's rights as human rights.

Against this background, *Part II* concentrates on the structural context and policy-making process in which the particular asylum seekers engaged in Canada. *Chapter six*

introduces the Canadian setting in the 1980s and reveals emerging rights, resources and opportunities for asylum seekers to engage in policy processes. The characteristics of the main actors in the core policy network are presented as they were influenced by this climate.

Chapters *seven and eight* explore campaigns involving asylum seekers who went public within the core policy advocacy network. *Chapter seven* shows why and how they and their supporters decided to campaign, revealing asylum seekers as political actors, and their relationships with and influence on the internal political culture of the advocacy network. *Chapter eight* analyses the processes, evolution and outcome of their campaigning, illuminating asylum seekers' integral roles throughout. The incremental influence and implications of institutional claim-making processes under the Guidelines since instatement are explored in *Chapter nine*, which examines 'gender-related' claims and court decisions between 1993 and 1997. It suggests further policy development may be in order.

In all the chapters, asylum seekers' symbolic and strategic roles in policy change are illuminated and their actions and influence are explained in relation to the structural context. Integral to all the chapters is also the interplay between citizenship and human rights illuminated in asylum seekers' challenge to refugee policy. This interplay is revealed as both an instrument and effect of asylum seekers' participation in policy processes.

Part III concludes with a discussion of the implications of the particular case study for understanding the relationship between asylum seeking and refugee policy development in particular; the developing relationship between human rights and citizenship more generally regarding rights to the benefits of membership and access to policy-making that shapes those rights and benefits; and the implications for social policy. The study can only be a beginning in the necessary development of a more globally aware social policy. It indicates that relations between states and noncitizens are changing in ways social policy needs to account for. Implications for Marshall's idea of citizenship as the underlying justification of social policy are suggested, and theories of transformations of citizenship are reconsidered in light of the case studied, which invoked a symbiotic relationship between human rights and citizenship rights.

2. RESEARCH STRATEGY

The research strategy for this study seeks to address descriptive and theoretical aims: to describe the particular asylum flow and asylum seekers' access to, participation in, and influence on the policy process through their institutional claim-making and extra-institutional campaigning; and to explain both this previously unexplored process as it involves asylum seeking noncitizens, and its implications for policy and policy-making. Thus the research evolved around four specific questions: (1) What are asylum seekers' roles in the policy process. (2) What comprises the stable and changing structural context of opportunities and constraints they negotiate. (3) How did asylum seekers negotiate this context. (4) To what effect.

Underlying these questions is the more fundamental question, and methodological concern, of who the particular asylum seekers are: are they defined by their policy demands (shaping policy to identity) or are they subjects defined by policy? This chapter begins by setting out a conceptual framework to address this question and describing the implications of choosing a successful case to study, both of which affect the methodology and data interpretation. The qualitative case study method and triangulation process in data interpretation are then presented. Section II describes the data collection method, including some of the difficulties encountered and the strengths and limitations of data obtained. Section III on data analysis relates the central questions explicitly to the data.

I. METHODOLOGY

A. THE ASYLUM SEEKERS UNDER CONSIDERATION: SOME CONCEPTUAL DISTINCTIONS

A.1 Legitimate versus illegitimate refugees

A primary theme underlying both theory and methodology of the study is the false dichotomy between legitimate and illegitimate refugees when we look at asylum seekers whose claims push out the boundaries of refugee policy and state responsibilities. When considering who the actors in question are, we run into the distinction between the formal status of 'refugee' which some attain and the reality of being a refugee (a person in flight from persecution) without state recognition. Because we are interested in how refugee policy is shaped by claimants, we must look at the dynamics between state-recognised and self-recognised refugee identity. This underlies policy outcomes, whereby the needs and claims of

self-recognised refugees may or may not fit eligibility criteria for state-recognition. And it also underlies the policy process, whereby lack of fit may indicate policy change is warranted, and may be pursued precisely by those who do not ‘fit’. It means also that the subjects of this study may include asylum seekers with, ultimately, *either* positive or negative outcomes on their individual refugee claims; various *types* of positive outcomes in terms of the formal status they receive; and different degrees to which their final policy status matches their policy claims. These are discussed below.

A.2 ‘Asylum seekers’ versus ‘refugees’

The term ‘asylum seeker’ is used in this study for three main reasons which set the parameters for international migrants to be included in the study as well as how they are referred to in the study.

Firstly, the term “asylum seeker” describes formally unrecognised ‘refugees’ (i.e. lacking formal refugee status) attempting to establish their legitimacy; they are *seeking* asylum by making refugee claims. The outcome of their cases is pending, even for those challenging negative decisions already made on their claims. This study focuses on the processes asylum seekers engaged in while seeking status, and how their claims challenged the refugee definition that lays out their eligibility criteria.

Secondly, because this study is retrospective the outcome of cases is now known, and not all of the asylum seekers who went public ultimately attained formal Convention refugee status. Some received extra-Convention status, usually on Humanitarian grounds, while two were deported or remained illegally in Canada. In this study reasons for these various status types included both continuing misfit between asylum seekers’ claims and current interpretations of the refugee definition, and the fact that the Guidelines were instated *after* most of the asylum seekers who went public first made refugee claims – thus raising administrative/claim-processing difficulties. As well, while it is not the researcher’s opinion, it is always possible that, like any refugee claim, evidence pertaining to particular claims was not credible even when viewed through a gender-lens. Each claimant who went public had to be assessed on the merits of her individual claim. In all cases the success or failure of individual claims is extremely important for the asylum seekers themselves, but is the challenge they posed (individually and collectively) and its effects upon refugee policy which we want to study.

Thirdly, the term asylum seeker emphasises the movement or action in ‘seeking’ refugee status; it emphasises their identity as actors. The study explores how asylum seekers

can effect new interpretations of the law by making untraditional claims and challenging decisions on them, resulting in the growth of jurisprudence or catalysing substantial changes to the law. Their agency in this respect reveals that both asylum seeking and refugee law are historically and structurally located, the former having at times to challenge political boundaries to maintain a symbiotic relation with the latter (discussed further in Chapter 3).

For all these reasons, throughout the study I refer to ‘asylum seekers’ rather than ‘refugees’ to account for all those who made claims and may have influenced policy development. This avoids the confusion that arises regarding someone with a legitimate claim to being a refugee but who is not traditionally recognised as such or is not ultimately accepted as a *Convention refugee*, or who is even rejected.

A.3 What kind of ‘refugees’ in policy?

Having described conceptual distinctions within the asylum seeker category, how claimants are viewed in this study as potential policy actors regardless of the status they *ultimately* achieve, and which asylum seekers the study therefore considers, we must now identify those studied by their various *policy identities*: the types of refugee claims they make and corresponding demands upon policy, and their ultimate policy-defined status.

A.3.1 *Female-specific persecution as an umbrella term*

The above ‘status’ distinctions lead to the question of how to approach Canada’s Guidelines as the framework for identifying refugees of this type, and how this reflects on asylum seekers in the study whose cases push out the definitional boundaries. At the time the asylum seekers studied argued their claims, there were conflicting perspectives on how they ought to be defined in policy. These persist to a certain extent today. This fundamental ambiguity underlies their identity as actors influencing policy, as women who are persecuted, as refugees identified through particular frameworks in refugee policy, and as asylum seekers *not* yet recognised in policy.

“Female-specific persecution” is an umbrella term used in this thesis to describe the various *forms* of persecution experienced primarily by females that thus are somehow structurally rooted to gender discrimination. For such asylum seekers to be recognised as refugees according to the 1951 Convention Relating to the Status of Refugees (to which most states adhere), the nature of the persecution they experience must be identified by its structural *cause*. The essential structural element is intended to lift identification of persecution out of time and place specific forms, which would be too numerous to list in one definition. It points instead toward universalisable and ahistorical root causes that may

manifest themselves in various ways according to time and place. The 1951 Convention recognises five such grounds of persecution: race, religion, nationality, political opinion and social group. There are two ways of recognising female-specific forms of persecution within the Convention definition, to different extents and effects. Both were important in the case studied and are defined below.

A.3.2 'Gender-related persecution' versus 'sex persecution': policy outcomes and policy demands

Canada's *Guidelines for Women Refugees Fearing Gender-Related Persecution* interpret the Convention definition through a gender lens. They explain how gender-specific reasons and forms of persecution may *cross-cut* all five established grounds of persecution; i.e. persecution on any established ground may be "gender-related". Adjudicators are instructed how to interpret violence against women as a public (versus 'private') and structural issue which therefore may amount to persecution, invoking rights to state protection.

The Guidelines may be viewed as a step in an evolutionary process of policy-making that is not yet complete. Asylum seekers and supporters in campaigns for policy change argued that female-specific forms persecution may occur on the universal or ahistorical basis of sex as a root cause, rather than being a gender-related *form* of persecution on other structural grounds. They argued for 'sex' or 'gender' to be recognised as a "sixth" category of persecution alongside race, religion, nationality, political opinion and social group. This view has been supported in the international law and human rights literature. It was this demand which propelled national debate and led to instatement of the Guidelines as an immediate measure whilst further legislative change could be considered.

Despite the apparent controversy over the Guidelines, the nascent literature does not include empirical studies of the newly recognised "gender-related" claimants in Canada to assess whether the Guidelines indeed go far enough, nor has this new refugee movement been studied either in itself or in relation to the development of the Guidelines. Thus asylum seekers' 'invisibility' in policy processes is matched by policy proposals and critiques that remain 'static', more focused on content rather than the dynamic relations between refugees and the policies that define them. The study returns to the asylum seekers in question. In exploring the policy change process it explores who these asylum seekers are, what their demands were and continued to be, and asks how far policy matches demands.

When referring to the structural basis of refugee claims by asylum seekers in this study I primarily use the term sex persecution, which formed the basis of their policy demands. I use the term 'gender-related' refugee only when referring specifically to the

grounds for formal refugee status claimed by asylum seekers *after* the Guidelines were instated – their actual policy identity.

B. STUDYING A SUCCESSFUL CASE

This study concentrates on a successful case –policy advocacy involving asylum seekers, which actually brought about a major policy development – explaining the generation and impact of asylum seekers' influence within a particular structural context that was both conducive and vulnerable to their claims and actions. It does not aim to prove definitively why policy campaigns succeeded, rather to identify and illustrate the role of asylum seekers in campaigns that succeeded, illuminating important factors that made their participation possible and describing the forms it took. It thus challenges existing theory about noncitizen and asylum seeker participation in policy-making, while illuminating many of the evident strengths of the particular claims and campaigns in a changing world context vulnerable to their particular characteristics and strategies.

The study identifies a bundle of opportunities asylum seekers *actually* made use of in the particular case, and offers a rich empirical description of their participation and influence on policy-making. Had any of the particularly significant opportunities these asylum seekers used been absent, or had they not converged at the same time, it is possible that these asylum seekers may not have succeeded. On the other hand, several factors of their influence were so important as to be called *crucial*, to the extent that they could have brought significant pressure for policy change even without some of the other factors. A case can be made for the fact that these were *women's rights* claims, which have particular force both in Canada and internationally. Other factors which the study examines, such as the openness of Canada's refugee regime, the new rights won by aliens in Canada, Canada's multicultural and common law tradition, may have been fundamental but in themselves could not be called decisive since other types of untraditional refugees also make claims under these same circumstances and yet fail to change policy. However, significant factors of the particular case also can be related to a more overarching causal factor – the broader processes of globalisation. The study illuminates the particular bundle of opportunities and relates them to broader structural trends and changes enhancing asylum seekers' abilities to challenge refugee policy. However, whether other cases could be similarly successful remains dependent on claim-specific and other circumstance-specific variables that could alter the outcome.

Looking at this latter possibility, it is important to note several important characteristics of the case studied. First, the fact that Canada's 1993 Guidelines were the first of their kind in the world makes their instatement process particularly interesting and unique;

other countries built upon an already proven successful model without, therefore, as much controversy. Thus, second, the particularly explicit nature of the asylum seekers' policy challenge (whose public campaigning even received international coverage) and its actual success (actually changing the use of the 1951 UN Convention rather than working outside it), are also unique. In this sense the case can be described as an 'outlier' (King, Keohane and Verba, 1994:56) in that it occurred under particular circumstances suitable for very specific types of claims, and thus could not necessarily be replicated elsewhere or for different types of claims. However, it was also a *fore-runner*, in using newly emerging opportunities for asylum seeking and further shaping other asylum seekers' future opportunities.

Thus, as the introduction to this thesis described, these asylum seekers' claim-making processes were both *typical and atypical*. That is, they involved some processes that all refugee claimants engage in by the very act of making claims, and under conditions that broadly affect asylum seekers' abilities to make claims and challenge decisions on them. All refugees make claims in typical institutionalised status determination process, and there is reason to believe that some among them are somehow 'untraditional' since many are rejected, accepted on extra-Convention grounds, or accepted as Convention refugees by setting precedents that alter the application of the 1951 Convention (either to a new fact situation or through a novel interpretative framework). This likelihood may increase with rising numbers of refugee claims each year, making it increasingly important for us to understand the politicised nature of refugee status determination processes and asylum seekers' political roles in it.

The asylum seekers studied were also not completely atypical in 'going public' or using other extra-institutional tactics. This strategy, while uncommon, is not unprecedented, nor is campaigning by supporters for (or against) refugee policy change with reference to individual asylum seekers 'falling through the cracks', so-to-speak. Several examples can be found although in campaigns with far less coverage or effect and altogether different policy demands or *no* policy demands (i.e. simply permission for claimants to reside in Canada). For example, around the same period that asylum seekers in this study campaigned in Quebec and Ontario, Iranian refugees in British Columbia announced a hunger strike and a public demonstration was held with over 600 supporters to stop their deportation, alter Canada's political stance toward Iran and its low acceptance rate of political refugees from Iran (01-03-93, "Hunger strike day" *Press release*). Another example is the 'sanctuary movement' in the United States in the 1980s, in which thousands of rejected El Salvadorian and Guatemalan political refugee claimants were housed by US residents in churches where they were declared beyond the law under the Christian doctrine of 'sanctuary'. Asylum seekers and advocates

sought to change government's refusal to see asylum seekers from those countries as legitimate political refugees, which they claimed was politically biased due US foreign policy (see MacEoin,1985).

Considering the institutional and extra-institutional possibilities for other untraditional asylum seekers to challenge policy, it is helpful to consider how studying a comparable asylum seeking and policy advocacy process that *failed* might change or contribute to the analysis in this study. Comparative analysis with a negative case could, by elaborating existing structural barriers to noncitizen participation and their effective exclusion in particular cases, contribute to a more thorough exploration and understanding of the various dimensions and nature of participation among successful cases. Highlighting dissimilar characteristics of negative and positive cases could illuminate those factors (of context or strategies used) that were *crucial* for success, while highlighting common characteristics could illuminate those that may not have been crucial or were not in themselves sufficient to explain success. For example, an interesting and fruitful comparison would be with other types of 'gender-related' claims that did not manage to change policy, for instance claims by individuals persecuted because of their homosexuality. It is likely that the failure of such cases could be related, for example, to the much lower salience and support for homosexual rights, compared to women's rights.

Because the study is not comparative it did not seek to identify causal factors of asylum seekers' success that would definitively explain either similar policy change in other countries, or why other 'untraditional' refugees actually fail to change policy in Canada or elsewhere. Nor could it attempt a complete catalogue of the challenges and types of political participation those studied engaged in, or be completely representative of the kinds of access asylum seekers generally have. Such a comparison was beyond the scope of this study in terms of both time and space, since the group studied was in itself previously unexplored, as was the asylum seeking process in relation to policy development generally. Moreover, available information or access to it for other cases is scant, and indeed this study faced its own problems of data collection (described below). Without widespread campaigning for homosexual claimants for example (whose cases were instead argued *through* the Guidelines after their instatement), it is incredibly difficult to identify and locate claimants who failed.

However, for the purposes of this study it is important to note that typical structural barriers preventing asylum seekers from participating in policy processes or more simply from making *successful* untraditional claims are, while also under-researched, far better known than are structural *opportunities* and how asylum seekers use them. Studying a negative case

could reinforce or elaborate our knowledge of existing structural barriers against asylum seekers. But the historical and structural background this study provides (Chapters 4 and 5) on barriers to claim-making by the particular group studied helps the analysis be more exhaustive than would be possible by looking only at claims and policy advocacy from the campaigns onward. These barriers are further described alongside the *emerging/changing opportunities*, and how they were actually used by the group studied. This helps explain why the particular type of claimants and policy process emerged when they did, and some important reasons why they succeeded.

Thus while the study can not identify with certitude crucial aspects that defined these asylum seekers' success while others fail, it does describe a broad and significant range of types of access and circumstances enabling the particular asylum seekers to make the challenges they did, in the ways they did, and to the extent they did. It further reveals the nature and strategies of their participation in policy processes, providing strong evidence of why they were able to participate and have significant impact. And it theorises the relation between the particular 'bundle of opportunities' and how asylum seekers used them, and the broader structural trends brought on by globalisation – namely the developing dynamic between national and international institutions, law, values and norms. The fact of asylum seekers' participation and influence is thus illustrated and made comprehensible.

C. QUALITATIVE ANALYSIS AND THE CASE STUDY METHOD

A qualitative case study approach was used to describe and explain the particular asylum flow, the asylum seeking process in relation to policy development, the extent of its influence and its implications. The case study method is advantageous for generating rich data on topics for which research resources are limited (Yin,1994). It is also considered a fruitful approach for generating theoretical insights (Bryman,1989). Yin describes “the distinctive need for case studies” arising out of “the desire to understand complex social phenomena. In brief, the case study allows an investigation to retain the holistic and meaningful characteristics of real-life events” (1994:3). Such an approach was appropriate for the complex social and political processes of asylum seeking and policy change illustrated in the particular campaigns and claim-making in Canada. In this sense the qualitative aspect was also an essential feature, as it is highly appropriate for descriptive studies (Burgess,1984). The dearth of previous research and documentation on the particular policy process necessitated an approach that offers the means for “subjects to express and develop their own interpretations of the situation”, thus reducing researcher bias (Crtcher et al,1999:72). A qualitative approach further provides flexibility that enables unanticipated themes to emerge

during the course of research (Pollit et al,1990). The analytical framework for the study was indeed generated through an iterative relationship with the empirical work. Yin (1994) describes this process of explanation building as one in which an initial proposition is compared to findings of case studies and revised.

The core advocacy network in campaigns that occurred in Canada between 1991 and 1997 is the main focus of the case study. However, campaigns were comprised of a series of individual and groups of asylum seekers making their refugee claims (and negative court decisions) public. Individual claims thus also constituted individual case studies, or 'embedded units of analysis', of the claim-making and campaigning processes, which could then be viewed as a whole. Claimants were linked through common supporters (Canadian residents) in a core advocacy network. Analysis of individual claimant 'case histories' (as described below) thus occurred on two levels: for the types of claims in themselves and their campaigning experiences, which could be compared individually (with the other claimants) and examined as a part of the campaign as a whole.

Additionally the research aimed to explore asylum seekers' influence through institutional means in and of themselves, in particular to examine the nature of the asylum flow and its use of the *Guidelines* after instatement. The study thus set out to be more comprehensive in exploring the structural context and its use by the particular asylum seekers in Canada. A second set of claims was examined, described below on data sources, again for both the nature of their claims (and court decisions on them) and their collective influence.

The case study as a whole also aimed to take into account how the structural environment affects claimant abilities to influence refugee policy, the structural environment being an intersection of international and national contexts, and historical and current trends and changes within them which asylum seekers traverse. Thus the study sought to explain not only how asylum seekers influenced policy but also to shed light on why they were able to do so in Canada in the late twentieth century.

D. TRIANGULATION METHOD OF DATA INTERPRETATION

A variety of data sources was needed to suit the above purposes and aims of the study and to compensate for the dearth of relevant previous research upon which to build the study and analysis. Thus a triangulation method was used. Yin (1994:92) explains: "the most important advantage presented by using multiple sources of evidence is the development of *converging lines of inquiry*, a process of triangulation...". By offering multiple sources of evidence with different perspectives, and diversifying the methods by which they were obtained,

triangulation reduces the chances of researcher bias in the interpretation of data and increases the internal validity of the study.

Triangulation was particularly helpful for describing the complex process in the case studied. Many perspectives pertaining to factual details of the campaigns were gathered from a variety of types of sources and checked against each other to present a more holistic and reliable account of events, and to tease out significant recurring themes regarding asylum seekers' roles and policy advocacy strategies. Converging lines of enquiry meant in this case that the conditions, nature and strategies of asylum seekers' participation in policy processes were illuminated. Because a successful case was chosen in which asylum seekers had some role, evidenced in their claim-making and 'going public', the data was not searched for proof of their participation *per se*; rather data analysis sought to elaborate *why, how and to what extent and effect* asylum seekers participated.

This included considering why and to what extent asylum seekers *chose* to participate, and to what extent they acted on their own behalf or were represented by advocates; i.e. to what extent were they actually more 'voluntary' than 'forced' actors. An important aspect of addressing this last point was looking at why some asylum seekers considered *not* participating. By looking at their considerations and options *against* participating (particularly when deciding whether or not to go public), and at the obstacles to claim-making and policy advocacy which asylum seekers needed to overcome, findings support an interpretation of asylum seekers' *agency* rather than *forced actorhood*.

While the *effect* of asylum seekers' participation can not be measured quantitatively divorced from overarching campaign processes and collective claim-making, multiple qualitative indicators relating to the success of policy influence strategies *as they in fact involved individual asylum seekers* (indeed, showing asylum seekers' centrality in chosen strategies) provide some measure of asylum seekers' influence. In this the case is not representative of asylum seekers generally; rather it describes why and how particular asylum seekers helped shape policy, despite their traditional 'forced' image and noncitizen status, as an illustration of global influences on policy processes and the transformation of state responsibilities.

The combined research methods included historical documentary techniques, interviews with campaign participants (primarily core supporters of asylum seekers who went public), examination of NGO and government documents, analysis of mass media coverage, analysis of gender-related claims and court decisions, and direct observation. Through this variety of data sources I identify and describe the asylum seekers, illuminate their structural

context and changing political opportunities, and explore the ways asylum seekers and supporters used them.

E DATA SOURCES

The number and combination of data sources and methods used reflects complexity of the process studied, and an attempt to be comprehensive given scarce analytical resources on the topic. It perhaps most resembles studies of collective action, which aim at a number of levels of analysis linking individual/group identity and aims, structure and agency within a specific historical or current process, as discussed in Chapter 3.

(1) Case histories of twenty-five asylum seekers, including all those (twenty-two) who engaged in public pressure tactics and three who made private appeals to the Immigration Minister through supporters between 1991 and 1997. In total nineteen of the asylum seekers who went public are the main focus of attention due to the substantial amounts of data with multiple sources of corroborating evidence on each of their cases; they are therefore referred to as ‘major’ case histories. The remaining six cases form ‘minor’ case histories to which the study occasionally refers as supporting evidence.

Individual case histories were compiled from the variety of data sources listed below. The process of identifying and compiling evidence on particular claimants from the range of sources constituted the most lengthy dimension of the fieldwork, as it involved so many sources and stages of research as described in the section on Data Collection – for example searching newspaper archives, identifying asylum seekers’ advocates, and tracking down multiple sources of information based on leads gained during interviews.

Once compiled, case histories served several purposes. They provided: data on characteristics of claimants and types or ‘scenarios’ of female-specific persecution and corresponding claim types; descriptions of asylum seekers’ institutional and extra-institutional actions and their relationships with supporters, primarily those in what I refer to as the ‘core advocacy network’ (see below); chronology and details campaigns in individual case histories and as a group of case histories; and direct quotes and political commentary from asylum seekers regarding their situation, beliefs, aims or demands. The case histories themselves are described in detail in Chapters 6-8, presenting their characteristics in relation to why and how they made claims and campaigned.

(2) Twenty in-depth ‘expert’ interviews at on-site locations (Toronto, Ottawa and (primarily) Montreal where campaigns took place) and four in phone interviews. These included all but one of the organisations in a core advocacy network and several of the main participating lawyers. They also included several secondary campaign participants and

government sympathisers. Asylum seekers who campaigned were central to the advocacy networks, as the study demonstrates. However interviews concentrated on their supporters due to lack of access (described in the Section on Data Collection) and relying instead on the presence of alternative sources for case histories as described above.

Interviews were semi-structured or “loosely-structured” whereby interviews:

follow a sequence which allows respondents plenty of room to develop their own perspectives and agendas at the beginning, even if the researcher later needs to inject a minimum number of ‘standard’ questions. This reduces the chances that the researchers will impose their own prior pattern on the evidence. (Politt et al 1990:184).

The specialists interviewed provided an alternative to the paucity of published information on gender-persecution generally, and provided ‘elite’ insider accounts of what went on between supporters, asylum seekers and government before, during and after the campaigns. Interviews had five main themes or aims: to identify policy actors (both asylum seekers and Canadian residents); describe trends witnessed regarding the particular asylum flow; describe types of the particular claims and their movement through the Canadian refugee system; describe the campaign process in various dimensions (participants, aims, strategies, chronology of campaign generation, height and decline), interviewee’s roles in it (including their personal background) and their relationships with asylum seekers and supporters; and provide personal opinions on the *Guidelines* as an outcome of the campaigns.

Campaign participants were diverse in profession. Interviews were undertaken with the lawyers representing claimants who went public, and the main actors from participating organisations including international, national and local level refugee, human rights and women’s organisations. They also included one refugee, IRB official, and researcher at the Library of Parliament. Due to this diversity interview schedules were to a certain extent individually tailored to suit professional background and thus best elicit the kinds of information interviewees would be able to offer. However interviews all followed the same basic themes and structure based on research questions. The great diversity of interviewees contributed a wide range of perspectives and holistic view of campaigns, asylum seekers and asylum seeking process, raising a variety of themes and generating rich descriptive data which could be analysed for common and different interpretations of events.

(3) Questionnaires answered by seven women’s shelters, in Montreal, Toronto and Ottawa. The majority of respondents were ‘secondary campaign participants’, i.e. not participants in the core advocacy network. The aims of the questionnaire were three-tier: to illuminate/describe trends in the shelters’ experience with international migrant women, specifically asylum seekers; the different dimensions of the ‘scenarios’ of asylum seekers’

situations, of those who resided at the shelter; the shelters' participation in and views on the campaigns and 1993 Guidelines.

(4) Mass media coverage of the campaigns from 12 newspapers, and press packages, press releases, letters to the Immigration Minister and other NGO documents pertaining to the campaign. These were used primarily to identify campaign participants, add to case histories of individual asylum seekers, provide a chronology of campaigns and the discourses and strategies between state and nonstate actors. The 12 newspapers were chosen simply for having covered the campaigns, but were those located primarily in the Provinces of Quebec and Ontario. They include the main newspapers as well as some smaller and local papers. Use of media sources was intended neither to compare coverage by different sources or media, nor as a complete index of all coverage on the campaigns. However the coverage used for this study includes the majority of articles on the campaigns appearing in major papers during the time period of the campaigns.

(5) Institutional documents including Consultations and Conference reports, and relevant press releases and speeches by government officials pertaining to campaigns and gender-related claims. This was a relatively abundant source, providing details and chronology of the government's stance on female-specific persecution and state responsibility, its approaches to demands by activists, and its approach to solutions.

(6) Case synopses and court decisions on 147 "gender-related" claims and court decisions between 1993 and 1997, drawn from RefLex, a legal database of notable cases across the country. Notable cases are those that break legal ground, either expanding or challenging previous decisions on similar cases. Claims and court decisions are examined for characteristics and trends, and application of the Guidelines. The characteristics and representativeness of cases included in RefLex are described in Section II.

(7) Historical literature on international migration and Canada's refugee regime, and the nascent literature on female-specific persecution. Historical documents were consulted relating to various aspects shaping the 'refugee' in policy and the asylum seeking process. It includes historical descriptions and analysis of the international refugee regime and migration system, Canada's refugee regime, and trends for women in particular. Although information on gender-related persecution is limited, a nascent body of literature has quickly developed since 1993 primarily in international human rights and refugee law but also including policy literature and institutional documents (government and NGO). Institutional documents include, in particular, relevant IRB special papers and reports, speeches and documents, with special assistance from the Working Group on Women and Children Refugees, and the

editorial board of RefLex. Among this information was an evolving set of statistics on gender-related claims in Canada which are used to put the RefLex cases into context.⁵

(8) Direct observation of the campaigns during my residence in Montreal before, during, and immediately after the campaigns, in both first and second phases.

II. DATA SELECTION AND COLLECTION

The method for collecting data on all but historical aspects is described below within the broader aims of uncovering who the particular asylum seekers are; how they made use of the structural context to challenge policy; and to what effect. Selecting and collecting information pertaining to these questions was divided across two main areas with a combination of data sources and methods within each: A. extra-institutional (campaign) actors and activities; B. institutional actors and activities. These are in reality inter-related actors and areas of activity in that all asylum seekers undergo institutional procedures; however, not all asylum seekers undertake extra-institutional actions, thus they are treated separately here. Within both areas are the issues of *mapping, access, representation and confidentiality*, each affecting the nature and reliability of data obtained for specific purposes.

A. EXTRA-INSTITUTIONAL (CAMPAIGN) ACTORS AND ACTIVITIES

A.1 Identifying policy advocates and policy processes

Campaigns were organised around a series of individual and groups of asylum seekers making their claims public. The core policy advocacy network studied was therefore comprised of both asylum seekers who went public and their supporters. The empirical research started with highly publicised cases as a way into the network of advocates and asylum seekers. Media coverage (newspapers, television, newsletters and journal articles) following the course of events, both before and after the *Guidelines*' instatement, was used to begin identifying claimants and supporters.

A main difficulty in the research was access, arising from the fact that studying a particular campaign involved locating and getting access to particular individuals. These 'key informants' were the only sources of information on campaigns from the perspective of *coë* campaigners; they were irreplaceable. As the research was conducted several years after the most intense period of campaigning, in some cases individuals could not be located. Despite

⁵ I am particularly grateful to Nancy Dorary from the IRB Montreal Division; the Montreal IRB Documentation Centre archivists; Valerie Woods, a Regional co-ordinator of RefLex; and Sarah Morgan who responded to my queries through the Access to Information Act.

intense efforts, the target of interviews in fact shifted early on in the fieldwork, from asylum seekers to their supporters in the core advocacy network.

Asylum seekers who had gone public were often identified in press coverage only by their first names or by alias. Once their supporters were interviewed, the majority of asylum seekers still could not be located either because they had re-located in an attempt to begin more settled lives in Canada and/or had explicitly stated they wanted to return to normal life without public attention after the campaigns and resolution of their claims. Supporters either did not know where they were or could not put me in contact with them. However, as described below case histories of participating claimants were compiled through a variety of other data sources including (most importantly) the people they worked with.

These experts respected the confidentiality of claimant names and whereabouts but talked openly about the campaign process and particular claimants. Access was in this sense particularly good, no doubt influenced by my own interests and affinity toward human rights, refugee and women's issues, alongside the nature of the study which was supportive of campaign aims. These aspects put me in good standing with interviewees, who tended to be quite candid and provided detailed accounts and opinions of events. Despite the fact that these experts were also 'irreplaceable' they comprised the bulk of the interviews, as most were indeed available and interested in the study. All publicised claims and campaigns occurred in Montreal, Toronto and Ottawa, the stronghold being Montreal where the majority of interviews were conducted.

Interviews were first conducted with supporters who according to press coverage appeared most frequently involved with cases and public pressure tactics. At each interview other core supporters were identified, and follow-on interviews were arranged. The 'network' structure best described the nature and organisation of their coalition, which was non-hierarchical, diffuse, and diverse in constituency and types of action or strategies used.

A "nominalist" sketch of overarching and sub-networks of asylum seekers and supporters was thus mapped. Laumann and colleagues (1992:23) describe a nominalist delineation of network boundaries as a process by which "an analyst self-consciously imposes a conceptual framework constructed to serve [her] own analytic purposes". In this approach "network closure has no ontologically independent status. There is no assumption that itself will naturally conform to the analyst's distinction; the perception of reality is assumed to be mediated by the conceptual apparatus of the analyst, be he (or she) an active participant in the social scene under study or an outside observer." (Ibid,22).

The chain of contacts was mapped until information obtained about participants and events was saturated – no new names of individuals or organisations continued to emerge, and those identified overlapped extensively among the chain of contacts who were interviewed. At this point, the network could be mapped through a “realist” approach in which “the investigator adopts the presumed vantage point of the actors themselves in defining the boundaries of social entities. That is, the network is treated as a social fact only in that it is consciously experienced as such by the actors composing it” (Ibid,20-21).

This produced a map of the larger metanetwork of support, nationally and regionally, and of the “core” network of activists including asylum seekers. By ‘core’ I mean the network of supporters most involved with, and indeed leading, campaigns around those asylum seekers who received the greatest media attention. The core network was a small cluster of individuals from a surprisingly broad cross section of fields with varying mandates and expertise, across non-government, semi-government organisations, international, national, regional, and local levels. They included human rights organisations; refugee and immigrant groups; women's organisations including women's shelters, national organisations and educational/research groups; church groups regularly involved with refugee advocacy and community work; immigration and refugee specialists in academia; and lawyers, both in private practice and Legal Aid (state provided legal counsel).

The main participant from each of the organisations spear-heading the campaigns was interviewed, with the exception of the Canadian division of Amnesty International which appeared to have taken a more marginal role in orchestrating campaigns, although providing a very important source of support and legitimacy for the campaigns as a whole. Several lawyers were unavailable or could not be located, however the majority were interviewed (six lawyers handling a total of thirteen of the nineteen cases that went public).

At times there were very strong supporters involved with a particular claimant but not closely involved with the core advocacy network orchestrating the bulk of the campaigns. These are referred to as secondary supporters, with whom several interviews were conducted for information on the extent of their involvement, additional campaign descriptions including other actors, and information about the claimants they were involved with.

Of women's shelters, often integrally involved with the campaigns, four were interviewed. Of these, two were part of the core network in early campaigns, one was more secondary, and the fourth was a main leader in campaigns during the second phase. To complement the data on secondary actors a questionnaire was sent to women's shelters in Montreal, Ottawa and Toronto because compared to other types of organisations they were

involved in the campaigns in higher numbers. The aim was to discover the extent of their involvement, and what they knew about the particular asylum seekers and campaign process. Questionnaire responses were low: seven out of thirty. All but one was more peripherally involved in the campaigns, as expected, thus providing information more on secondary actors' experiences. An interview was arranged with the one shelter more integrally involved.

The overarching metanetwork of policy advocates could be said to include sympathetic government authorities, primarily members of the IRB Working Group on Refugee Women and Children. They did not work together with core advocates and did not get involved in campaigning for individual asylum seekers. They were not regarded by core participants as necessarily "on their side" and were viewed with some scepticism. However, surprise was voiced at the positive nature of certain IRB members' involvement and co-operation particularly in public Consultations and Conferences *after* the Guidelines' instatement.

Interviews generated other data of two kinds: access to unpublished and institutional documents relating to campaigns and gender-related refugees; and case synopses, case files, and media coverage on particular claimants. The latter were essential for compiling case histories of asylum seekers who went public.

A.2 Compiling case histories on asylum seekers who went public

Through the combination of mass media coverage and interviews, a total of 25 asylum seekers were identified, 22 who 'went public' and three who did *not* make their claims public but were supported by core advocates in private appeals to immigration authorities.

Information for their case histories comprised their official case files and other institutional documents (i.e. sensitised Personal Information Forms provided by the IRB, lawyers or organisations); case synopses provided by NAC in press packages, interviews with core policy advocates, and media coverage. However, access to the various elements of claimant case histories was uneven across different cases. For instance, claimants who received the greatest media coverage were most accessible, and among these some also had the greatest contact with core supporters who therefore were able to provide more information on particular claimants. They subsequently form particularly strong case studies drawn upon heavily in Chapters 7 and 8. Of asylum seekers who went public there were three for whom minimal case history information was found. These cases are referred to more peripherally, as are the three who did not go public.

Case histories of asylum seekers who went public are representative of asylum seekers in the campaigns; according to accounts of supporters and the media, they constitute *all* claimants who received substantial media attention at some time during the campaigns as *part* of the campaigns. Thus they share many characteristics. In particular their special circumstances, timing and experiences of persecution started all off as ineligible for refugee status. All were rejected, all resorted to public activities and subsequently formed a collective body with specific policy demands.

These asylum seekers are representative of the broader population of claimants in Canada in the sense that they set precedents concerning a variety of state-recognised categories or forms of violence against women and the conditions under which such violence amounts to persecution. Indeed, case scenarios of these claimants were helpful for drawing a more realistic typology than currently exists in the Guidelines or in publications. Their stories reflected a range of forms of female-specific persecution, from traditionally 'public' to 'private' and involving a diverse set of scenarios and claim-making processes. However, these claimants were different from the population of claimants emerging *after* the Guidelines were instated, not only in the public pressure tactics they took but also because of administrative complications they faced because they initiated claim processes *before* the Guidelines were instated. For example under Canadian law an individual can only make one refugee claim and can not introduce new evidence at a later time. Thus some asylum seekers could not introduce new claims after the Guidelines were instated, although immigration officials recognised that had they been made later they would have received Convention refugee status. Consequently some attained entry through other status types (characteristics of claims and status types are explored in the empirical chapters).

A.3 Handling interviews and case histories: Confidentiality

Handling of information about claimants was varied according to the wishes of the claimant based on their previous decision to use their own names or an alias when they went public, and based on instructions they sometimes left with supporters. A high degree of confidentiality was ensured in the case of those using alias names. At times real names, or whether names were real or fictitious, were not made known to me. On the other hand some claimants were completely candid in interviews with the press, and one in interview with me, insisting on using their real names. Both types (using alias or real names) spoke with the press. One wrote an editorial and at least one other gave a speech at a conference. Of my own interviews, the most in-depth ran over five hours with one of the refugee women; she

was adamant that her real name be used, as discussed in the empirical study. Quotations and viewpoints of asylum seekers are referred to by first names or alias first names.

Supporters, on the other hand, were activists from a range of professions who had taken public roles in the campaigns and were not typically concerned with their own confidentiality. Exceptions were several lawyers who agreed to be quoted and were extremely generous with their time and knowledge, but stipulated that while still in progress cases should not be commented upon to the media or using lawyers' names (none are in progress at this point). They were extremely respectful of confidentiality agreements with claimants they worked with. Their quotations referenced by surname and organisational affiliation.

B. INSTITUTIONAL ACTORS AND ACTIVITIES

Turning to a broader sample of gender-related claimants representing those in institutional claim-making processes, statistics on gender-related claims in Canada generally were identified, and within these a sample of claimants between 1993 and 1997 was selected. Like asylum seekers who went public these are assessed in a more qualitatively than quantitatively.

B.1 Assessing the prevalence of gender-related claims in Canada

Because of the newness of the 'gender-related' refugee category in Canada, information on and analysis of these claimants is more manageable than for refugees of racial, religious, nationality based, political or social group persecution generally (which gender-related claims intersect). There are simply fewer of them, making very particular types of claims. However, the newness of the gender-related category also poses particular difficulties in terms of availability and access to data. Data on gender-related claims was not made available to the public until 1995, and minimal at that. Moreover, over the next four years different statistics were provided of the total number of gender-related claims, in fact showing gradually *lower* numbers of claims actually identified as being 'gender-related'. Information obtained through the Access to Information Act in 1995 indicated some 2500 gender-related claims had been identified since 1993, breaking down claims by countries of origin and status of claims (positive/negative/pending). In 1997 the IRB reported that a total of 1200 gender-related claims had been identified since 1993. This shrinkage most likely occurred as methods of tracking and identifying the particular claims have been developed and improved. This thesis uses the most recent statistics on the campaign period covered, as shown in Figure 2.1, drawn from reports delivered by the IRB Chairperson.

Table 2.1 IRB identified ‘gender-related’ claims and outcomes, March 1993 - January 1997

Total number of gender-related claims identified	1200
Accepted gender-related claims	664
Rejected gender-related claims	363
Pending, withdrawn, abandoned or discontinued gender-related claims	173
Gender-related claims as a % of all refugee claims in Canada in 1996	1.4%

(source: Mawani 1997).

B.2. Accessing case synopses and court decisions: the REFLEX cases

Using the above statistics the 147 cases gender-related cases drawn from the RefLex database represent approximately 7% of all positive and negative decisions in the same time period, from cases across Canada. The selected cases from RefLex, one of Canada’s most prestigious legal databases, include 100% of ‘gender-related’ cases in the database from 1993 to 1997.

Refugee claims (all types) are identified for inclusion into RefLex journals using the criteria presented in Table 2.2, as stated in RefLex Policy, Memorandum(1).

Table 2.2 Characteristics of refugee cases chosen for inclusion in RefLex journals.

- Cases in which court decisions depict a ‘novel approach to law’, with an emphasis on cases where reasons for the decision are set out in a clear and concise manner
- Cases reflecting the application of established legal principle to a novel fact situation
- Cases where reasons for decisions are representative of a number of decisions decided on specific issue from a particular country, or decided in a particular IRB region

RefLex further aims to achieve, in the selection and representation of cases in a widely used legal database:

- A balance of positive and negative cases
- A selection from each of the IRB Provincial offices
- The furthering of *consistency* in substantive law, evidential and procedural matters, rather than a *reflection* of all claims

From the above criteria on RefLex cases, the selected pool of gender-related claims represent a range of case scenarios and novel applications of the Guidelines since instatement according to evolving jurisprudence. In-depth qualitative analysis of the 147 cases presented in chapter 9 is the first on any substantial group of ‘gender-related’ claims in Canada.

III. DATA ANALYSIS AND INTERPRETATION

Drawing on the above sources, as the following describes, the following research themes were analysed through the conceptual guidelines and qualitative methods outlined earlier.

A. Who are asylum seekers fleeing female-specific persecution, as “refugees” in accordance with policy and as actors influencing policy content?

Keeping in mind the basic complications and distinctions regarding the identity of asylum seekers generally and those under consideration, illuminated earlier, a combination of data sources were used to analyse both asylum seekers and asylum seeking processing, in both extra-institutional and institutional realms.

Case histories and campaign participation of asylum seekers who engaged in public pressure tactics were studied. Statistical information on “gender-persecution” claimants provide a backdrop on the prevalence and acceptance rates of gender-related claims in Canada. RefLex cases offer more detailed accounts of claims and court decisions, analysed to create a detailed typology of claims made under the Guidelines, and trends in court decisions.

Substantial use was made of the nascent literature on female-specific persecution, which provides legal and discursive frameworks for typologising claims. These are significantly elaborated through analysis of the claims studied. In light of the lack of relevant empirical studies, this study presents one of the most extensive uses of the literature to date and present empirical evidence on the nature of the claims and claim-making process which the literature lacks.

Established Canadian residents in the advocacy network provided a good alternative source of information on gender-related asylum seekers generally and particularly those who went public, with whom they worked. They were specialists and practitioners with insight into both the nature and complications of the particular claims and claim-making processes, as well as on the campaign process and role of asylum seekers in it. Depth interviews with core supporters and several secondary actors (including women’s shelters that responded to the survey) helped identify and explain the nature and types of claims being made. They also provided extensive unpublished information (i.e. reports, leaflets, speech transcripts), access to difficult to obtain institutional documents as well as press packages, case histories, correspondences and action-plans pertaining to the campaigns. Mass media coverage of campaigns and campaign issues between 1991 and 1997 in 12 newspapers and journals served to identify actors for the first round of interviewing, and provide descriptive information on the particular asylum seekers, campaigns and evolving political discourse.

These sources were inter-related and complementary to analysis of claim-types and asylum seekers’ identity as actors and refugees, which appear throughout the chapters, but particularly Chapters 7-10. Aside from developing a detailed descriptive account and chronology of the asylum seeking process and campaigns from ‘insiders’ point of view, many

recurring themes emerged regarding strategy and the role of identity (individual and collective), including how resources and supporters were mobilised, how they framed their demands, and the 'symbolic' and strategic nature of actions they took. The role of asylum seekers as *actors* was accounted for and analysed in all dimensions that emerged. As actors they were also agents of policy change who could be defined by their policy demands. Their demands were compared and contrasted to actual policy outcomes in the institutional analysis of case synopses and court decisions after the Guidelines' instatement.

B. What is the stable and changing structural context of opportunities and constraints for the asylum seekers?

Asylum seekers' roles as policy actors are uncovered in light of the context in which they operated, both to explain why they were able to become actors, and how they influenced their environment. The inter-state system of legal and institutional structures for claim-making (the relationship between international law and national policies and status determination systems) is analysed to reveal various types and layers of constraints and opportunities upon asylum seekers generally and those fleeing female-specific persecution in particular. Historical trends in asylum seeking flows, the salience of relevant ideas, and the kinds of resources and opportunities available to the particular asylum seekers, are similarly identified and analysed, particularly in Chapters 4, 5, 6 and 8 which set relatively stable (long-term) features against changing features that offer *changing* opportunities for asylum seekers to push out claim-making processes in both institutional and extra-institutional realms. This brings us from the supranational level of international refugee and human rights law to their national applications, and how asylum seekers political roles in normative claim-making processes at state level are both obstructed and legitimated.

A dual emphasis is maintained on discursive symbolic and strategic opportunity structures and the relationship between them, showing how identity, structure and agency interact. The research draws on historical and legal documents in a variety of fields, analysing the evolution and emergence of different kinds of opportunities and constraints in changing contemporary trends. This is supplemented by interviews with core advocates and by trends in refugee case scenarios. Emerging opportunities of particular importance for the political viability of the asylum seekers studied are identified and examined: migration and policy trends, institutional and substantive rights and resources, vulnerability and openness of the institutional and political establishment, and salient ideas and collective interests.

C. How were changing opportunity structures used?

To document and explore the generation and process of campaigns I rely on the claimant case histories, personal accounts of core advocacy network members, NGO documents on campaigns and advocate-government interaction (i.e. advocacy letters, consultation reports, speeches), mass media coverage in itself, and direct observation of the campaigns. The question of how asylum seekers negotiated the structural context is explored in both extra-institutional and institutional realms, not only before but after the Guidelines were instated, as campaigns continued in various forms for some time and as the Guidelines were revised in November 1996 to reflect emerging jurisprudence. Within these realms I investigated asylum seekers' *abilities* to migrate, their *willingness* to make use of opportunities in the receiving-country, and their resultant or *actual use* of changing opportunity structures.

C.1 Abilities to migrate

Abilities to migrate are influenced by laws and practices in sending-countries and by relations between sending and receiving countries, but these aspects could not realistically be studied due to time and space constraints. Claimants who went public arrived from sixteen different countries; those in the databases studied arrived from over 100 different countries. Another indicator of abilities to migrate is financial and social status. As now recognised, international migration most often occurs among people of intermediate social status, particularly in movements from less to more advanced capitalist and democratic countries (Hammar,1997), in contrast to the view proposed by Push-pull theories of migration that it is the poorest who migrate into richer countries. While this may not apply to all asylum seekers, it probable for those migrating to distant countries (like Canada) rather than countries bordering their own.

Information on financial and social status of asylum seekers who went public was difficult to obtain and does not constitute a main dimension of the study. However Hammar's observation could be supported in the case histories studied, which showed that persecution sometimes involved family members of high social status with substantial political influence which prevented them from being able to attain protection in their home country. In two cases, family wealth enabled women to migrate initially for international education, which then became a means to break away from the family. More commonly, ability to migrate was linked to the financial capacities of either families *with whom they arrived in Canada*, or having friends and contacts who helped them out in Canada, sometimes even getting into relationships with Canadian residents who became their sponsors. These details emerge in chapters where case histories are discussed (6, 7, 8). For more general structural

trends influencing or indicating abilities to migrate, Chapters 5 and 6 paint in depth the international and national contexts for migration by the particular *type* of asylum seeker.

C.2 Willingness and actual actions: Using new resources, rights and interests to effect policy change

In Part II of the thesis analysis concentrates particularly on the use of opportunities by asylum seekers once in Canada, for example how increasingly salient ideas and frameworks for expressing and legitimising claims and rights were applied, expanded and translated into meaningful actions and applications. It situates the analysis within the Canadian political climate at the time, describing the timeliness and strategic nature of pressure tactics, and the ways asylum seekers were integral to campaigns as a whole and crucial to its outcome.

The formation and mobilisation of advocacy networks in Canada is described with particular emphasis on the role of asylum seekers, drawing from case histories and interviews. The ways ideology and grievances were translated into demands and actions is analysed both in the internal political culture of the advocacy network (in relations between asylum seekers and supporters) and in relations between the advocacy network and the external political culture they wished to influence. The latter includes current political climate in Canada at the time, and strategies for expressing demands (types of goals and tactics or actions), legitimising the cause, mobilising public support, negotiating with and pressuring government (drawing additionally on mass media, and on NGO and government documents and correspondence). Actions include the use and transformation of institutionalised claim-making processes, as well as the mobilisation and influence of extra-institutional claim-making processes. Actions also include the transformation of ideas about rights and responsibilities from nationally-bound to human rights levels. Asylum seekers' roles are explored in all these processes.

C.3 Using *institutionalised* claim-making processes before and after the Guidelines

The use of institutional procedures for claim-making was an inherent part of the campaigning process. The structure and range of institutional options *before* the Guidelines is described in Chapters 4 and 6, highlighting claimants' embedded rights and responsibilities as potential opportunities to challenge decisions on claims, and also as inherent obstacles and barriers to making such a challenge. Chapters 7 and 8 describe how asylum seekers exhausted institutional options before campaigning. Their policy impact – the Guidelines – was then used by later claimants. To evaluate the nature and implications of claims and court decisions

after instatement of the Guidelines, the broader RefLex database is analysed in Chapter 9, presenting a detailed typology of gender-related persecution claimants. Claims were coded along a number of dimensions: types and locales of violence against women; relation between the persecuted and persecutors; degree of claimant activism and state role in persecution; types of refugee claims made at various stages of the status determination process; and categories of “persecution” into which the *causes* of the violence falls.

Having explored each of the research themes, the broader implications of the particular nature, process and extent of asylum seekers’ participation and influence may then be discussed in terms of changing policy-making processes and the emerging citizenship-human rights debate in social policy.

SUMMARY

The chapter has presented the methodology, data sources and data collection, and linked analysis to the questions posed for study. It also illuminated some of the difficulties of the research, its main limitations and strengths. The following chapter explores why asylum seekers’ roles (as ‘asylum seekers’ and as noncitizens) in receiving-country policy development have not previously been explored in migration studies or theories, and then develops an analytical framework to tackle problematic conceptualisations and to explain and explore asylum seekers’ roles as political actors in receiving-countries.

3. ASYLUM SEEKERS AND THE POLICY PROCESS: AN ANALYTICAL FRAMEWORK

“Refugee”:

Any person who, as a result of... and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

[1951 UN Geneva Convention Relating to the Status of Refugees]

What creates a refugee? As Zolberg and others have noted, when it comes to issues of refugee-recognition, “the definitional problem... is not mere academic exercise but has bearing on matters of life and death” (1989:3). The standard-setting refugee definition provided in the 1951 UN Convention Relating to the Status of Refugees (above) identifies a number of the characteristics of “refugees” and the conditions characterising the refugee’s situation. Most states have developed refugee policy around this definition. Asylum seekers falling outside the formal refugee definition may not only remain invisible to our conception of just what a refugee is or what “makes” refugees, but may have their chances of survival seriously threatened. Policies themselves ‘make’ some asylum seekers into formal refugees eligible for protection, while excluding others. The issue of refugee policy development is thus a serious matter, but the political processes and agendas behind it have only recently been conceptualised.

Section I of this chapter describes how the nation-state system necessitated the explicit categorisation of ‘refugees’ by creating rules of inclusion and exclusion from membership. It then reviews the merits and limitations of ‘migration systems’ theories for understanding refugee policy development today. This describes the international context and nature of migration systems, and currently accepted ideas about the inter-relations between receiving-country policy and the emergence and shape of asylum flows. It points toward the subjective and political nature of the evolving refugee definition. It also reveals significant theoretical gaps: current conceptualisations neglect the political roles asylum seekers may play in receiving-countries, namely in policy development. Sections II and III develop an original analytical framework to explain asylum seekers’ roles in policy development *within* migration systems.

Section II begins by enlarging upon conceptualisations of refugees’ “social change function” (Zolberg et al,1989), pointing out that social change occurs not only in sending-

countries, but in receiving-countries where asylum seekers may be political actors. It then situates both refugee policy and asylum seeking within historical settings and identifies the dynamic tension between underlying *ideals* of refugee policy being static or universal, whilst asylum seeking causes and contexts change and subsequently question these ideals. This describes the relationships and contests between theory, rights, opportunities, and identity.

In Section III the structural context and institutional logic framing asylum seekers' political action and policy influence are described, presenting the international and national refugee regimes which asylum seekers must traverse and offering several premises about asylum seeking as a central component of the migration system. Three basic dimensions of the asylum seeking processes are then laid out, expanding upon migration system theory. A basic axis for exploring asylum seekers' use of the structural context in political ways is offered, drawing upon collective action theory.

I. THE NATION-STATE SYSTEM AND 'MIGRATION SYSTEMS'

A. THE NATION-STATE SYSTEM

There have always been 'refugees' – people who flee their homeland due to persecution. However, the creation of refugees moved from the societal to the state level with the formation of the nation-state system, in which states began to define the people to whom they would grant rights and extend protection. This effected both the creation of persecuted groups within nation-states on one hand, and the necessity for nation-states to determine whether or not to grant rights and protection to persecuted groups arriving from other countries on the other (Zolberg et al,1989).

Hannah Arendt explained the former in this way: the formation and proliferation of states in the nation-state system, in bringing about the nationalisation of rights, also brought about the emergence of two "victim" groups, or targets for persecution: minorities and the stateless (Arendt,1973:268). The very nature of the nation-state system implies that only nationals can be citizens and only citizens can benefit from "the full protection of legal institutions... [while] people of a different nationality needed some law of exception until or unless they were completely assimilated and divorced from their origin." (Ibid,275). Thus nation-states give pre-eminence to nationally guaranteed rights over "human rights" of traditional Western doctrine (see Zolberg et al,1989:13). Arendt called this the paradox of human rights. Although human rights were meant to be universal and independent of citizenship, nationality or territorial residence, they "proved to be unenforceable - even in

countries whose constitutions were based upon them - whenever people appeared who were no longer citizens of any sovereign state." They were in effect based on citizenship as "the right to have rights" (Arendt 1973:105).

As Zolberg explains, this became increasingly apparent after "the nation-state formula was adopted to organise political life in states containing ethnically mixed populations, often so inextricably interspersed that it proved impossible to form viable ethnically homogeneous political entities" (Zolberg et al,1989:12). Persecuted minorities includes persons claiming a different nationality than that of the state in which they live, who thus are disqualified from citizenship rights associated with nationality. Persecuted stateless persons describes those who "would always remain residual groups who did not belong to any established nation-state or recognised national minority" regardless of how territorial boundaries might be drawn (Arendt,1973; see Zolberg et al,1989:22).

Zolberg notes that the newness of "victim groups" in Arendt's analysis is misleading because it addresses the rise of "victim groups" in the years after World War I without considering that state-formation also gave rise to persecution of minorities in the 16th and 17th centuries. However, the "nationalisation of rights" can indeed be seen as corresponding to the emergence of target minorities, described as part of a more general process:

whereby the state's choice of an integration formula determines positive and negative categories of persons and its ensuing relationships with these groups. The formula is the construction of a collective identity encompassing the rulers and the majority of the population; its foundations may be religious, racial, or even ideological, as well as national, but each has distinct implications. (Zolberg et al,1989:23)

The "collective identity" of rulers and the majority population contrasts with persons and groups who do not fit that identity. These "political misfits" (Ibid,23) may constitute their own collective identity, upon which their acceptance or rejection by receiving-countries is based. Thus the formation of nation-states not only identified or reified, as the case may be, targets of persecution, but also made their flight dependent upon acceptance into the territories of other nation-states according to international law and national refugee policy.

We should also add to Zolberg's analysis that not only minorities lacking full citizenship status are persecuted, but *status* citizens (not necessarily minorities) who lack full substantive rights of citizenship. In this females form an exemplary category, as international law and human rights scholars have observed (for example Cook,1994; Rominay,1993). Persecution in such cases may be linked to cultural traditions, or simply lack of protection or rights to protection, or adequate means or willingness of enforcement by the state.

B. THEORIES OF MIGRATION: TOWARD A 'MIGRATION SYSTEMS' APPROACH

Theories of international migration have not generally been developed, applied or analysed with the intention of understanding the evolution of the refugee definition, and certainly not to understand the complex role of the refugee therein. They have been developed to understand why movements of people arise, possibly to predict them, and increasingly to enable receiving-countries and international bodies to manage or respond to them.

The first theories of migration were developed in the 19th century and more or less held sway until the 1980s. These 'Push-Pull' theories offer ahistorical and internalist (sending-country) visions of migrations occurring on an individual cost-benefit calculus. The "causes" of migration are considered a combination of 'push' factors impelling people to leave the areas of origin (i.e. demographic growth, low living standards, lack of economic opportunities and political repression), and 'pull' factors attracting them to certain receiving-countries (i.e. demand for labour, availability of land, good economic opportunities and political freedoms) (see Castles and Miller,1993:19). Push-pull theories may therefore be summarised as positing a direct causal relationship between the conditions or grievances motivating international migration, and the acceptance of international migrants by receiving-countries. Receiving-country migration policy was thus considered primarily reactive – a response to the international migration of individuals themselves. But while push-pull theories understood immigrants as 'voluntary migrants' calculating their best course of action, they saw refugees as 'forced migrants' influenced by factors beyond individual control. Accordingly, refugees were seen as direct symptoms of political turmoil in sending-countries (causes), and refugee policy a direct response or *reaction* to refugee flows. This gave refugees symbolic political power but could neither explain nor predict *root causes* of refugee movement, thus supporting the belief that refugee movements are by nature unpredictable and unstructured events (Zolberg et al,1989).

It was not until relatively recently that international migration theory began seriously considering the role of receiving-countries in actually creating root causes of refugee flows, rather than simply responding to them, and the influence of refugee policy upon the shape and constituency of refugee flows. The combined political and strategic factors that both cause refugee problems and help determine the policy responses of states to refugee crises have received even less systematic research until more recently (Loescher,1989).

Dramatically changing patterns of international migration, particularly since the 1960's, brought the serious criticism that push-pull theories were not supported by empirical evidence. In fact, people of intermediate social status during periods and from regions

undergoing economic and social change are the most common migrants, and rarely the poorest people moving from developing to richer countries. Neither do movements arise out of all equally underdeveloped countries or regions within countries. Moreover, some of the most densely populated countries receive large influxes of migrants, for example the Netherlands and Germany (see Castles and Miller,1993:21). Subsequently push-pull models failed to explain or predict migratory movements (Sassen,1988; Boyd,1989; Portes and Rumbaut,1990).

The new literature has given rise to migration theories that are essentially “collectivist and institutional” approaches to migrations as historical phenomena deeply influenced by globalisation, particularly the emerging global economy, and relations between sending and receiving-countries (see Castles and Miller 1993:19). This major theoretical shift can be described as moving away from a causal model to one that incorporated mediating factors. This fostered much more complex, realistic, explanatory and predictive models of international migration, based on the idea that migration is structurally determined.

Structural theories argue that international migrations are “embedded in larger geopolitical and transnational economic dynamics” (Sassen 1998:8; 1988). They identify “the dynamics of the transnational capitalist economy, which simultaneously brings both the ‘push’ and the ‘pull’” to migration (Zolberg,1989:407), economic and political relations and power asymmetries between countries (Portes and Borocz,1989), and prior links between sending and receiving-countries, for example colonisation, political influence, trade, investment or cultural ties. They also describe international pressures of state conformity to international human rights conventions and agreements (Sassen,1996).

What Fawcett and Arnold have conceptualised as a ‘migration systems’ approach (1987) is particularly useful because it binds together many of the features of different structural approaches. It is premised on the concept of global interdependence in which all the linkages between the sending and receiving-countries play significant roles: “state to state relations and comparisons, mass culture connections and family and social networks”, exchanges of information, goods, services and ideas (Fawcett and Arnold 1987:456-7). The sets of relations comprising international migration take place “not so much...between compartmentalised national units as within an overarching system, itself a product of past historical development” (Portes and Borocz,1989:626). Castles and Miller (1993:22) summarise the migratory process or system as “the result of interacting macro- and micro- structures”.

Macrostructural determinants generally include economic and political historical relations and trends between sending and receiving-countries. They include large-scale

institutional factors such as the political economy of the world market and inter-state relationships (for example Bohning,1984; Sassen,1988; Mitchell,1989; Fawcett and Arnold 1989). The regulatory laws and structures of both sending and receiving-countries also shape migration flows, while overarching international agreements and conventions help shape both flows and state responses. Human rights instruments and organisations are exerting increasing influence in international and national refugee law (Hathaway,1991a). The international human rights regime not only influences states and inter-state relations, but gives rights to individuals and potentially undermines or transforms state sovereignty (see Sassen,1996, 1998; Jacobson,1994; Soysal,1994).

Microstructural determinants generally refer to “the networks, practices and beliefs of the migrants themselves” (Price,1963), or the internal dynamics of ethnic community formation in receiving-countries. These aspects are influenced by “cultural capital” (information and capability enabling migration and adaptation) and personal relationships (family, community, and even relations with non-migrants) linking immigrants to the ethnic populations in receiving-countries and also to receiving-populations (Boyd,1989). They help explain why individual motivations to migrate may supersede weakening ‘pull’ factors.

Under Migration Systems theory, “...refugee movements, like other international population movements, are patterned by identifiable social forces and hence can be viewed as structured events that result from broad historical processes” (Zolberg et al,1989:vi). The migration system shapes refugee-creating situations, structural determinants of individuals’ decisions and abilities to migrate, receiving-country responses and the shapes flows take. It may be summarised as explaining refugee movement through four contiguous elements. (1) Supranational trends and institutions affecting sending countries and involving receiving-countries in relations between states. (2) Particular circumstances and events causing refugee-creating situations and how sending countries address them. (3) Particular responses of receiving-countries in either addressing root causes or dealing with migratory flows through policy. (4) Micro-structural determinants of international migrants’ motivations, needs and opportunities for migration. These mediating dimensions shape or create “refugees”, both in real terms and in discursive or policy terms. Receiving-countries’ chosen policies and attitudes toward migration, and the fluctuations and trends they exhibit, further affect migratory trends.

However the last of the four dimensions typically attracts the least attention in explanations of policy development; rather it tends to be used to explain motivations to migrate and patterns of integration in host countries. In contrast, the first three dimensions

have been brought together more rigorously. International Relations theories of receiving-country responses recognise the importance of foreign policy and political agendas, particularly for refugee policy. Teitelbaum (1984:433) demonstrated that *foreign policy affects international migration*, international migrations may also be used (stimulated, restrained, facilitated or regulated) *as a tool of foreign policy*; and foreign policy may reflect the changing constituency of countries due to *past migrations*.

As now well recognised, ad hoc refugee definitions as well as the 1951 UN definition were formulated around the prevailing Cold War political climate. Refugee policy was primarily intended “to protect persons from countries under communist domination” (Melander,1988:9). International relations and the political agenda of Western states were crucial influences on the refugee definition drafted by Western states and initially applied primarily to European countries, the USSR and the far East (Ibid,9).

The formation of receiving-country responses has also been conceptualised in terms of degrees of “conflict situations” (Matthews,1972) arising from the particular combination of politically active or politically passive refugees on one hand, and political or humanitarian receiving-country stances toward particular events in countries of origin on the other (i.e. politically active refugees and political stances of receiving-countries produce high-conflict policy decisions; politically passive refugees and humanitarian stances produce low conflict policy decisions). Vasquex and Mansbach (1981) add to this a “co-operation” dimension between states, which can influence refugee policy development. Hastedt and Knickrehm (1984) further add that receiving-state response patterns typically correspond with various their stances toward particular “issue-areas”, observing that refugee flows raise central issues within the context of pre-existing interstate relations.

As we can see, all sorts of variables, rules and response patterns shape why and how receiving-countries formulate refugee policy, but they are embedded in international issues as well as domestic. International migration policies and practices address “unwittingly or not, both domestic and international issues that have to be dealt with in the domestic arena” (Sassen,1988:7). Dacyl (1992) observes that theories of receiving-country responses generally tend to combine humanitarian concerns with foreign policy considerations; or “compassion” with “realpolitik”. The latter includes domestic climate, needs and security measures, such as protecting cultural, ethnic and economic stability or continuity. The former entails pressures from domestic spheres, including pro-immigration lobbies and increasingly immigrant and ethnic communities (Baubock,1998), and global pressures to conform with international human rights standards and regional agreements. However, regarding the fourth dimension

of the migration system it is evident that the possibility of asylum seekers (as opposed to established migrants) as anything but passive beneficiaries of policy is not considered. When refugees are referred to as 'political', this implies politicism only in the sending-country.

C. INROADS TO RECOGNITION OF ASYLUM SEEKERS IN POLICY DEVELOPMENT:
REFUGEE MOVEMENT AND SOCIAL CHANGE

As migration systems theory gained sway in the 1980s and international migration continued to rise, receiving-countries increasingly shifted their focus toward mediating factors with the aim of *preventing* refugee-creating situations from arising, and limiting refugee influxes. This preventative approach has been marked by, for example, increasing overseas humanitarian aid, conflict-mediation in foreign policy, imposition of visa requirements on people from high refugee-producing countries, aircraft carrier sanctions (to prevent airlines from accepting persons without valid identity papers), and general tightening of entry rules and regulations throughout the 1980s and 1990s.

While humanitarian aid and conflict mediation have developed with increasing support, their increasing restrictions on asylum seeking have inspired criticism that among other things has drawn out the political nature of refugee movements. Leading scholars on refugee movement Zolberg, Suhrke and Aguayo accused preventative approaches of stifling the political and social change function which refugee movements serve in sending countries. They emphasised the "essential political and normative nature" of the root causes of refugee movement (Zolberg et al,1989), and the fact that refugee outflows in response to root causes are integrally linked to social change. The preventative approach, they argued, seeks to avert refugee flows but takes into account neither the role of refugee movement nor that of receiving-countries in creating and shaping refugee movement. It "ignores the historical connection between social change and refugees. To avert flows would be the equivalent of trying to oppose social change... To stifle change may freeze a repressive social order or contribute to systemic social inequalities. In the longer run, both conditions are likely to produce their own refugees..." (Ibid,262).

Zolberg and his colleagues therefore proposed that to address refugee problems greater emphasis be put on the role of external parties and regional peace systems in addition to conflict-reducing institutional reforms. They further observed that change in the refugee definition is a natural and desirable outcome of broader processes of social change. Social conditions change or are newly recognised as producing new types of "refugees", thus a good refugee determination framework is one which is can respond to the changing times.

Preventative policy approaches also discourage another type of political and social change by removing some of refugees' symbolic political force upon receiving-countries. Concerned as such approaches have been with the rising volume and possible 'illegitimacy' of refugees, asylum seekers are no longer assumed to be direct symptoms of root/political causes. Rather, in popular discourses even legitimate refugees, while still typically considered 'forced' migrants, are increasingly blamed for contributing to contemporary social problems in receiving-countries – from increasing racial tension and unemployment to straining welfare states. They are causes of social discontent rather than symptoms of root causes of persecution; the *causes* of refugee flight escape popular discontent with government's inability or unwillingness to curb refugee flows. But as Hathaway (1991a) has observed in his influential work on refugee law, it is important to remember that by 'voting with one's feet' refugees alert the international community to human rights abuses occurring in their home countries. And with the increasing global interdependency of states and growing salience of human rights codes, violations of human rights in foreign countries are gaining increasing concern and attention by receiving states.

Clearly refugees have the potential motivation and beginnings of a framework to be political actors from a receiving-country perspective, when the very events they flee are not recognised in policy as meriting asylum. However this potential political role *within receiving-countries*, and the structural determinants of the nature, process and extent of this political role as a factor of policy development, remains unexplored. It has been excluded from migration system theory, theories of receiving-country responses, and policy critiques through them. There has been insufficient attention to the complexity of refugees' roles in receiving-countries, as asylum seekers navigate the system and push out its boundaries. Instead, asylum seekers are still predominantly considered either the recipients of goodwill which states may choose to extend toward them by granting Convention or extra-Convention refugee status (i.e. Humanitarian status), or as perhaps the greatest mass of con-artists in history: 'illegitimate refugees'. How might we overcome this duality, account for asylum seekers' political roles in receiving-countries and explain their potential influence upon policy?

II. ENLARGING UPON REFUGEES' POLITICAL ROLES: THE CONTEST BETWEEN THEORY, RIGHTS, IDENTITY AND OPPORTUNITIES

Policy-making models in social policy inherently exclude consideration of asylum seekers as policy actors because of their noncitizen status and their embeddedness in international trends, as Chapter 1 discussed. We can now see this exclusion occurring also as a factor of

conceptions of refugees and their roles according to migration theories, where asylum seekers are primarily the pawns of history caught up in broader structural events, or are actually illegitimate refugees. However migration systems theory does paint the essential picture of the various layers of the international migration system and some of their inter-relations. These are important for understanding asylum seekers' roles in receiving-countries, because we need to understand the 'system' which asylum seekers traverse – that which links national refugee policy with the broader migration system.

There are indeed formidable barriers and constraints upon seeking and receiving refugee status, and in many dimensions. Notably, Tuitt (1996) and others have pointed out many of the legal constraints upon asylum seeking, where identity and law or its interpretation conflict. Not only inter-state relations (between sending and receiving countries), but also group-state relations (collective identity of particular types of claimants, and receiving-countries) are politicised in ways that constrain many refugees. We now need to look how these politicised refugee systems may be negotiated by asylum seekers in necessarily political ways. We need to consider how asylum seekers actually involve receiving countries in the political debates and moral issues surrounding their flight, and often must challenge prevailing norms even there, and gain domestic support for their entry. The following considers the nature of their political challenge.

A. THE CONTEST OVER IDENTITY: 'UNIVERSAL RIGHTS' VERSUS HISTORICALLY SPECIFIC OPPORTUNITIES TO CLAIM OR CHANGE THEM

Much of the over-simplification of refugees' roles (as simply beneficiaries of refugee policy), as well as the very strength of their rights in policy, may stem from the basis of the international refugee definition in basic human qualities that may be considered *inherent* to one's being: race, religion, nationality, political opinion, membership in a social group. These characteristics begin to define what it means to be a member of the human community. To be denied these fundamental qualities is to be denied *self* and self in relation to the world in which one lives. In some instances it may be tantamount to inhumane treatment, or persecution.⁶ These qualities thus are equated with human rights, to be safeguarded, for they enable humans to pursue enjoyment of life as a whole.

⁶ "Persecution" is understood as human rights violations committed directly or indirectly by the state in a country lacking internal protection mechanisms. A 'human rights' approach to the interpretation of persecution (see Hathaway, 1991b:104-5) is commonly recognised by scholars, legal practitioners and adjudicators in Canada (Schenke,1996). In the case of *Canada v. Ward* (1993) the Supreme Court endorsed a definition of persecution as "sustained or systemic violation of basic human rights demonstrative of a failure of state protection"(S.C.R..1993at734). On the Ward case see Tranter,1993; on the application of the human rights approach to gender-related persecution see OLAP,1994.

These inherent human qualities and rights are the tremendous strength of the refugee definition, but also its capstone if their identification in policy is not acknowledged within historically specific recognition processes. The 'universal' nature of human rights is ideally relevant to *all peoples in all places* as well as universal in the range and nature of rights protected. However in practice we know that many people, particularly within certain groups, do not enjoy *basic* human rights, far from a full range of 'universal' human rights, and that the composition of the latter itself is not uncontested.

So-called 'illegitimate' refugees who have challenged the parameters of the above categories of persecution or their interpretation draw attention to the fact that universal categories of human rights violations identified thus far in refugee policy and through our interpretation of human rights principles may be incomplete or interpreted through biased lenses. A disjuncture exists between the universality of human rights defining ahistorical structural causes of persecution on one hand (and subsequently the characteristics of persecuted groups), versus the historically specific and more transparent structure of opportunities for particular rights and forms of persecution (and subsequently particular persecuted groups) to be recognised by a receiving-country. This can be better understood by considering the nature of both human rights and citizenship rights in relation to the doctrine of cultural relativism. We can then better see how asylum seeking may bridge these worlds, posing significant political challenges.

B. HUMAN RIGHTS, CITIZENSHIP RIGHTS AND CULTURAL RELATIVISM

A curious paradox of refugee policy is its basis in universal notions of human rights to call upon state responsibility, and its application in culturally specific contexts with various traditions of citizenship rights and state responsibilities. This actually creates a two-way dilemma for receiving-countries. First, human rights may be broader than nationally protected rights, whether in law or in practice. A state unwilling or unable to protect some basic rights of its own citizens may be unlikely to extend those rights and protections to aliens, and moreover, competition over scarce resources might suggest that claims of established citizens or residents should come first. Second, rights upheld nationally may be broader than those actually protected through refugee policy according to traditional interpretations of human rights in status determinations. Thus the use of human rights in refugee policy does not always match citizenship rights in a particular receiving-country.

Human rights exist in principles codified at the supranational level in international documents, which states may then choose to ratify. Like citizenship rights they also cover the gamut from political and civil rights and to social and economic rights. But unlike

citizenship rights, human rights are *intended* to be universal – relevant to all people regardless of territorially or otherwise defined membership. Moreover, they are typically conceived as being of a higher order than citizenship rights perhaps because of the inconsistency in the very nature of citizenship rights across states. Not all states recognise, uphold or enforce the same citizenship rights, whereas *in theory* human rights should be applied and upheld the same way everywhere.

Also unlike citizenship rights, human rights instruments did not initially develop with monitoring and enforcing mechanisms. Rather, sovereign states were left to decide whether or not, or how, to enforce them. Monitoring and enforcing mechanisms *within* and *across* states are more recent and still largely underdeveloped dimensions of human rights institutions. Under international refugee law, states are only required to establish a refugee status determination system, and through it to ensure (according to the specific framework created) that *persecuted* individuals are not returned to the countries from which they have fled (see Plender,1989:82,88). This is known as the principle of non-refoulement. To determine eligibility for refugee status, states increasingly rely on human rights principles, which they further hierarchise.

Individual rights within nation-states came to be embodied in the idea of citizenship. But as we know, *and accept*, citizenship rights of both formal and substantive kinds vary across countries and cultures. That is, citizenship rights are intended to be universal only within a limited domain. Variation in citizenship rights across countries occurs both in the interpretation and application of the broad categories of which they are said to consist (political, civil and social rights), and their historical development (their order of evolution), as we saw in chapter one. Citizenship rights may thus be more readily identified along the lines of culturally relative rights. Although nation-states may house more than one 'culture' or ethnicity, they are typically considered to constitute national communities based on shared political space, cultural ties, and belief systems.⁷

The doctrine of cultural relativism interprets any universalist claim, such as the universality of human rights, in the context of a particular time and place. Vincent (1986) identifies the three elements of the doctrine: first, cultural relativism "asserts that rules about morality vary from place to place"; second, it claims that variety in such rules must therefore be understood within corresponding cultural contexts; third, "moral claims derive from, and are enmeshed in, a cultural context which is itself the source of their validity". In its extreme

⁷ see for example Andersen,1983; Smith,1986; Seton-Watson,1977.

form, cultural relativism asserts:

there is no universal morality, because the history of the world is the story of the plurality of cultures, and the attempt to assert universality... as a criterion of all morality, is a more or less well-disguised version of the imperial routine of trying to make the values of a particular culture general. (Vincent,1986:37-38).

Cultural relativists believe moral and ethical choices are but value judgements shaped by historical and cultural variables, having different meaning and taking different forms and applications in different societies, and that therefore there are no 'universal' values, only those which are culturally relative. Universalists, on the other hand, believe that certain moral and ethical principles and rights can be not only identified but universally applicable to all peoples across time, such as universal human rights.

The greatest strengths of cultural relativism are, as Vincent aptly summarises, “the protest it utters against imperialism, and the buttress it seems to provide against it” (Vincent, 1986:38). Its greatest weakness is that “it might reduce the ethnocentrism of the erstwhile imperialist, but multiply it everywhere else by reinforcing in any culture its adherence to its own tradition.” (Vincent,1986:39. See Donally,1982). Other cultures' moral claims are thus deprived of validity within different societies, the effect of which is “to withdraw a society from the moral scrutiny of others.” In a perfect society this may be acceptable, but no society can make that claim.

The strength of universalism is in offering protection against the drawbacks of cultural relativism, rejecting the idea that moral argument in world politics can simply be withdrawn. However its main dangers lay in the fact that there is no common culture of modernity, it is subject to the particular moralities of “the primary cultural groups” in each society, and most importantly, it may be set against “the measure of westernization and not modernization”, thus imposing what are actually ethnocentric imperialistic moralities (Vincent,1986: 50-53).

A third perspective may be argued which recognises that predominant frameworks or paradigms that we use to understand the world and ourselves, whether considered universal or culturally relative, may be and will be challenged from time to time, and revised. Frameworks that are taken to be universal either to all of humanity or to all of a particular culture or society (universally particularist) are formed out of social and political discourse and interaction, and can be changed. This idea was well expressed by Kuhn who spoke of “scientific revolutions” in a controversial thesis that challenged the notion that scientific progress is orderly, incremental movement toward empirical truth. Kuhn maintained that rather than being ‘evolutionary’, scientific ‘revolutions’ occur when one

predominant paradigm is displaced with another through mechanisms involving “techniques of persuasion...argument and counter-argument in a situation in which there can be no proof” (Kuhn,1962). Likewise, we can not simply select from the pool of existing cultural moralities and expect these to remain incontestable either in a universalist or culturally particularist sense.

Asylum seekers must base their claims on human rights violations, or persecution (see Chapter 4 for a detailed discussion). If we consider Arendt’s (1967) analysis of human rights as in fact premised on citizenship rights, as we saw earlier in the chapter, and the possible dialectic between human rights and citizenship rights discussed above, the question arises as to what rights asylum seekers can lay claim to. These two considerations could easily amount to situations in which asylum seekers are excluded from rights to protection, having neither protected citizenship rights in their country of origin nor protection in receiving-countries when corresponding human rights abuses are not recognised.

Yet this possible outcome does not remove the political nature of claiming protection, in which rights are claimed and judgement must be rendered. In this process different institutionalised norms of rights protections at national and international levels are considered. As Soysal (1994:7) describes, “combined in complex ways, these discourses and modalities sanction different forms of activity and organising”. They may also come into conflict, as they are not always in agreement, “but this does not necessarily create irresolvable tensions or ‘role conflicts’ for actors” (Ibid,7).

In fact, asylum seeking may exemplify forces blurring the boundaries between exclusion and inclusion from citizenship rights, through processes of policy formation that link national and international state responsibilities. Asylum seekers may have to negotiate and challenge both universalist and particularist rights and moralities, and in both sending and receiving countries. Important here are the dynamics between national level refugee policy-making and the standard-setting nature and processes of international law, declarations and policy. Both may be mutually shaping over time, but the former offers possibilities for ‘bottom-up’ involvement due to nation-states actually *receiving* refugees in their territories. The latter, being a representative rather than territorial body, responds from the ‘top-down’ or through representative organisations (government and nongovernment) to delegate and standardise responsibilities among states.

In the case studied, the particular citizenship rights desired in countries of origin were not initially recognised by Canada or any country for that matter, as being on par with human rights. Cases could be argued only by laying claim to the same rights Canadian citizens enjoy,

and convincing the Federal government to correspondingly elaborate its interpretation of human rights in refugee policy. Human rights and corresponding state responsibilities for refugees were expanded through a feminist lens reinforced by women's citizenship rights in Canada. A feminist human rights framework is predicated upon the recognition that women's citizenship rights are often not substantively or adequately met; it then brings accountability for this failure into the inter-state system. Human rights frames provide a means for making states (at least theoretically) accountable for failure to uphold and nurture women's rights as equal members of humanity residing within the state and inter-state system; human rights frames subsequently also provide the justification for inter-state responsibility when states fail to uphold human rights. *But human rights (in principle, interpretation or application) may also be expanded upon through culturally relevant examples.* At the time of the campaigns a fast growing literature on women's human rights was emerging in disciplines such as international law, development and international relations (see chapter five in particular). However it took comparison to Canadian women's rights to actually get state responsibility for women's human rights institutionalised through refugee policy.

From the preceding description, it is clear that the process of transforming refugee policy is a political one. It involves the politics of identity, structure and agency, played out within a shifting terrain of citizen-state defined rights operating in the context of growing globalisation. An analytic framework for asylum seekers roles' in policy development must account for both institutional politics of policy-making and symbolic or identity politics, which the following elaborates. It considers the structural context as a field of changing opportunities and constraints for asylum seeking, the role of asylum seekers within it, and some basic parameters and processes of asylum seeking and political action.

III. THE STRUCTURAL CONTEXT FOR POLITICAL ACTION AND POLICY INFLUENCE: STRUCTURE, AGENCY AND IDENTITY

The structural context for political contests over identity and rights as intersected by asylum seeking consists of the migration system which asylum seekers physically traverse and its institutional rules and norms which they negotiate. This 'terrain' of asylum seeking meets that of policy development in receiving-countries, which similarly takes place between two broad institutional and political layers – the overarching international refugee regime and migration system, and particular national refugee regimes discussed below. Both may be described as contributing to “the institutional structure of society” which as Meyer, Boli and Thomas (1994:9) explain:

creates and legitimates the social entities that are seen as “actors”. That is, institutionalized cultural rules define the meaning and identity of the individual and the patterns of appropriate economic, political, and cultural activity engaged in by those individuals. They similarly constitute the purposes and legitimacy of organizations, professions, interest groups, and states, while delineating lines of activity appropriate to these entities. All of this material has general cultural meaning in modern systems and tends to be universal across them, so that all aspects of individual identity, choice, and action... are depicted in the institutional system as related to the collective purposes of progress and justice.

Institutional logics of the structural context for asylum seeking describe the framework of legitimating and enabling asylum seekers' political action (DiMaggio and Powell,1991; Meyer, Boli and Thomas,1987).

A. INTERNATIONAL AND NATIONAL REFUGEE REGIMES IN THE MIGRATION SYSTEM

Zolberg et al (1989) refer to the "international refugee regime" as the institutional and policy structures and the ways they were developed in response to changes in the migration system – flows of people, relations between countries, sending-country causes and receiving-country responses – internationally since World War II. It consists of refugee and humanitarian concerned international bodies at global and regional levels, such as the UNHCR and the European Commission on Human Rights, and the human rights principles they support. these offer individuals legitimacy as ‘persons’ rather than as ‘subjects’ of states, thus enabling their claim-making.

Like the international refugee regime, national refugee regimes may be described through relations between the migration system and the institutional and policy sub-system that evolve and change over time. This respects Boutang and Papademetriou (1994) description of national ‘migration regimes’, showing how particular types of countries have worked within the migration system. As international migration policy analysts, they are concerned with typologising different types of migration regimes in different countries. Coming from this angle, they emphasise the integral role of receiving-country responses to their definition of the Migration System:

...the particular combination of types of population flows between countries of departure and arrival, perhaps extending over several generations, along with the rules regulating these flows, and their administration. (1994:20).

They suggest this definition "allows the interplay of institutional variables to be given an important role" while recognising that migration policy is highly dependent upon the system in which it operates. They therefore suggest a working definition of "migration policy" as "a subsystem of the migration system" (Ibid,20). As a sub-system, migration policy "reflects the

content of the system, and at the same time is an essential component of its dynamics." (1994:20). The ways receiving-country responses *are formulated* must therefore also be understood within the overarching migration system.

They explain that migration policy is concerned with controlling "the effects of the migration system and, to some extent...the magnitude of international migration movements". But it faces constraints arising "from the nature of the system" and from "the policy's being only a subsystem, which limits what it can achieve" (Ibid,20). They describe migration policy as comprising all actions taken by central and local government on the basis of regulations under "the rule of law": treaties, agreements, laws, regulations and administrative instructions, as well as measures concerning the foreign immigrant population and its descendants (abroad or in the host country). Such regulations may be clear-cut, but the variables of the system itself are not, and can not be controlled. In this latter dimension Boutang and Papademetriou include the attitudes of the countries of origin, all types of refugee flows in time of war, and the influence of interest groups and political parties. Other macro structural factors include inter-state relations affecting modernisation and anti-colonialism, and the globalisation of technology and communication (Fawcett and Arnold,1987; Zolberg,1989; Castles and Miller,1993).

These influences are reflected in national migration policy and regime types. At this level the international logics of both human rights and citizenship norms come into play. Canada is divided between the citizenship based needs and demands of residents, and the humanitarian needs of nonresidents. These two levels are sometimes supportive and sometimes conflictual. Both can legitimate actors making claims and provide access to resources needed to challenge policy.

In Boutang and Papademetriou's typology Canada's migration regime is classified as reflecting a 'hybrid' of labour and permanent settlement priorities, the latter including its strong family reunion and humanitarian policies. Elaborating upon domestic refugee policy influences such as interest groups and political parties, which Boutang and Papademetriou mention, empirical studies of refugee policy making identify a range of formal and informal organisations and groups comprised of national citizens and including established ethnic minority communities (for example Hardcastle et al,1994). However, as Baubock has observed, the role of ethnic communities in shaping migration policies generally has tended to be underplayed or overlooked in migration theories (Baubock,1998), despite the profound nation-building function played by immigrants in countries such as the US and Canada.

As in theories of receiving-country responses and policy-making models, asylum seekers are not conceived as part of the policy process within refugee regimes and studies of refugee policy development. What is the political nature of *inland* asylum seekers' actual movement across this terrain? We need to look more closely at the asylum seeking process itself as it confronts politicised legal, institutional and extra-institutional structures, at sites where identity and rights are defined and developed.

B. INTERSECTING THE MIGRATION SYSTEM: THREE PREMISES ABOUT ASYLUM SEEKERS AS AGENTS

As described above, refugee regimes and migration systems may be defined largely by the interdependency of their parts. Interdependent agents are both instrument and effect of a specific but changable context. To put asylum seekers more explicitly into this equation, three premises are offered to explain their inclusion as agents and to expose and overturn previous assumptions that led to their exclusion.

Asylum seekers face a conflict between theory and opportunity in refugee status determination systems

The first premise is that asylum seekers face a conflict between theory and opportunity in institutionalised status determination processes. Theoretically, all persecuted individuals have the *right* "to seek and enjoy asylum" in other countries, according to Article 14(1) of the Universal Declaration of Human Rights (1948). However, not all persecuted individuals enjoy the same *opportunities to seek* asylum in the first place, and once asylum is sought, receiving countries maintain the authority to determine whether asylum seekers actually have the right to receive asylum in order to "enjoy" it. That is, asylum seekers must be considered eligible for "refugee" status as interpreted by sovereign states in national refugee policy⁸ and along lines delineated in international refugee law.⁹ The problem arises as, first, both international law and states' interpretations of it favour refugees of some types of "refugee-creating" situations (the characteristics of which define 'genuine' refugees) more than others. Second, in the face of this, the "burden of proof" in determinations of status falls primarily

⁸ Plender (1989) extensively examines the 'right of asylum' in different countries and the views of eminent refugee law scholars who tend to conclude that states determine 'the right of asylum'.

⁹ The term "International refugee law" applies to refugee-related Conventions and Treaties, but also the human rights standards to which they conform. The standard for Treaties and state policy is primarily the United Nations 1951 Geneva Convention Relating to the Status of Refugees and the 1961 New York Protocol.

upon refugee claimants.¹⁰ However, not all claimants enjoy the same availability of information and support necessary to prove their cases, or the equal opportunity to present information in an environment suitable to their needs.¹¹

In fact, all of the above conditions which pit theory against opportunity may seriously obstruct the ability of persecuted individuals to act effectively in order to be recognised as genuine refugees, a status that essentially transfers state responsibility for an individual's welfare from one country to another. Yet at the same time, as this thesis argues, the structural context makes the *act* of seeking asylum an important linchpin for expanding the refugee definition in policy such that less traditional asylum seekers may be recognised as 'legitimate' refugees therein, and receive international protection. In this study, women who seek asylum from female-specific persecution, as radically untraditional "refugees" who have clearly been considered illegitimate or invisible throughout the greater part of institutionalised asylum-giving history, sit at the centre of just such a quandary. They engage in a contest over identity concerning rights and state responsibilities.

This contest is influenced by the structural context asylum seekers must negotiate, and various resources (including legal, ideological, and material) they can draw upon to negotiate the system more effectively. Resources include particular legal rights as refugees through refugee policy and determination systems, and as residents in the host country; greater empirical evidence on conditions in their country of origin; ideological support for political activists or against particular forms of persecution; financial aid to reside in the host country while making claims, potentially to hire better lawyers; and support by NGOs in a variety of dimensions during the claim-making process, and networks between host country communities (for example ethnic communities) and recent arrivals. We will see in this study what kind of rights and resources asylum seekers had access to, which were important for the policy process and policy influence.

¹⁰ According to the 1951 Convention refugee definition, claimants must show "well-founded fear of persecution". Shenke (1996:8) explains that "proof" of persecution contains objective and subjective elements, and applicants are responsible for both. The former refers to "objective circumstances that give rise to the fear", and the latter refers to the claimant's genuine suffering from fear of persecution.

¹¹ On lack of documentary evidence for women refugees, see Martin-Forbes (1992), OLAP (1994). Canada's *Guidelines for Women Refugee Claimants Fearing Gender-related Persecution* note problematic evidentiary matters including the "particularised evidence rule", lack of "statistical data on the incidence of sexual violence in her country of origin", indirect state involvement in persecution by failing to protect, and special problems facing women at status determinations, i.e. cultural barriers preventing communication with male officers or disclosure of sexual violence, and the trauma of sexual violence (1993: 8-9). See Chapter 5 for detailed account.

Asylum seekers themselves are instrument and effect of the migration system

A defining feature of the migration system is the interdependency of its parts. Thus the second premise is that asylum seekers, as central *components* of migration systems and refugee regimes, are both *instrument and effect* of these relations, not merely shaped by but shaping interdependency. This is recognised in migration systems theory insofar as refugee policy is often said to ‘respond’ to refugee flows and also to shape them. It differs from migration theory which still tends to describe refugees as ‘forced’ migrants, focusing often on mass flows and implying asylum seekers do not make decisions on actions that may influence their migration prospects. However, we do not have evidence pertaining to asylum seekers’ roles, particularly in receiving-countries, to draw this conclusion.

The assumptions of migration systems theories are based on the macro structural causes of persecution or human rights violations over which asylum seekers have no control. The many barriers to access that asylum seekers face, the dangers and risks they take in flight and in refugee camps, have been documented. But without investigation, the influence of asylum seeking upon the broader structural context is considered almost inevitable – not a factor of individual asylum seekers’ actions in a political context but of their forced collective roles as pawns of history. Hathaway (1991a) and Zolberg et al (1989), discussed earlier, made substantial contributions by identifying the political role of refugee movements in drawing attention to the occurrence of human rights abuses and forming a necessary part of broader processes of social change. However even here asylum seekers are considered not as individual agents but as forced groups.

Thus, clarifying the second premise, asylum seekers are considered here as autonomous agents just as much as they operate and are embedded within an interdependent system that patterns their actions. In as far as individual claims are part of a structural type or group of claims, they are part of a collectivity, and may at times act politically as conscious members of that collective identity (defined by their experience of persecution or type of claim) or make claims that affect future decisions on claims by members of that collective group (i.e. setting legal precedents), whether consciously or not. This capacity does not suggest that asylum seekers do not face forces beyond their control that impel them to flee their home countries, and grave obstacles to actually fleeing or receiving asylum once in the host country. But it impels us to question the ways they are autonomous agents, and the implications. This leads directly to the third premise.

Asylum seekers are actors working with *changing* political opportunities

If asylum seekers are not solely forced actors by virtue of being compelled to seek asylum, we can explain their movement as in part that of *actors working with favourable political opportunities that may arise in changing structural contexts*. Several striking dimensions of the contemporary world constitute changing political opportunities for asylum seeking on a broad level.

First is the growth of regional and international conventions and agreements and the *increasing* salience of the human rights principles they support. Human rights codes prioritise the individual or person and provide legal and moral tools to challenge state sovereignty to violate human rights and to exclude aliens from their territories. In this context “the individual emerges as a site for contesting the authority (sovereignty) of the state because she is the site for human rights” (Sassen 1998:8). Asylum seekers’ claims to the legitimating discourses of institutionalised human rights norms and notions of personhood lend them options and the means for agency.

Second, both an outcome of the first point but moreover fundamental to its fruitful employment, is the increasing application of citizenship rights to noncitizens, and noncitizens’ increasing ability to access and claim citizenship rights (Soysal,1994; Jacobson,1996). Like other migrants, inland asylum seekers are exposed to the political, social, organisational, and resource environment of the host-country as they make claims and await decisions on them. This provides asylum seekers a range of institutional and extra-institutional resources and opportunities, for instance to make full use of judicial institutions and be represented by lawyers paid for by the state.

The two dimensions described necessarily intersect within the context of globalisation, marked by increasing interaction between national and international level systems (see Held et al,1999), and subsequently between national and world level institutional norms and logics that legitimate individual actors (see Meyers,1994:30). Both dimensions and their intersection can be fleshed out empirically as used by asylum seekers in this study. Thus, we can explore how asylum seekers acquired the means and legitimacy to challenge their exclusion from host countries despite increasing restrictions on refugees in policy and administration in recent years.

Seeing asylum seekers as *actors* further removes them from the limited ‘forced refugee’ image in which the individual actor disappears and refugee movements are ‘irrational and unstructured events’, yet without making the illogical assumption that individuals who challenge the refugee system are calculating voluntary migrants and thus ‘illegitimate refugees’. Just as the old ‘voluntary migrant’ category is now seen, in a migration systems

context, as subject to historically structured processes that qualify individualistic explanation of migration, so are refugees distanced from the old 'forced migrant' category and can be seen also as individual actors as new frameworks for action and legitimacy emerge.

As eminent refugee scholars Zolberg et al (1989:31) have noted, the forced/voluntary distinction is problematic for political dissidents who 'choose' to be political activists in their home country and thus do not quite fit the 'forced' definition (events leading to their persecution were not entirely out of their control). It is also problematic for untraditional asylum seekers; for instance, refugees of economic persecution are not recognised under the 1951 Convention and thus are often considered 'voluntary' migrants and illegitimate refugees. Moreover, due to barriers against their acceptance, untraditional asylum seekers may need to strengthen claims to state protection by taking extra, voluntary, political action in the receiving-country. Paradoxically, the more they challenge the system the more they may appear as calculating individuals who are not really forced migrants at all. This study dispenses with the artificial distinction between 'voluntary' and 'forced' migrants and explores how asylum seekers use political opportunities, rather than assuming that as refugees they must be 'forced actors' as well. They may have legitimate claims that push out existing refugee eligibility frameworks. The rationale of seeking asylum is based not on how well they 'fit' existing refugee law, but on membership in a collective group with shared identity and grievances *as well as* structural opportunities, resources and potential strategies for redress – all important factors mediating the migration system. Of course, potential actorhood does not guarantee success in seeking asylum; rather it implies *weighing* known options and opportunities, making what are perceived to be strategic and rational decisions within the universe of known possibilities, at times even taking risks to act on certain decisions. And, it does not preclude individuals who have *not* faced persecution but who are attempting to 'use the system' to gain authorised entrance.

C. ADAPTING MIGRATION SYSTEMS THEORY: THREE BASIC DIMENSIONS OF SUCCESSFUL ASYLUM SEEKING

Using the above premises international and national refugee regimes may be explored as terrain for women seeking asylum from female-specific persecution. Now we need to look at some of the basic dimensions of *successful* asylum seeking, from the asylum seeking perspective, which opens up potential policy influence. Three such dimensions can be delineated. Asylum seekers must have *opportunities to seek asylum*, that is, both to leave their country and to request refugee status from a host country in the first place. They must have *opportunities in the receiving-country to challenge negative decisions* on their claims and the existing

refugee determination system, if necessary. And asylum seekers must have the *willingness to make use of these opportunities*, which may involve certain risks.

The first dimension, *opportunities to seek asylum*, is most commonly identified in migration studies of various kinds, although not as ‘opportunities’ per se. Rather, migration studies following the migration systems theory framework identify a combination of macro and micro level factors shaping both particular sending and receiving-country conditions for emigration and immigration (see Fawcett and Arnold 1987; Castles and Miller 1993). These are often discussed in terms of the structural circumstances shaping international migration flows, such as global economic trends, decolonisation, modernisation and other inter-state or international level trends. They also include factors such as: laws permitting free movement in the sending-country, potential asylum seekers’ financial and/or human resources (i.e. contacts) which enable immigration (particularly in the case of movement to distant countries), international refugee law and receiving-country refugee laws and determination systems, and political relations between sending and receiving countries. These create the particular structural contexts of constraints *and opportunities* for certain migrants in particular times and places. Factors also include the resources international migrants can access once inside receiving-countries, described earlier as including access to legal counsel, evidence regarding widespread persecution in sending-countries, welfare benefits such as housing and community organisations that offer information and advocacy, and the particular rights associated with residence in the receiving-country, such as constitutional and civil rights.

The second dimension, *opportunities in the receiving-country to challenge negative decisions*, is rarely discussed in migration studies or even in the literature more specifically on refugee policy development. However, in the international and national refugee law literature where status determination systems are described and analysed, it is evident that law, its administration, and various resources available to claimants (i.e. a judicial setting, legal representation, etc.) are fundamental not only to the outcome of claims of different types (See Tuitt,1996; Paul,1992) but also to claimants’ abilities to challenge outcomes. These are not often discussed as *opportunities*, rather the more closed an immigration system is, the more it is considered to *constrain* asylum seekers’ chances of being accepted. The opposite logic is that the more open a particular system is, the greater opportunities asylum seekers will have to challenge it. The same is true for less tangible aspects of international migration systems that affect particular types of claimants and claims, for example systemic bias toward refugees arriving from particular countries due to political relations between sending and receiving countries (see Fawcett and Arnold 1987), receiving countries’ use of immigration as

a tool of foreign policy (Teitelbaum,1984), general attitudes toward international migration in receiving-countries, and the salience of human rights and citizenship norms in receiving-countries or as forces undermining state sovereignty (see Sassen,1996).

We may also add factors less commonly associated with status determination processes because we are considering asylum seeking (including status determination) *in relation to* policy development. The latter, in any kind of policy-making, requires opportunities such as: access to substantive rights and means (resources and opportunities) of participation in the host country; salient ideas and interests in the receiving-country which are relevant to the ideology underlying particular types of claims and demands upon states (i.e. ideas and interests embodied by the women's movement, or particular ethnic communities and/or public opinion concerned with international politics giving rise to refugee flows); and vulnerability of the establishment at a given time or on relevant political issues (i.e. domestic discontent toward a particular government, factions within political parties, and inherent or rising institutional weaknesses). Some of these were mentioned earlier as creating leverage points for asylum seekers facing the conflict between theory and opportunity. All the above types of factors can be viewed as structural opportunities, and elaborated upon appropriately in relation to particular kinds of claims and claimants.

The third dimension, *willingness to make use of these opportunities*, is neglected in the literature on refugees. Refugees are traditionally described as 'forced' migrants, although disagreement with this definition is increasing (see Zolberg et al 1989:30). As forced migrants refugees' capacity to weigh risks of various kinds and make choices even under difficult circumstances is overlooked. Moreover, despite the shift from push-pull to 'systems' theories there is still a marked tendency to concentrate on factors in sending-countries 'pushing' asylum seekers out, to the neglect of opportunities and constraints in receiving-countries.¹² If asylum seekers are presented with opportunities and constraints upon seeking and receiving asylum as described along the two dimensions developed above, they may be confronted with decisions about various kinds of risks they must be willing to take in the receiving-country to achieve their goal. For instance, would they be willing to make untraditional types of claims that are less likely to be accepted, or would they rather attempt to fit their claims within more readily accepted eligibility parameters by distorting the evidence? Would they be

¹² Incentives and abilities to migrate have been explored among immigrants on the micro level through social networks linking them to established migrants and migrant communities in receiving-countries (see Price,1963; Boyd,1989). 'Migration cycles' across generations of families are said to link international migrants of various types - migration beginning with refugees may be followed by extended family members as immigrants.

willing to challenge negative decisions on their claims (a surprising number of claims are ‘abandoned’ or ‘withdrawn’ at some stage of the determination process)? Would they be willing to take extra-institutional measures, such as going public, to challenge decisions?

These considerations may often depend upon whether asylum seekers have the resources necessary to become aware of various possibilities in the first place or ultimately to be able to go act on them (i.e. knowing one’s legal rights; having a good lawyer; having the support of NGOs to help gather hard to find evidence on countries of origin, or write advocacy letters to immigration officials who may be able to intervene in negative decisions). In this sense, bringing the third dimension to fruition is integrally linked to the first two.

To consider *how* asylum seekers actually achieve their goal – asylum – we must also understand the asylum seeking process and the policy development process together: how the structural context frames identity and process, and how asylum seekers may negotiate it. Having an idea of the political contests that take place as refugees lay claim to rights, and as links between identity and rights evolve in policy; the layers of the migration system, asylum seekers as central components of it, and the dimensions of asylum seeking, we may now elaborate *how* asylum seekers become political actors in receiving-countries. This can be described by drawing on theories of collective action to draw a thread through the diverse dimensions of the relationship between asylum seeking and the policy development process.

D. ASYLUM SEEKING AND COLLECTIVE ACTION: DYNAMICS OF STRUCTURE, COLLECTIVE IDENTITY AND AGENCY IN REFUGEE POLICY CHANGE

The dynamics between identity, the asylum seeking process, and policy, are crucial for understanding asylum seekers’ roles. Collective action theories are useful for further explaining this dynamic as it occurs in the particular policy process. They help explain how the structural context is used and resources and ideologies mobilised around particular collective identities and aims, including policy aims. Compared to models of policy-making in social policy, theories of collective action are particularly useful for studying a policy process by identifying the structural context but focusing on the *agency* of policy actors in it, i.e. their *use* of the structural context. Policy-making models in a social policy, reviewed in Chapter 1, tend to offer highly structural and institutional accounts of the policy-change process without looking in-depth into the actual dynamics of the conflict that takes place between actors. Further, they tend to neglect important factors in the *generative* stage of policy conflicts, such as the identification of grievances as structural (rather than individual) by potential actors, the formation of collective identities around grievances, the development and use of appropriate

ideologies, and the actual mobilisation of actors into a collectivity.¹³

The structural context can be broadly categorised into three distinct but contiguous dimensions that explain why political action may arise and how it becomes political influential. Drawn from a comprehensive theory of collective action offered by McAdam, McCarthy and Zald (1996), these are described as *political opportunity structures*, *mobilising structures*, and *framing processes*. This approach is useful here because as a synthesis of the two main theories of social movement, New Social Movement and Resource Mobilisation theories, it combines a number of elements applicable to the approach to the study described thus far: a structural historical and identity oriented approach (as in NSM theory), which is attentive to institutional and noninstitutional resources and their strategic use (RM theory).¹⁴

Taking a snap-shot of each of the three dimensions as related to a particular issue or collective interest, we see: (1) The structure of political opportunities, or the variety of institutional structures and informal power relations in a given area, which shapes the interaction of collective interests and institutionalised politics. (2) The particular formal and informal structures or “vehicles... through which people mobilise and engage in collective actions” (Ibid,3), such as NGOs or legal structures and institutionalised claim-making processes. And (3) the structure of salient ideas and ideologies, or the ways culture, identity and politics are ‘framed’ for a particular political purpose.

These three dimensions each provide various kinds of opportunities and constraints for individuals and groups to engage in successful political actions and thus shape vehicles for action, ideas and identity, institutional structures and power relations. The aims and outcomes of their endeavours may be broad social change, and/or particular vehicles encouraging social change, such as legislation and policy.

¹³ This is an under-recognised and under-researched area in policy-making, which has long neglected to sufficiently draw upon the more extensive literature and theory on social movements.

¹⁴ A complete review of the literature can not be undertaken here, but a brief synopsis can be offered. NSM theory focuses on the long-term - *why* movements develop - postulating this question is best understood at the macro level as *new* political identities coagulate around changing social grievances corresponding to broad socio-political and technological changes of post-industrial societies. Movements are essentially cultural struggles for control over the production of meaning and the constitution of collective identities. Main proponents of NSM theory include Melucci (1989), Touraine (1981), Habermas (1987). RM theory concentrates on short and intermediate term variables and the processes through which *pre-existing* grievances are translated and mobilised into goals and action. It explores, for example, the necessary pre-existing and developed resources, *how* resources and political opportunities are operationalised, participant recruitment, strategic political-entrepreneurial interaction between movements and existing political processes and structures. Main proponents of this approach include Tilly (1978), Gamson (1978), Oberschall (1973), McAdam (1982), McCarthy and Zald (1979).

The three dimensions also operate in a context where national and international discourses, norms, and institutions interact. The effects of globalisation are pertinent to nationally rooted collective action and policy processes because globalisation helps shape “institutions as cultural rules giving collective meaning and value to particular entities and activities, integrating them into the larger schemes... [The] patterns of activity and the units involved in them (individuals and other social entities) [are] constructed by such wider rules.” (Meyer, Boli and Thomas, 1994:10). Meyer (1994:30) describes such wider rules or environments as those of (1) world society and its dominant rules and ideologies, as well as the organisations and professions that structure these, i.e. those emphasising world level human rights ideologies; (2) universalistic ideologies and scientific doctrines that may also be world-wide and involve general or universal claims to authority; and (3) arrangements that in fact aggregate to the world level because of common clauses or diffusion processes, i.e. because interrelations among nation-states make changes widespread, such as ideas, politics and practices regarding women's rights.

The fact that political opportunity structures, mobilising vehicles, and framing processes are *changing* structures (i.e. under the influence of globalisation which creates standardising human rights law, international and ethnic organisations, and ideologies of multiculturalism linked to citizenship and women's rights) explains the emergence, development and subsequent nature and extent of influence by particular political actors in a specific time and place. As structures change they provide different opportunities and constraints for political action. Changes occur both over the long-term as the result of broad historical change and the development of new meanings and identities (NSM theory), and in the intermediate-term mobilisation of resources and political opportunities to address grievances (RM theory), affecting national and international levels and their interrelations.

The above parameters and may be applied to the more specific contexts of asylum seeking and the political action and policy process under consideration. The *stable and changing* nature of the structural context where asylum seeking takes place can be explored, and asylum seekers' use of it analysed. They need to use potential opportunities to take their claims from the individual to the collective level. This occurs in at least four basic processes:

(a) Identifying experiences of persecution within a broader structural experience of persecution by similarly structurally situated people. This aspect of refugee claim-making is often taken for granted in studies involving aspects of migration or status determination processes – asylum seekers are assumed to have fled structural persecution which forms the obvious basis for refugee claims. However, we can not assume that asylum seekers will frame

their experiences in political ways – i.e. identifying its structural causes. More likely, they present their individual experience, which hopefully is self-evidently structural in cause. However, presenting a claim with evidence or persuasive arguments as to its structural element is an important aspect of the claim-making process, particularly when claimant experiences do not ‘fit’ refugee eligibility frameworks. Claimants need to explain why theirs is a chronic, not individually experienced, problem. Lawyers are the most obvious candidate for helping claimants frame their experiences appropriately, however other influences may also be important (for instance refugee advocacy organisations).

(b) Using available ideologies and ideas as moral and legal resources to argue for collective rights. This dimension is interesting and significant as it brings different cultures and layers of legal and ideological arguments into contact. As indicated earlier, asylum seekers draw on a complex system of international and national law. They further raise debates about culture and the rights of particular groups (i.e. women), in both sending and host countries, the latter often overlooked. This process underlines that refugee policy is framed by historically and culturally specific ideas about rights and their justification through affiliation to identity or particular membership.

(c) Making use of or helping to mobilise necessary resources and support. This dimension is interesting as it involves mobilising host country resources and residents. The former may include resources often thought to be reserved for established residents or citizens. Residents may not be personally affected by the same grievances or seem to have a personal stake in taking political action around particular issues except insofar as their employment may involve dealing with refugees or issues related to particular types of asylum seekers’ claims (for example in this study, individuals working in women’s organisations). On a broader political level individuals and organisations may benefit indirectly from politically supporting a common ideology that benefits them as members of a broad group.¹⁵

(d) Finally, strategically using emerging political opportunities to draw on appropriate ideology and resources and pressure for policy change. That is, the timeliness of certain types of claims is very important, not only for political access but also for seizing moments when opponents may be more vulnerable to certain types of claims and pressure tactics.

¹⁵ These are known as ‘selective’ and ‘solidary’ incentives which partially account for what is often referred to as the free-rider problem in explanations of social movement participation (Olsen, 1965).

IV. CONCLUSION

Asylum seekers' role in and use of the structural context may be both symbolic and institutional/strategic. Their importance for symbolic politics involves the interpretation and creation of meaning and understanding of identity. Their strategic institutional influence involves bringing political situations to light and convincing states to adopt appropriate policy.

Identity for asylum seekers is both *self-defined* and *state-defined*. Both are important, and together they highlight the distinction between informal and formal status and the significance of their inter-action for policy-making. Refugee policy identifies potential beneficiaries of state protection and their rights according to basic state responsibilities explicit and implicit to the policy. Feeding into refugee policy development are policy actors' abilities and opportunities, arising from informal and formal rights inherent to contracts and relations between states and individuals in the global system, and between the state and citizens or residents, through which asylum seekers may mobilise and legitimate their claims.

Taking this into consideration, we can better understand that opportunities to seek asylum and challenge the refugee determination system, alongside willingness to successfully make use of these opportunities, contain both tangible and intangible, symbolic and strategic aspects. For example, asylum seekers have both symbolic self-defined identities as refugees, and institutional or state-defined identities as 'legitimate' or 'illegitimate' refugees. Opportunities and constraints include both institutional structures and resources (or lack of) and other tangibles, and salient ideas, trends and other intangibles. And asylum seekers and supporters use both ideas and ideology in 'symbolic politics' (Edelman 1971), as well as strategic tactics of influence through use of law, media and other instruments for public and government persuasion. McAdam (1996) describes the combination of symbolic and strategic actions as types of 'signifying acts' used by collective actors to influence social change. Looking specifically at policy-change processes, Smith and Sabatier (1994) explain that policies can be mapped on the same canvass as 'belief systems'. Policy actors cohere in coalitions for policy change through a 'hierarchy of policy values' from deep level beliefs to preferred policy instruments and aims, and secondary aims. Policy actors can even shift policy aims from preferred (or 'core policy values') to secondary as a matter of strategic consideration or new information coming to light (Smith and Sabatier, 1994).

Conditions for effective policy advocacy are an effect of *changing* political opportunities, and their use by asylum seekers whose identity and roles in relation to receiving states have also been changing. Transformations occur both symbolically and

strategically. For example, significant to this study were changing relationships between noncitizens and states, noncitizens and residents, and citizenship and human rights. The dynamic between asylum seeking and policy development is political, involving struggle and conflict and describing an important over-looked dimension of refugee policy development.

Furthermore, refugee policy is not only a vehicle for protecting states and preventing flows or providing aid to passive beneficiaries. It may also be a also vehicle for making use of or even expanding state responsibilities in human rights protection. Asylum seekers may actually use the existing structural context as a vehicle to overcome constraints and restrictions in receiving-countries. Both scholarly and popular discourse tends to be either panicked at this likelihood, saying that the system is prone to abuses by illegitimate refugees, or protective of legitimate refugees' structural vulnerability and 'forced' image. Migration Systems theory generally and theories of receiving-country responses in particular do not look at the international migration system as one of developing opportunities or constraints which asylum seekers *must* negotiate and *may* successfully challenge. They neglect the political process involved in actual asylum seeking and claim-making processes. This is essential to understanding how policy influence may occur. Its implications involve more explicit recognition of international pressures on, and applications of, social policy. This involves recognising noncitizen access to rights and policy-making processes, and considering the dialectic between international and national rights that may be mutually informative, extending state responsibilities for a range of substantive rights and for the formal beneficiaries of those rights. These transformations could fundamentally alter the use of 'citizenship' as a justification for social policy.

The analytical framework presented in this chapter suggests why and how asylum seekers (particularly persecuted individuals who do not fit traditional refugee status frameworks) may make the transition from being "self-recognised" refugees to state-recognised "refugees". While policy influence is not often a direct result of asylum seeking by individual claimants, and certainly can not be conceived as an easy process, we must still consider some of the structural layers asylum seekers negotiate and the means by which asylum seekers negotiate them, their impact and its implications. Such is the aim of following chapters, which examine the particular asylum seeking process in the unique case of refugees of female-specific persecution. Chapter 4 begins by examining in detail the context and interface between international law, its national applications and the claim-making process itself, drawing out the symbolic and strategic challenges both faced and posed by women fleeing female-specific persecution.

4. INTERPRETING "PERSECUTION" IN THE INTER-STATE SYSTEM: FEMALE ASYLUM SEEKERS' SYMBOLIC AND STRATEGIC CHALLENGE

"Everyone has the right to seek and to enjoy in other countries asylum from persecution."
[Article 14(1) International Declaration of Human Rights, 1948]

"... the question is whose criteria defines legitimate fear for refuge recognition purposes? Why is it decided that persecution on the grounds of race or religion may lead to 'well-founded fear' followed by international assistance, while women who are burnt to death have no rights of protection? Why is a girl who is threatened by violence and who attempts to escape by fleeing from her country, not part of the UNHCR's responsibility? Since neither national governments nor international bodies offer the right to protection and right to life [for these women], this is their under-development and their shame."

[Bonnerjea,1985:6]

Both the constraints against asylum seekers being recognised as "refugees" and the opportunities for overcoming them must be considered within the structural context of international law relating to refugees and to state responsibilities, and their national interpretations and applications in policy and status determination processes. This chapter looks at relations between women asylum seekers, states and the international legal context, as they interact in defining and redefining the lens used to determine state responsibility for protecting foreign-nationals and stateless persons, in this case those seeking asylum from female-specific forms and/or causes of persecution. This achieves three things. It provides a general background on the basic legal and administrative framework as a structural context for seeking and receiving refugee status, highlighting gaps between theory at the level of international law, and practice at the national level. It illuminates, as a basic element of that structure, the quite active and essential role of asylum seekers in interpretative processes that occur in refugee status determinations within receiving-countries. And it provides a more specialised analysis of how, through status determination processes, asylum seekers fleeing female-specific persecution in particular face and also pose structural challenges to the legal discourse on persecution and subsequently to the structure of interstate responsibility.

Such challenges occur as the gendered lens traditionally used to interpret refugee law and state responsibility for determinations of refugee status, is reframed. This lens differentiates between legitimate and illegitimate refugees along a public/private political axis. Asylum seekers' challenges are thus both symbolic and strategic, oscillating between discourses and norms framing identity and rights at national and international levels, and their institutional applications.

Legal discourse, writes Klare (1982:1358), mirrors "systematised symbolic interaction", it "informs our beliefs about how people learn about and treat themselves and others". The manner in which legal discourse informs "ways of thinking about public and private" (ibid.1361), which subsequently may fluctuate and be revised, is only one such example. There is now a vast literature on the structure of the public-private divide and implications for women in society, ranging from issues such as women's caring and unpaid labour, to violence against women, to gender in international relations.

At the national level, violence against females has become a social policy concern in many countries, including Canada, where domestic responsibility ideally consists of prevention, protection, and prosecution measures. These policy aims are built upon state obligations to promote the well-being and full-integration of all members of society; and the idea that violence against females is a public rather than private issue due to its structural origins. It is both product and promoter of the structural inequality of females in society based on their sex (Status of Women Canada,1991).

Statist discourse underpinning the inter-state system has remained premised on a masculinist demarcation between conceptions of what constitutes 'public' and 'private', between 'state' and 'society', and subsequently between the 'inner' life of sovereign states (their political and civil society) from their 'outer' life, or what Walker (1994) has called the "public faces in the global system". Thus internationally, female-specific violence has traditionally been interpreted as occurring in the 'private' sphere, beyond the responsibility of states for their citizenry, and undoubtedly beyond inter-state responsibility. The fundamental challenge both faced and posed by female asylum seekers is to this public/private demarcation underlying state and inter-state systems. This demarcation has traditionally informed the meaning of "persecution" for which states are responsible and from which individuals may "seek and enjoy" asylum, according to Article 14(1) of the International Declaration of Human Rights, thus determining asylum seekers' eligibility for refugee status.

The chapter draws from the literature on refugees and the international refugee system and on feminist scholarship on the public/private divide framing women's human rights, in such a way as to show how persecuted women's structural opportunities to seek and receive asylum and state responsibility are framed, and with what kinds of implications for asylum seekers' role in interpretative processes. Tensions between opportunities and barriers to recognition of female-specific violence as "persecution" in international law versus national policy and administration are drawn out, moving from the international scene to the Canadian context in particular, and highlighting how the need for asylum seekers to take an

active interpretative role is actually built into the system. Thus I argue that asylum seekers may be agents within the legal and administrative structural context; their agency is shaped (constrained, guided or promoted) by the inter-state and national legal systems, are their inter-relations, but may also influence the legal system within which they act.

Section I asks "Who defines persecution" and by what criteria or framework according to the standard refugee definition. It explains how in *theory* international documents and basic principles in international law counter-balance the rights and roles of asylum seekers and sovereign states in the definitional process. Section II goes on to explore the implications, for women, of international human rights law being based on the principle of state responsibility among sovereign nation-states. As the public/private demarcation inherent to statist discourse, which prevents structural violence against women from being treated as a public issue *within* states, has come to inform the structure of international law, inter-state responsibility for female-specific persecution has been left to what is known as the "goodwill" doctrine of states. Distinguishing between inherent or potential meanings of "persecution" in international refugee law, and states' *interpretations* of "persecution", I discuss how the latter have traditionally excluded female experiences by using the public/private demarcation which informs the principle of state responsibility, and how the former has the potential to overcome it. New interpretations of persecution need to operate through a human rights framework (rather than a male model and interpretation of citizenship rights drawn along gendered public/private lines) which dissolves the barriers between states and non-citizens in receiving-countries, and between states and individuals not granted the full rights and protections of citizens in their own country. In section III, returning to the role of asylum seekers, the barriers they face in interpretative processes at the level of claim-making and jurisprudence creation is assessed through the public/private lens, and the question of why and how opportunities may arise for them to challenge these barriers is highlighted.

I. WHO DEFINES "PERSECUTION?"

INTERNATIONAL LAW, ASYLUM SEEKERS AND SOVEREIGN STATES

According to Article 14(1) of the 1948 Universal Declaration of Human Rights, the determining factor of the theoretical "right to seek and to enjoy... asylum" is the experience or threat of "persecution" in the country of origin. However, the Declaration does not explicitly define "persecution" which gives individuals the right to seek asylum in the first place, nor do subsequently instated international documents which reinforce this right, in

particular the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 New York Protocol. Neither is "persecution" explicitly defined by most receiving-countries, which usually reproduce the Convention or Protocol in their national legislation.¹⁶

Typically, persecution is equated with serious human rights violations (Hathaway, 1994:108; IRB Preferred Position Paper,1992; OLAP, REF6-1, 1994:4). However not all violations of human rights will be recognised as amounting to persecution. To determine whether violence actually amounts to persecution for which states are responsible, international documents provide a loose framework for interpretative processes which theoretically balance the rights and roles of asylum seekers against those of states. Asylum seekers' forum for exercising this right is in the claim-making process, and subsequently the growth of jurisprudence. Flora Liebich (1993), IRB member and Chairperson of the Working Group on Women Refugee Claimants explains that in Canada, "When we look for guidance in deciding key issues in a refugee claim, such as what constitutes persecution... we look both to Canadian case law and to the international human rights instruments."

ASYLUM SEEKERS AND THE 'BURDEN OF PROOF'

Case law arising from refugee claims forms an important element of interpretations of persecution (its forms, types and structural nature), as well as recognition of the occurrence of persecution in particular countries at particular times. Persecuted individuals are therefore an important part of the definitional process, although the influence of their movement and claims tend to be objectified and divorced from them as individuals and actors. Seeking asylum entails both self-identification as individuals who are persecuted or seriously threatened by persecution, and the attainment of external or state recognition of the experience of persecution and right to receive refuge. These necessary actions are translated into what is often referred to as "the burden of proof", or the requirement that claimants provide evidence of both a general and a particular nature regarding their persecution.

Schenke (1996) explains that the burden of proof consists of both subjective and objective elements, and that the applicant is responsible for both. Objective elements consist of "objective circumstances that give rise to the fear". Subjective elements refer to the claimant's genuine suffering from fear of persecution. Persecuted individuals may present themselves at immigration posts within their country of origin to make refugee claims, or at the borders of or from within receiving-countries. Whether or not external parties are aware

16 See Hathaway (1991), on Canada; Schenke (1996) on the US.

of country-of-origin conditions, claimants must recognise and show “well-founded fear of persecution”. Hathaway (1991a) describes asylum seeking as a process that allows “people to become directly and immediately involved in the process of calling attention to affronts to human dignity in their home state”.

However, not all persecuted individuals are recognised as "refugees" by states, and as we shall see not all have enjoyed the same opportunity to shape interpretations of persecution in receiving-countries. Access to claim-making and case law creation processes is stratified among asylum seekers, despite what should be an inherent recognition that "Persecution is, in fact, a violation of one's human rights, whether the claimant is a woman, man or child" (Liebich,1993:2). The principle of state sovereignty allows states to interpret and apply UN Conventions to which they are signatory. This enables states to determine *in individual cases* whether a claimant's experience actually amounted to persecution from which asylum is the only viable source of protection, rather than be obliged to accept all self-identified refugees. Determinations take place in settings more amenable to some claimants than others. Subsequently, eligibility frameworks are created through which some self-identified refugees will be regarded as 'legitimate', and others as 'illegitimate'. The challenges posed by these two aspects are discussed below.

STATE INTERPRETATIONS OF INTERNATIONAL LAW: DELIMITING OR EXPANDING THE REFUGEE ELIGIBILITY FRAMEWORK

The principle of state sovereignty was upheld when Article 14(1) of the Universal Declaration of Human Rights was being drafted, so that states' interpretations of responsibility for persecuted individuals are shaped but not precisely defined. The instated article, "Everyone has the right to seek and to enjoy in other countries asylum from persecution", in addition to being only theoretically gender neutral, emphasises the right of individuals to seek asylum but does not bind states which are signatory to grant asylum. In contrast, the original draft of that article proposed to emphasise the responsibility rather than rights of states: "Everyone has the right to seek *and be granted* in other countries asylum from persecution." (UN Doc. A/C 3/285 Rev. 1 (1948), emphasis added). Opposition was upheld by the United Kingdom, the Commonwealth of Australia and the Kingdom of Saudi Arabia, whose delegates argued that "recognition of a right to be granted asylum would violate State sovereignty" (in Plender,1988:397, UN Doc A/C3/SR 121 pp4,6). Plender, Professor of international law, concludes that the traditional view concerning the Article actually instated is that:

the right of asylum is no more than the right of each State to grant asylum to a fugitive alien. In part, this view is based on the premise that international law gives rise to rights and duties only between States; and in part on the premise that States are free to exclude aliens from their territories. (Plender,1988:394)

According to Migration Systems theory, exclusion of aliens, whether in South-South, South-North or East-West movements, occurs both on the basis of international relations and foreign policy between sending and receiving states, and to preserve the inward looking protectionary interests of receiving-countries, usually to maintain or strengthen economic and ethnic/national integrity, and often fuelled by xenophobic sentiment (See Fawcett and Arnold 1987; Castles and Miller 1993). Humanitarian protection thus respects the right of states to protect self interests by having apparatus of the state determine whether asylum seekers are "legitimate" or "illegitimate" refugees. Since the upsurge in refugee movement from the 1970s and corresponding rise in costs of national refugee systems, 'legitimacy' has become an increasing preoccupation both to contain unmanageable flows and prevent 'illegitimate' asylum seekers from taking advantage of the system. Essentially the only obligations of regional and national refugee determination systems, as signatories or "contracting states" to the 1951 Convention and 1967 New York Protocol, are: (1) to establish determination procedures that identify the beneficiaries, and (2) to undertake the status determination task, in accordance with the principle of non-refoulement which states that no persecuted individual may be returned to her or his country of origin (see Plender,1989:82,88 and 1988:425-428). Controlling the framework for how persecution is to be interpreted clearly gives states the tools to justify rejecting asylum seekers.

The suggested framework for refugee determination which forms the basis for the majority of national immigration and refugee policies, is the refugee definition offered in the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 New York Protocol. These Conventions identify five structural *causes* or grounds of persecution rather than defining "persecution" or the many forms persecution takes. The reasons identified indicate that the persecution must be of a kind based on the inherent characteristics which an individual possesses or comes to possess in life and which are central to one's being: the universal qualities or "categories" of race, religion, nationality, political opinion, and membership in a particular social group. Denial of the right to possess any of these basic characteristics would be tantamount to denial of basic human rights. These universal categories were identified in lieu of enumerating particular persecuted groups (i.e. *all the particular* races, religions, nationalities, political opinions or social groups which may be persecuted in a certain place and time) which would be both impossible and limiting, as new

categories would constantly have to be added or else excluded as particular situations arise, subside, or are recognised over time (Zolberg et al 1989:25. Also see Chapter 3).

Universal *causes* of persecution thus constitute a determining factor of refugee eligibility which makes states responsible for *human rights violations* (the forms of persecution). These two factors qualify one another. The Convention does not entitle all members of a particular race, for example, to seek and receive asylum; only those who have suffered or have well-founded fear of human rights violations related to one's race, may do so under the claim of persecution. This is referred to as the individualised basis of persecution. Similarly, not all individuals whose human rights are violated are entitled to asylum according to the Convention; only those persecuted on any of the five universal grounds of persecution may do so. This excludes, for example, victims of civil war and economic or class persecution, which are also structurally based human rights violations, but are not enumerated in the Conventions.

The third crucial factor determining when an individual persecuted on universal grounds may receive asylum in another country is that the country of origin must be unable or unwilling to provide protection or "internal flight alternatives". The essential combination of these three mutually qualifying features form the basic framework for defining who the persecuted are, and who of those are entitled to asylum, which states then institutionalise in various ways. This is intended to preclude large masses of persecuted individuals such as victims of random violence, while (ideally) accepting those individuals persecuted on Convention grounds who are most in need.

Some scholars have argued that the basis for refugee status and refugee law is essentially exclusionary – its primary purpose is to limit, rather than to recognise, real refugees (Tuit,1996). However, some arguments for limiting broader acceptance (or "open-door" policy) of persecuted individuals as refugees have been made in the name of persecuted peoples' interests. Too general acceptance of refugees might encourage countries to get rid of unwanted people, while encouraging many groups to emigrate who would otherwise remain to challenge serious discrimination (see Zolberg et al,1989:21). As well, a refugee definition that does not regularly deny status to very large numbers could both jeopardise the possibility of their obtaining special consideration from the international community in times of crisis, and could undermine state authority (Zolberg et al,1989:22).

Thus refugee status has evolved along the fine line between universal and particularistic categories and concerns. Universalism won out through the Geneva Convention's universal categories of persecution (race, religion, nationality, political opinion,

social group), while the specification that the refugee's departure must be accompanied by individualised persecution or threat of persecution (at least against a section of the population with which the refugee identifies) individualises or particularises the refugee definition. The concepts and applications of state sovereignty and state responsibility may then be so combined to reinforce either humanitarian assistance or the right of states not to grant asylum. States were advised to balance their sovereignty and responsibility for persecuted individuals when, following instatement of the 1951 Convention, the UN recommended that "governments continue to receive refugees in their territories and that they act in concert in a true spirit of international co-operation in order that these refugees may find asylum and the possibility of resettlement" (Recommendation IV.D).

Thus while the majority of states recognise Conventions and Declarations of the UNHCR and face strong international pressures to act in good faith toward the Convention, the refugee definition leaves "ambiguities to be fleshed out in National law and state practice" (Plender,1989:63). There remains a lack of international consensus on the definition of "refugee" (Ibid,64). Most Western European and North American countries apply the UNHCR refugee definition as a basis for determination of eligibility, and then "subject the definition to qualifications to address regional problems" (Ibid,64), either limiting or expanding it. Furthermore the ambiguous meaning of "persecution" in international documents leaves states to interpret what amounts to persecution on the basis of any of the five Convention grounds or otherwise, on a case by case basis (except in mass intra-regional exoduses of people, for example in Africa), relying both on former case precedents and international Conventions and Declarations. Interpretations may broaden or tighten the application of the refugee definition.

It is important to note that in the process of delimiting the definition, various attitudes toward asylum seekers develop or are reflected. Rejected applicants may be considered either "illegitimate" refugees, or less worthy of need than other applicants. Conservative and neo-conservative approaches consider those asylum seekers who are refused entry to either (a) actually have available to them "internal flight alternatives" or mechanisms for redress from within the country of origin, (b) not be fleeing from persecution occurring on the grounds of race, religion, nationality, political opinion or social group, or (c) not be fleeing from violence or abuses actually amounting to human rights violations, or persecution. On the other hand, libertarians at the extreme end consider all refugees to be essentially "legitimate", and thus advocate a more or less open-door policy, or only minimum requirements (such as no previous criminal activity) for immigrant and

refugee eligibility. Taking a moderate approach, pragmatic liberalists interpret the determination process by explaining that modern nation-states are confronted with the difficulty of having to limit the number of in-coming refugees due to economic and geographic constraints, having therefore to set about the distasteful task of establishing selection criteria and attempting to prioritise in an equitable way some groups of people over others, according to perceived needs and alternatives. While seeing all refugees as "legitimate" and our understanding of refugee creating conditions forever incomplete as the terrain and nature of such problems shifts throughout history, this perspective accounts for the need for conceptual adaptability and for nation-states to develop distinctions between "more" and "less" legitimate refugees at any period in time.¹⁷

Recognition that individuals are often persecuted for reasons not identified in the Convention has led many states to grant asylum to individuals and groups in "refugee-like" situations. Sweden first introduced the category of "B status" or "de facto" refugees in the 1960s, creating temporary ad hoc measures to cover refugees of social-political crisis without precedent in the Convention. "De facto" refugees are those who, although they fail to meet Convention criteria, do not wish to return to their country of origin because "of the political conditions there" (Plender, 1989:67). Many countries and regional systems have followed Sweden's example and created extra-convention categories.¹⁸ Canada, for example, allows entry to "non-statutory" refugees (verses "statutory" or Convention refugees) as "designated classes" of refugees, or on "Humanitarian and Compassionate" grounds (Immigration Act 1976, 1993). The UNHCR also regularly recognises persons in "refugee-like" situations, extending aid to large masses of refugees in camps for reasons such as civil war and famine, which are not covered by the Convention but amount to serious human rights violations. The Organisation for African Unity is an exception, explicitly naming refugees of civil war and strife in its definition (OAU. Convention on Refugee Problems in Africa, Article 1. 1969). These extensions of the refugee definition share the recognition that persecution may occur for reasons not explicitly stated in the Convention, in countries unable or unwilling to provide protection from human rights violations.

Leeway to grant or with-hold asylum to women, as for all refugees, is guided generally by the inter-relation between asylum seekers' and states' rights, mediated by international law. Persecuted individuals' rights to seek and receive asylum when their own

¹⁷ Parekh (1994) describes the three theories of immigration as "liberal", "communitarian", and "ethnic or nationalist", on a scale from least to most conservative.

¹⁸ See Plender (1989) for documentation and comparison of national and regional systems regarding extra-convention categories.

country fails to protect, is upheld in the International Declaration of Human Rights when claimants meet the refugee definition provided in the 1951 Convention and 1967 Protocol. The sovereignty of signatory states is upheld as states may interpret the concept of 'persecution' to either widen or delimit eligibility for refugee status. For women these inter-relations are further framed by the public/private lens of state interpretations, as we shall now see.

II. THE PUBLIC/PRIVATE BARRIER TO STATE RESPONSIBILITY FOR WOMEN'S HUMAN RIGHTS IN INTERPRETATIONS OF PERSECUTION

According to Article 2 of the 1948 Universal Declaration of Human Rights, all "rights and freedoms " contained therein apply equally or "without distinction" to all people, including distinctions based on " sex":

Every one is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status.

Thus in theory, Article 14 (1) on the right of persecuted individuals "to seek and enjoy asylum", like all articles under that declaration, is inherently gender-equal. However, structural barriers against women seeking and enjoying asylum occurs at each of the three dimensions of the framework for refugee eligibility provided in the Convention refugee definition and as generally interpreted by states. These were discussed above as: well-founded fear of persecution, which is increasingly equated with forms of human rights violations generally; the structural basis for persecution; and lack of internal flight alternatives. At each of these dimensions, barriers to recognition of female-specific persecution arise.

EXCLUSION OF FEMALE FORMS OF HUMAN RIGHTS VIOLATIONS

The requirement that claimants be fleeing persecution is left for states and asylum seekers to determine in ways that has traditionally excluded female-specific experiences or *forms* of human rights violations. Failure to apply equally the laws of asylum to women and men in accordance with Articles 2 and 14(1) stems from what international law specialists have observed as the gendered basis of international law and relations, which has its roots in the public/private divide (See Beasley and Thomas,1994; Cook,1994; Schenke 1996; Peterson and Runyan,1993; Sylvester,1994; Charlesworth 1991). Charlesworth (1991:614) observes:

both the structures of international lawmaking and the content of the rules of international law privilege men; if women's interests are acknowledged at all, they are marginalized. International law is a thoroughly gendered system... [which] privileges the male world view and supports male dominance in the international legal order.

Despite Article 2, the Declaration of Human Rights has traditionally viewed human rights violations through a gender-male lens. This may originate in the fact that before the United Nations Charter, human rights violations were a matter of domestic jurisdiction (Riggs and Plano,1988:240). The UN Charter represents the intent to "assert an international interest" in the human rights of individuals by formulating standards of conduct, encouraging compliance with standards, and condemning egregious examples of non-compliance" (Ibid,241). It includes the creation of international co-operation in "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (Ibid,241). But the state, as the basic cell or unit of the international system, is the underlying structure for interpretation of international human rights.

Human rights violations were later identified in the UN Declaration of Human Rights but the guidelines indicating when human rights violations amount to persecution are based loosely on the principle of state responsibility with its origin in "the demarcation of spheres between the state and the individual" in a "social contract" relationship, and within which nation-states are considered sovereign (Romany,1993:90). Subsequently, state responsibility for human rights protection has typically referred to the "public" realm of state governance. This is reflected in the UN Draft Code of State Responsibility which asserts that acts by individuals or a group not acting on behalf of the state are not considered acts of the state (see Romany 1993:111). Thus human rights are traditionally defined along underlying public/private demarcations inherent to statist discourse, which have long symbolised the separation between male and female experiences in society (Romany,1994).

It is in this context that interpretations of female-specific persecution must be understood. Human rights violations were traditionally considered violations perpetrated by the state or by actors of the state, as a necessary precondition for other states to take on the humanitarian responsibilities of accepting asylum seekers (see Rominay,1994:90). Cook (1994:21) explains that state responsibility in international law:

makes a state legally accountable for the breaches of international obligations that are attributable or imputable to the state. In other words, only a state and its agents can commit a human rights violation. Nonstate actors are not generally accountable under international human rights law, but the state may sometimes be held responsible for human rights violations.

Human rights violations that are "attributable or imputable to the state" are considered "public", within the realm of state responsibility. This framework does not recognise the private sphere of citizens in their everyday life because it does not recognise linkages between the personal and the political which occur in the 'life world' of individuals. Many forms of violence against women have traditionally been considered "private" in nature, that is, committed by "non-state-actors" in the private sector and as such beyond the realm of state responsibility.

"Private" violence may be described as that which occurs either through or in the name of the traditional family structure where it supports and perpetuates the gender hierarchy at its most basic level. This hierarchy is reflected in gender-role relations of the 'public' sphere of state and society. However the separation between public and private sectors is manifested "to different effects" in different societies, particularly when one compares Western to Eastern and Southern societies (Cook,1994:6). Charlesworth (1994) explains that "what is public in one society may be private in another", but that which is the women's domain is the one consistently devalued. This combination of public/private demarcation and differentiation in cultural manifestation of public/private creates special problems for the protection of women's human rights, both within and between states.

Within some states, condemnation of violence against women (public *and* private) has grown since the 19th Century, but particularly in the past three decades (see Dobash and Dobash,1992). *Between* states, female-specific violence has only recently become an issue of government attention.¹⁹ Ashworth (1986:3) describes the public/private demarcation as fostering a "false separation of ethics" between foreign and domestic policy, apparent in the historical fact that "no state has ever proposed sanctions, economic boycotts or war against another for its treatment of its female citizens". The demarcation still underlying the state and international relations has produced a tremendous gap between domestic policy and ideology regarding state responsibility for violence against women, versus state responsibility in foreign policy and international relations. States that have developed an infrastructure to act as intervening third parties to prevent or hand down punitive consequences, in their own countries, for violence against women formerly considered "private", have continued to treat violence as "private" and non-interferable when refugees have sought protection from female-specific forms of violence occurring abroad. Such violence was not considered persecution, or subsequently an inter-state responsibility. Refugee movement based on

¹⁹ The first international Convention to explicitly address public *and* private violence against women is the UN Declaration on the Eradication of All Forms of Violence Against Women, instated in 1995.

female-specific persecution brings domestic and foreign policy face to face, and must be battled out in refugee determination processes, jurisprudence creation, and refugee policy development.

Professor of Law Celina Romany (1993:87) explains women's position in foreign and domestic policy, and the interface between them, as "alien":

Women are the paradigmatic alien subjects of international law. To be an alien is to be an *other*, and *outsider*. Women are *aliens* within their states and *aliens* within an exclusive international club of states which constitutes international society.

Violence against women is demonstrative of "how human rights law has excluded women" (Friedman,1994:20). Bunch explains that violence against women is "the issue which most parallels a human rights paradigm and yet is excluded":

...it involves slavery, it involves situations of torture, it involves terrorism, it involves a whole series of things that the human rights community is already committed to [fighting, but which] have never been defined in terms of women's lives. (in Friedman,1994:20)

Until recently, non-governmental human rights organisations have also demonstrated a lack of attention to violence against women. Roth, Executive Director of Human Rights Watch (New York), attributes this gap largely to the origins of the movement in concerns with politically motivated abuse, in particular the classic "prisoner of conscience" who experiences abuse considered public or directly related to a state. Roth (1994) traces the evolution of the traditional human rights movement, demonstrating why domestic violence women experience has been neglected therein. He concludes that "although organisations such as Amnesty International and Human Rights Watch have gradually expanded their mandates beyond the classic prisoner of conscience, the paradigm of a government seeking to still dissent remains powerful" while recognition of individuals persecuted because of social status, or of individuals whose human rights are violated by non-state actors, remains relatively neglected (Ibid,328). However, Roth also notes that "the broad language of the Covenant [on Civil and Political Rights] clearly encompasses these governmental abuses [by non-state actors], and it has become increasingly accepted that they should be part of the international human rights mandate." (Ibid,328).

EXCLUSION OF STRUCTURAL CAUSES OF FEMALE-SPECIFIC PERSECUTION

The public/ private framework has also underpinned female experiences of the structural basis of persecution. This occurs in two ways. (1) Interpretations of whether the persecution

claimants flee occurs on one of the five Convention grounds typically exclude forms of human rights violations experienced by females in each of the five categories. (2) Sex itself as a structural basis of persecution is not included in the Convention grounds. For instance, the rape of women as a tactic of war (to destroy the 'purity' of a racial or ethnic group) could in theory be conceived as persecution on the grounds of nationality or social group, but traditionally has not. The view that rape (the *form* of persecution) is a 'private' rather than public or state matter has precluded consideration of the structural basis of the persecution. Similarly, persecution occurring due to structural status as females is precluded from consideration because relevant forms of human rights violations are not recognised as state responsibility and do not occur for the same reasons that men experience. Sex specific elements have generally been considered irrelevant to refugee claims. The Australia Law Reform Commission recommending guidelines which mimic those developed in Canada, quoted one example of a DORS officer dismissing gender dimensions of claims:

Now, you make two claims: one is on your rape and one is on your religion. The rape question is not a Convention-related issue, therefore we will not discuss that question. We will go straight into the religion question.²⁰

In other cases, Hearing Officers have not merely dismissed elements of claims, but made statements judging female claimants' cultural roles and responsibilities rather than look at political or other elements of persecution. In one widely publicised Canadian case, Hearing Officers concluded that the claimant should not have opposed the wishes of her father and authorities regarding appropriate dress for Saudi Arabian women. It did not consider the punishment that would be inflicted upon her for disrespecting the dress code (public lashing, stoning) because it was appropriate to her gender in the society in which she lived, and it did not consider her actions political (see Young, 1994).

Female experiences of persecution are fleshed out in Chapter 9 in an analysis of claims. For present purposes, the public/private division underlying frameworks and status determination systems can be identified as a primary reason female experiences are excluded from state responsibilities.

EXCLUSION OF FEMALE EXPERIENCES OF PROTECTION:

As Canada's *Guidelines for Women Refugees Fearing Gender-Related Persecution* now recognise, determination of whether 'Internal Flight Alternatives' are *available* are largely contingent upon the existence of appropriate documentation which has typically been lacking for

²⁰ In OLAP, 1994: Case study cited by Australia Law Reform Commission, NSW *Submission* 588. (69)

women. However, documentation is irrelevant if determinations of whether IFA's are *necessary* are considered culturally relative. States are free to interpret whether the right of a sending-country to *withhold* adequate protection from human rights violations is culturally relative. These elements can be described in greater detail as they affect female refugee claimants' opportunities to make and prove the validity of their claims, taking as example the Canadian experience.

III. BARRIERS AND OPPORTUNITIES FOR CLAIM-MAKING AND THE GROWTH OF FEMALE JURISPRUDENCE IN CANADA

In Canada, "persecution" is not defined in the national Immigration Act but derives its meaning through case law and interpretations of former precedents (OLAP 1994). National case law, its development and application may be a vehicle through which new interpretations of persecution develop, setting precedents for other cases to draw upon. However, the growth of case law is shaped by the ideological and sociological background of national refugee determination processes. These are built upon the public/private demarcation and thus steeped in bias toward male claimants.

Barriers to recognition of female experiences of persecution occur not only in legal discourse and interpretations, but in how refugees are treated in refugee determination hearings, which have tended not to be suitable to women refugees' needs. The latter gained recognition in Canada in the late 1980s. It became increasingly evident that women asylum seekers face various socio-economic and status determination disadvantages which policy and status determination processes were not designed to take into consideration. These disadvantages involve both claimants' status as women in their home countries and the ways receiving-countries hear and judge claims. Three consequences have been identified: (1) women are prevented from emigrating independently and having their claims evaluated fairly; (2) a system that frames women's dependency leads to abuses of sponsorship power and (3) prevents women from telling their own stories in receiving-countries and being heard through an appropriate gender-lens.

Regarding the first, the structural disadvantages women face occur in all entry categories. Boyd (1987, 1993, 1994) and others have shown that Canada's immigration and refugee system favours those who are or have been financially independent or have particular skills considered marketable, usually excluding the 'unpaid' labour and value of women's traditional skills and contributions to society, while attempting to balance this through a high rate of admissions for family class/ sponsored relatives. Boyd showed how women refugees

who *are* accepted into Canada overwhelmingly tend not to be allowed entry due to humanitarian reasons (referring to Convention refugees, Designated Classes, as well as those accepted on humanitarian grounds), but through landed immigrant classes, in particular the "family class" where they outnumber men by 50%. Women entering in this class are allowed entry primarily as "dependants" or sponsored family members, meaning that they do not in fact make claims of their own but rely on the claims of their spouses/ family members.

Regarding the second consequence of economic and status determination disadvantages, the sponsorship system can lead to abuses of power. This became a matter of increasing concern in the late 1980s. The National Clearinghouse on Family Violence produced a report in 1990 concerning women refugees who are battered based on a study of women's shelters (MacLeod and Shin,1990). It identified abusive situations that may be created when women enter Canada as dependants whose sponsors have been or become abusive. Battered refugee women, as dependants, may feel locked into the abusive situation, without information as to their rights, and with fears of being deported if they leave the abusive relationship and abandon the sponsorship contract. As dependent refugees, they may be prohibited from making a new refugee claim because they are not allowed to enter *new* evidence in support of their claim, and because evidence not presented at the initial hearing may weigh against claimant credibility (see MacLeod and Shin,1990; also Pope and Stairs,1990).

The third consequence is women's *silence* and the *lack of hearing* given to their experiences during determination processes. In the face of economic and status disadvantages, women refugee claimants still face "the burden of proof". They must show "well-founded fear of persecution" according to the UN refugee definition. But more often than male claimants, females generally face a paucity of documentation upon which to find evidence regarding the occurrence of persecution, the well-foundedness of fear of such persecution (such as evidence of conditions for women and statistical data on the incidence of certain forms of violence in the country of origin), and the lack of state protection or internal flight alternatives. Problematic evidentiary matters also include the "particularised evidence rule", for which claimants must show that persecution which is general in nature, i.e. affecting all women in a particular place and time, has affected them in particular (IRB *Guidelines*,1993).

The difficulties women face are also related to stress producing factors generally affecting both claimants and Hearings Officers. Karola Paul, Chief of Promotion of Refugee Law Unit of the UNHCR Division of International Protection, produced an influential

report in 1992 observing the general and female-specific barriers in refugee hearings. Refugees may be in a psychological "state of emergency" in the first days after arrival in a foreign country, resulting in communication difficulties during the claim-making procedures. The claimant may be euphoric, "almost incoherent in communicating her joy at having escaped humiliation and persecution". Following initial euphoria, the claimant may be so depressed by uprooting from the country of origin and the traumatic events experienced that she becomes reserved and withdrawn and has difficulty producing information. These situations are particularly difficult when the persecution experienced is not commonly recognised and adjudicators do not know what type of information to look for (Paul 1992:11).

Claimants also commonly lack understanding of the status determination hearing, in particular the condition "that they have to *substantiate* in the first hearing all measures of persecution that they *individually* have been subjected to in order to avoid the credibility issues which can arise when new information is presented after the hearing" (Ibid,12 emphasis added). Paul explains that "for refugees who come from cultures where the individual does not count as such but only as part of a collective, the individualised notion of persecution is hardly understandable" (Ibid,12). Claimants often describe in general terms the situation in the country of origin and "in terms of what has happened to her family, clan or tribe" rather than the persecution she herself experienced or is in danger of experiencing.

Claimants may not understand the questioning of refugee hearing officers, who seem to doubt well-known generalised persecution in the country of origin. Claimants may even consider the questioning to indicate that hearing officers are 'against' them, and may decide to be careful of what they say, becoming fearful and defensive or nervous and aggressive. Some refugees have experience that authorities do not accept dissonance, that their own opinions are not wanted by officers of rank. Attempts to retrieve precise and "to the point" information from claimants may be interpreted as an order not to speak or explain background further (Ibid,13).

Females face particular difficulties presenting their claims because they often come from societies in which it is "uncommon that women speak in public i.e. outside the confines of their family collective. If a woman wishes to state something, a man from her family will represent her interests." (Ibid,14). When represented by another individual, particularly a male, she will not have an opportunity to voice her experience of persecution and make an independent refugee claim. Unless adjudicators encourage female claimants to tell their own

story, women often remain silent. Former refugee hearing officers describe the presence of female claimants as being “in the background”, or as if they are not really there at all.²¹

When female claimants do have the opportunity to tell their stories, the hearing room environment has not traditionally been gender sensitive. For example, difficulty arises when female claimants come from societies that highly value a woman's sexual 'honour' as representative of the honour of her family. In such cases, as Paul explains, a woman:

...who admits during the hearing that she has been sexually mistreated or even raped during detention would normally have to take her own life in accordance with the traditions of her home country in order to restore the honour of her family... For a woman, the hearing itself therefore puts into question the norms and values to which she was accustomed in her country of origin. This fact will be aggravated if the hearing officer is a man. For Tamil women, for example, it is forbidden to be alone with a man in a closed room. (Paul,1992:14)

Loyalty to family and cultural values of honour may also inhibit a woman from divulging information about persecution perpetrated by kin (for example as punishment for transgressing social mores and sullyng family honour, or in gender-specific traditions such as domestic violence, or 'female circumcision', also known as female genital mutilation).

Due to cultural inhibitions and lack of understanding of the hearing process, a woman may introduce vital information only as a last resort to avoid deportation. At that point, "added information" has low credibility and often still results in a negative decision:

...the tragic consequence is that many women who have suffered severe persecution do not obtain refugee status... What embitters these women most is that the shame is now out in the open but their 'sacrifice' was superfluous because it did not protect them from deportation or *continued persecution*. (Ibid,15 emphasis added)

If rejected, persecution may in fact be heightened by the divulgence of information, considered as further betrayal of family honour, whether by family, extended family, or community members in the country of origin to which the claimant must return.

Stress producing factors also influence Hearings Officers' abilities to make sound judgements. Paul (1992) sites factors such as emotional/psychological exhaustion from day to day hearing of traumatic events, which may increase the difficulty Hearings Officers experience in hearing claims equitably:

Research has established that members are thus at an increased risk of favouring undemanding asylum-seekers... The refugee hearing officer/member is engaged in a cultural confrontation where her own values might be silently questioned. This constant stress can lead to disgust and indifference (Ibid,16).

²¹ Interview with refugee lawyer Cote.

Other factors that may inhibit Hearing Officers' gender-inclusiveness and recognition of experiences and circumstances particular to female refugees, are described by Liebich (1993) from the IRB Working Group on Refugee Women. These include the likelihood that Refugee hearing officers/members may lack understanding of the cultural background of claimants, and of how cultural values may inhibit the manner and type of information given by claimants. Traditional lack of gender sensitivity or awareness is only compounded by unfamiliar gender roles and practices of other cultures, and different forms of persecution women may experience therein.

All these barriers inhibit female claimants from making claims or verifying their merits (Turley, 1994). In Canada, until recently the body of jurisprudence accounting for women's experiences was small, and the meaning of persecution was derived from the experience of male claimants. The *1993 Guidelines on Women Refugees Fearing Gender-related Persecution* explain:

The circumstances which give rise to women's fear of persecution are often unique to women. The existing bank of jurisprudence on the meaning of persecution is based on, for the most part, the experiences of male claimants. Aside from a few cases of rape, the definition has not been widely applied to female-specific experiences, such as infanticide, genital mutilation, bride-burning, forced marriage, domestic violence, forced abortion, or compulsory sterilisation (1993,para.7).

Instruments necessary to overcome these barriers have either not been well established or not readily available or accessible. However, the growing interest and research on violence against women across cultures and the increasing salience of the human rights movement challenges these obstacles, as the following chapter shows, offering more appropriate frameworks and necessary resources for women to make and prove their refugee claims.

CONCLUSION: ASYLUM SEEKERS SYMBOLIC AND STRATEGIC CHALLENGE

We have reviewed the legal and administrative framework of asylum seeking, drawing on feminist readings of international law and of refugee determination processes, and revealing the role of asylum seekers themselves in interpretative processes that shape refugee eligibility. In theory, international documents counter-balance the rights and roles of asylum seekers and states in interpretative processes surrounding the meaning of persecution, which determine whether individuals will in fact be eligible to "enjoy" asylum once they have sought it.

The public/private demarcation in statist discourse informs international law, which in turn reinforces state interpretations of persecution and the extent of state sovereignty or

responsibility for human rights violations giving rise to refugee flows. It thus also informs the rights of asylum seekers to seek asylum and the rights of states to grant or withhold asylum. We saw how interpretations of "persecution" may negatively affect female-specific claims that challenge the political symbolic demarcation between "public" and "private", foreign and domestic, as defining features of state responsibility.

Appropriate theoretical frameworks may help adjudicators hear claims involving female-specific persecution more equitably. But until such frameworks are established or institutionalised they may be fostered through claim-making and the ongoing growth of jurisprudence. Jurisprudence is a vehicle through which new interpretations of "hard law", or international instruments, can be developed and implemented. However, lack of relevant documentation alongside the public/private demarcation and inherent to status determination processes leads to predominantly male-based jurisprudence.

This vicious cycle exaggerates the 'burden of proof' placed upon claimants. On one hand it perpetuates the fundamental contradictions between externally imposed identities and actual experiences of asylum seekers by obstructing their credibility, and on the other hand may necessitate their greater action. These claimants must work harder to find alternative ways of proving the merits of their claims, including, as later chapters will show, using both institutional and extra-institutional recourses.

Considering the relatively wide berth states enjoy to either delimit or extend the Convention refugee definition, the significance of interpretations of "persecution" (essential in all refugee status determinations) which make states responsible for asylum seekers looms large. The dearth of well established theoretical and administrative frameworks and documentary evidence applicable to refugees of female-specific persecution in particular necessitates both theoretical revisioning 'from above' and practical developments 'from below', which the following chapters describe. On one hand, states must establish a framework for determining whether the experience of individuals seeking asylum -- whether falling *within or outside* the traditional five Convention grounds -- actually amounts to persecution invoking state responsibility which the sending-country has been unable or unwilling to assume. Equally important, asylum seekers must prove that their fears of persecution are well-founded, on both subjective and objective grounds. Both interpretative forces are essential, as well as mutually shaping and reinforcing. Development from below occurs through claim-making that confronts the political boundaries of state responsibility, as untraditional women refugees overcome symbolic and strategic disadvantages to foster the growth of case law. Such claimants face formidable structural barriers to "seeking and

enjoying” asylum, thus becoming more than ever political actors who must seek strategic means to overcome constraints in receiving-countries.

It is suggested therefore that asylum seekers face and pose both symbolic and strategic challenges in interpretative processes within actual status determination processes. Despite structural barriers we can see a potential forum in which asylum seekers can bring to light the occurrence, forms and nature of female experiences of persecution. Interpretative processes involved in claim-making and the development of jurisprudence constitute a driving force behind the institutionalisation of untraditional definitions of persecution. In this the state is a vehicle for expanding interpretations of human rights, while interaction between national and international legal and moral norms facilitates claim-making that fuels the need for new interpretations.

The following chapters will consider how barriers were challenged such that female experiences were translated into existing structures and created new structures. We begin with the emergence of necessary political opportunities for asylum seekers in the inter-state system, illuminating the progressive evolution of three important trends up to 1992: changing world migration by females, the international evolution of policy recognition for those fleeing female-specific persecution, and the birth of the women’s human rights movement.

5. THE FEMINISATION OF MIGRATION, REFUGEE POLICY AND HUMAN RIGHTS DISCOURSES: STABLE AND CHANGING OPPORTUNITIES AND IDENTITIES, 1970-1992

As the preceding chapter has shown, reinterpreting “persecution” to include the female experience in ‘hard law’ (i.e. international and national law, conventions, treaties) refugee definitions involves interpretative processes at both theoretical and at practical levels. This is promoted in part through asylum seeking itself which draws international attention to the occurrence of human rights violations, and at times leads to the growth of case-law within nation-states. This chapter explores three international trends with significance for women’s opportunities to seek asylum from female-specific persecution and be recognised.

Section I describes dramatic changes in international migration trends by women globally, in the late twentieth century. This is no doubt linked to new *needs* to migrate, but it is also an indicator of their growing *opportunities* to migrate. And it creates opportunities for issues concerning women to come to light and be addressed in policy.

Section II analyses the evolution of recognition of female-specific persecution in ‘soft law’ discourses (policy recommendations, resolutions, guidelines and jurisprudence, government conferences) up to 1992, internationally and in Canada. I draw on primary documents in an original and comprehensive historical analysis, complemented by secondary sources. The discussion moves from discourses on women refugees’ situations generally to sex-specific persecution, showing how they reflect both progressive and stereotypical attitudes toward women in society. It discloses both increasing opportunities for the particular type of asylum seeker to be ‘state-recognised’ refugees, and the persistence of traditional stereotypes of women as primarily passive and vulnerable, being ‘symbols of the nation’ (Yuval-Davis and Anthias, 1989) but also deprived basic citizenship rights. The Canadian jurisprudence and prevalence of refugee claims involving female-specific persecution up to 1992 are described as an example of these trends, drawing on IRB documentation and supplemented by interviews with lawyers.

Section III considers a final international trend with the potential to move policy discourses from cultural relativism and citizenship rights toward more universal rights discourses: the global human rights movement as adopted by women’s rights advocates.

The crux of the tension drawn out in this chapter, and also its fundamental force, is the absence of a commonly agreed and implemented framework of women’s citizenship rights both in sending and receiving countries. Faced with this condition, women have been what Rominay (1994) describes as “aliens” in their own states and aliens in international

relations and receiving countries. Women have been seen as cultural symbols of nations and nationalities (Yuval-Davis and Anthias 1989; Yuval-Davis,1997), while their lack of formal or substantive citizenship rights have been considered culturally relevant and used to deny them international protection. The evolution of refugee discourses in 'soft law' up to 1992 stops short of recognising underlying structural causes of persecution which emerging human rights discourses offered the potential to overcome. The rising potential for women to migrate and be recognised for female-specific *forms* of violence stopped at the rift that remained between these two bodies of discourse and theory, which campaigns leading to the instatement of the Guidelines would have to overcome.

The significance of 'soft law' discourses analysed in the second section can be read in a number of ways and a few comments are warranted here. Because of its non-binding nature, in contrast to legally binding 'hard law' of international declarations, conventions, treaties and law, the influence and significance of 'soft law' has been widely debated. Birnie and Boyle (1992) explain soft law as, "by its nature the articulation of a 'norm' in written form, which can include both legal and non-legal instruments; the necessary abstract norms in issues which have been agreed by states or in international organisations are thus *recorded* in it, and this is its essential characteristic" (Ibid,27).

While potentially a disadvantage, the non-binding nature of soft law may be part of its fundamental strength. It enables "the incorporation of conflicting standards and goals" as new or innovative legal developments emerge, by providing "States with the room to manoeuvre in the making of claims and counterclaims" (Chinken, 1989:866). Although states may disregard it, soft law may reflect and strengthen international law-making trends and create expectations for state behaviour (Reisman, 1988:374). Ultimately soft law may indeed provide a foundation for the development of 'hard law'. Thus the development and ways soft law discourses are framed, which this chapter traces regarding women refugees and female-specific persecution, is an important aspect of a larger developmental process, indeed an innovative or evolutionary process linking states and the inter-state system.

I. THE FEMINISATION OF MIGRATION

The "feminisation of migration" refers to "the increasing role in all regions and all types of migration" which women have played in the late twentieth century (Castles and Miller, 1993:8). Castles and Miller observe this trend as one of four major international migration trends characterising the modern world, including globalisation of migration, acceleration of migration, and diversification of migration. They explain the dramatic nature of the

feminisation of migration arising from the fact that women have been particularly affected by rapid changes arising from decolonisation, modernisation and uneven development. Subsequently, where men traditionally dominated numerically, women have been increasingly represented in labour migration as principle applicants rather than family class or dependants. The majority of the world's refugees are women and children (approximately 80%), while some refugee movements have been predominately female, for instance refugees of the former Yugoslavia (UNHCR,1995). Looking specifically at refugees we see that moreover, the volume of refugees world-wide has increased dramatically. The UNHCR reported in 1993 that the number of people seeking asylum continued to escalate in the 1990s, all over the world, including asylum applicants in industrialised countries. Asylum applications in Europe, North America, Australia and Japan rose from some 100,00 in 1983 to over 800,000, in 1992. The total number of applicants recorded between 1983 and 1992 was approximately 3.7 million in these countries alone (UNHCR,1993). Today there are an estimated 22 million refugees or displaced people world-wide.

Increasing volume and dispersion of women, across entry categories "...raises new issues both for policy-makers and for those who study the migratory process" (Castles and Miller 1993:8). Castles and Miller do not look at what these issues may be, but briefly describe the significance of links between ethnicity, class and gender for the migration process and for ethnic community formation in host countries as it feeds into the migratory cycle, which migration studies have tended to overlook (Ibid,32). It is generally accepted that the feminisation trend in migration is integrally related to factors influencing the globalisation, acceleration, and differentiation of migration, and that the specific ways females are affected, their mobility and opportunities to be accepted in receiving- countries, are different from men in many respects. Most case studies of female migrants continue to focus either on settlement and adaptive processes, or the experiences and needs of refugee women in camps (see Fincher, Foster Giles and Preston,1994). Across these there is still a predominant focus on the role of female migrants in the family (see Morokvasic,1984). This reflects what indeed continues to be their highest category of concentration, the family class, and also as the majority of dependants in refugee classes in receiving-countries, in Canada (Boyd,1989) and most countries (UNHCR,1995). Immigration policy has played a large role in this concentration, as Boyd (1989,1993) and others have recognised, by not valuing women's particular labour skills and not creating conditions suitable for hearing women's refugee claims (UNHCR,1995; also see Chapter 4).

But female migrants might not only strengthen migratory cycles already underway (through family and community roles). New policy considerations may be whether they may lead *new* cycles or migrate for reasons different from males. These possible aspects of the "feminisation of migration" have received little attention, particularly regarding refugees as we shall see below. The "feminisation of migration" is a loaded phrase requiring greater inquiry. It indicates not only a gender specific constituency, including the 75% of refugees who are women and children, but raises questions about traditional conceptions of 'root causes' of migratory movement and the responsibilities of both sending and receiving states.

Root causes of refugee flight have generally been assumed to be the same for women as for men: gross human rights violations, war and "natural" disaster. According to Migration Systems theory, receiving-countries play significant roles in precipitating refugee crises and all types of migration, as an effect of colonisation, military involvement, political links, the Cold War, and trade and investment. They are also integral in aiding refugees in camps in an equitable manner, as well as enabling *or* preventing refugees or other immigrants from receiving asylum in host countries (see Castles and Miller 1993). All of these may have particular implications for female refugees.

The feminisation of migration may also be considered, in part, an effect of practitioners' and academics' increasing recognition or discovery of female migrants and their needs. Thus we shall now examine the 'feminisation' of *refugee* policy and 'soft law' discourses, tracing the issues and narrowing in on those that identify *root causes of flight which are somehow different from those affecting men*. Within these discourses we shall see both increasing opportunities for female migrants' recognition, and the nature of continuing constraints.

II. GENEALOGY OF DISCOURSES SPECIFYING FEMALE PERSECUTION IN 'SOFT LAW'

A. INTERNATIONAL EVOLUTION: 'INVISIBILITY', 'VULNERABILITY AND DEVIANCE', AND 'SEXUAL STATUS'

Recognition of issues and root causes of persecution affecting female refugees occurred in roughly three contiguous and incomplete stages up to 1992 – gender neutrality, gender difference and increasing gender inclusivity.

Under refugee policy and programs considered gender neutral, the concerns and needs of women refugees were largely overlooked and 'invisible' (Camus-Jacques 1989). In 1989 refugee practitioner and academic Camus-Jacques explained:

Refugee women encounter specific problems regarding protection, assistance, and participation in decision-making. The following remarks are unfortunately not based on statistical data, for the simple reason that such data on refugee women do not exist. In spite of the recognition that women and girls constitute most of the world's refugee population, policy-makers and field-workers still do not have the proper information which would enable them to implement adequate protection and assistance for refugee women or to allow them a greater voice in decisions regarding their lives. (Camus-Jacques 1989:142).

Women refugees had been systematically overlooked in data collection and in policy and research on refugees, both those in camps and in receiving-countries (see Camus-Jacques,1989; Martin-Forbes 1992, Moser,1991; Newland,1991). They have also been overlooked in inland status determination systems and settlement programs (Boyd 1994). Finsher et al (1994) comprehensively review the literature on gender and immigration, concluding that women's invisibility was an effect of "a taken-for-granted view that women are the appendages of either protective males or the patriarchal state" (Fincher et al 1994:150).

Recognition of the concerns and needs of women refugees was precipitated by the illumination of the gender variable in the field of development, revealing that economic and welfare failure in development was in large part due to gender-blindness in policies and programs. Concern subsequently also emerged regarding development needs of women and children in refugee camp situations, where the majority of refugees are located. With this virtually new attention to gender in refugee studies in the early 1980s (Buijs,1993), women refugees became known as 'the forgotten majority' (Camus-Jacques,1989). Like 'gender-neutral' third world development programs, refugee-related policies and programs had previously treated all refugees as male.

It was observed that alongside the same needs for physical protection, assistance and participation in decision-making and status determination as men, women also face particular risks. However as a continuing legacy of their "invisibility", problems facing women refugees continued to be treated re-actively rather than pro-actively, their needs most often regarded as the gendered consequence of their 'special vulnerability' as females. Those women who were already refugees in transit, located in refugee camps, or facing cultural assimilation and role change difficulties in countries of asylum, were recognised as experiencing difficulties different from those faced by male refugees.²² Their sex was considered an indicator of the difficulties they faced, however these difficulties were not generally considered a result of relations between men and women in society.

²² These have been particularly well documented by Martin-Forbes (1992).

Most ground-breaking was recognition of sexual violation as a factor of persecution, which first appeared in the work of Swedish researcher Connie DeNeef. Her study, carried out between 1978 and 1984, was the first of sexual violence against refugee women and its effect on status seeking, eligibility and determination processes. DeNeef identified four categories of persecution particular to refugee women, in which sexual violence "may have played a role in the flight from the country of origin in any variety of ways" (DeNeef,1984:6-7). These lay the groundwork for international documents that later developed.

(1) *Persecution based on a woman's political convictions*, where the persecution is expressed through sexual violence. DeNeef notes: "Both for men and women in a number of countries sexual violence is an integral part of the methods of torture". This category recognises such torture in a gender inclusive, rather than "gender neutral" (traditionally male-based) manner. (2) *Persecution of a woman for "not conforming to the cultural traditions* in the country of origin which prescribe a certain behaviour for women". DeNeef describes an example of this type of violence to be the "decapitating or stoning women who have committed adultery in some Islamic countries". (3) *Persecution of women as both a strategic and symbolic act of war*, where persecution is manifested through "the threat of, or through actual sexual violence against women" as an expression of conflict (or way of deciding conflicts) between different political or religious groups. Sexual violence against women here can be a means to hurt an entire group and to reinforce the superiority of the one group over the other". (4) *Persecution of unprotected women*, for instance women "who have fled [their country] because of conditions of war or of a reign of terror", where the persecution is expressed through sexual violence because such women may be "exceptionally vulnerable" due to having been "deprived of the men's traditional protection and hav[ing] lost their status of wife."

These categories were ground breaking in that relations between refugees and violence particular to women had never before been identified explicitly. While the study did not explore women's motivations for seeking refugee status, it revealed the necessity for status determination systems to be aware of female-specific forms of persecution affecting asylum seekers, and of deterrents to women speaking about their experiences (particularly to male immigration officers), such as trauma and cultural taboos against speaking about sexual crime or punishment.

Several formulations of the type of persecution specific to women were subsequently proposed at regional and international levels in the early 1980's. These can be grouped into two categories: those specifying persecution on the grounds of "sex" or "sexual status" alongside the five traditional categories of persecution in the Convention; and those

specifying persecution against women as a "particular social group", thus making use of an existing category rather than reopening the Convention.

Sex persecution

In 1980 the UN held a round-table discussion which was the first to introduce sexual violence and refugee women at the international level, discussing the special needs and risks facing refugee women due to their "special vulnerability as women". Two years later the European Parliament submitted a motion for a Resolution based on a report of DeNeef's research, requesting that the 1951 Geneva Convention Relating to the Status of Refugees be re-opened for the first time since its instatement, "for the purpose of including the word 'sex' therein on the same basis as the words 'race, religion...!'" This motion was rejected, substantially revised, and passed a year later.

The original motion was significant not only for explicit recognition of 'sex' as a category, but because the detailed recognition of the *nature* of the violence against women calls attention to the inter-personal dimension, as opposed to the individual-state relation in which human rights abuses are traditionally said to occur. It identifies 'extortion', in which perpetrators may be state authorities or non-state actors, and 'inhumane treatment' resulting when women infringe the moral or ethical code (rather than legal) imposed on the social group to which they belong on the basis of cultural or religious traditions (Provision A). The motion also explicitly recognises that women's cultural infringements "do not constitute offences or crimes under provisions of international criminal law or United Nations agreements" (Provision B). This removes blame from women who are persecuted and redirects attention to the persecutors. The recommendation suggests subordination and persecution or "inhuman treatment" of women occurs because of their status as women *within* society, and because those who subject them to such treatment "belong to the same social group" and are thus "[immune] from criminal proceedings" (Provision C). It finally notes the 1951 Convention "disregards persecution on the grounds of sex" (Provision D).

The European Parliament motion for a resolution was rejected, raising important debates which did not disappear, as controversy over subsequent recommendations shows.

Female-specific persecution within the 'social group' category

Recommendations that developed in lieu of the 1982 Motion emphasise the *symptoms* of sexual divisions in society, rather than their structural *causes*. A new motion was passed by the European Parliament on 13 April 1984, focusing on "sexual violence against refugee

women" within camps or by soldiers, border officials, or other state-related authorities (as DeNeef's categories 1,3, and 4).²³ This version abandoned the notion of re-opening the 1951 Convention to introduce sex persecution. States were advised that they may recognise women as members of "a particular social group" under the five existing Convention categories of persecution if they fear cruel or inhuman treatment for having transgressed the social customs of the society in which they live. This strategy was adopted by the Dutch Refugee Council (DRC) in policy recommendations that same year, and by the UNHCR Executive Committee in 1985, each with slightly different definitions.

The Dutch Refugee Council's 1984 policy directive on refugee women was the most far-reaching, stating:

...persecution for reasons of membership of a particular social group, may also be taken to include persecution because of social position on the basis of sex. This may be especially true in situations where discrimination against women in society, contrary to the rulings of international law, has been institutionalised and where women who oppose this discrimination, or distance themselves from it, are faced with drastic sanctions, either from the authorities themselves, or from their social environment, where the authorities are unwilling or unable to offer protection. (Advisory Committee on Human Rights and Foreign Policy 1987).

Here the social group to which women may belong is defined by "social position on the basis of sex". The persecution they face may be a consequence simply of sex, particularly when institutionalised discrimination against women is opposed or when women seek to "distance themselves from it". The Dutch Refugee Council remained at the forefront of related policy discourses throughout the 1980's, with the Dutch delegation acting as a prime mover as a member of the UN Executive Committee.²⁴

Policy recommendations with the widest influence are those issued by the UNHCR, whose audience includes all states signatory to conventions and treaties relating to refugees. In April 1985, following the publication of DeNeef's research, the UN Sub-committee of the Whole on International Protection issued a report recognising that "there are situations in which refugee women face particular hazards due to the mere fact that they are women" (para.1). Its Note on Refugee Women and International Protection (EC/SCP/39, 8 July 1985, 36th Session) recognised the danger of "violation of their physical integrity and safety" in camps or in transit, particularly the threat of sexual abuse, including sexual exploitation,

²³ European Parliament, *Resolution on the application of the 1951 Convention Relating to the Status of Refugees*, Report by the Ministry of Social Affairs and Labour 1984, see p64-64.

²⁴ See Advisory Committee on Human Rights and Foreign Policy (1987) for opinions of Dutch members supporting a social group interpretation, and objections of dissenting states.

rape and prostitution, through extortion, brutality, and abduction (para.2and3). It recognised refugee women’s “right to equal treatment”, noting that neither the 1951 Convention and 1967 Protocol, nor the Statue of the Office of the UNHCR,

makes a distinction between male and female refugees, the basic assumption being that all refugees, irrespective of their sex, face the same problems and will be treated equally. In practice, however, the effects of the international refugee instruments and of humanitarian principles may be vitiated for some refugee women because the social conditions of women in a particular society may not permit their full impact to be felt. (para.4)

These limitations were observed to persist because of “prevailing attitudes” in *both* “countries of asylum and/or origin” (para.5). Finally, it recommended that the UN follow the European Parliament resolution advocating use of the ‘social group’ category:

As regards women who face harsh and inhuman treatment because they are considered as having transgressed the social mores of their society, consideration should be given by States to interpreting the term ‘membership in a particular social group’, as mentioned in article 1 (A) (2) of the 1951 United Nations Refugee Convention, to include women belonging to this category.

The Executive Committee did not accept this interpretation. States objected on two counts. First, the interpretation of social group was too broad and, they argued, could “lead to a wider interpretation of refugee status for others. This interpretation is, after all, based on ‘persecution’ due to the transgression of the certain social customs and not due to the status of the individual who does so”. Second, the interpretation represented a “condemnation of certain social customs” in certain states.²⁵

These state responses demonstrate a clear demarcation between the position of women in society and the gender roles which they are expected to embody. Recognition of women’s greater protection needs due to a presumed inherent ‘vulnerability’, both as refugees and as women, had won out relatively easily because it corresponded with stereotypes of women as passive and requiring male protection, not necessarily because of their position in society as females but because of their nature as females and their heightened vulnerability as refugees. Negotiation over “transgressions of social mores”, on the other hand, was more protracted because it raised the question of whether the social mores themselves were persecutory toward women and based on their status in society.

The UNHCR Executive Committee resolved the problem of implicating states and cultures by passing a directive on Refugee Women and International Protection (36th session,

²⁵ See Advisory Committee on Human Rights and Foreign Policy, (Appendix 1): 1987.

A/AC.96/671, 1985) recognising “that States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a ‘particular social group’...”

Thus from the onset to the final form which the directive took, the UN’s position has been criticised both for going too far and for not going far enough. States’ objections of ‘floodgate fear’ and cultural relativism remained while the directives fell short precisely because they reinforced state sovereignty to make use of them only if they wish. The provision appears in a sub-committee report which only advises, is not binding upon states, and is difficult to monitor.

It is also limiting in its categorisation of violence against women which may amount to persecution. First, the suggested interpretation of social group identifies deviance as the defining criteria of the cause of the persecution – women who have “transgressed the social mores of the society in which they live” – rather than seeing how social mores may reinforce the subordination of women in society, and indeed deviate from human rights standards. Social customs were not perceived as related to the ‘status of the individual’, but persecution could result from an individual deviating from social custom. The implication of this definition is that the transgressions are not inherently political (as defiance of social and political status), rather they betray apolitical custom, yet at the same time the persecuted individual is cast in a criminal light (transgressing codes rather than potentially fighting for their rights). Second, the Conclusion identifies only ‘public’ forms of female-specific persecution, meaning that a state must be directly implicated either through individuals acting in official capacity or representative of political or religious factions in a state, or individuals acting according to established law. The Conclusion failed to recognise private violence against women as inextricably linked to the public sphere, by reason of women’s social status.

However, like other UN documents the 1985 Conclusion is discursively significant at the international level. The UN Executive Committee reiterated its commitment to the Conclusion at its 39th session in 1988, issuing Conclusion No. 54, “Refugee Women” recognising both the “particular hazards, especially threats to [refugee womens’] physical safety and sexual exploitation”. A 1990 sub-committee Note On Refugee Women And International Protection (EC/CSP/59, 1990) called upon international documents for the civil, political, social and cultural rights of refugee women, embodied not only in refugee related documents, but in human rights instruments. It notes (para.8 and 9)in particular the 1966 Human Rights Covenants, the Nairobi Forward Looking Strategies on the Status of

Women (1985), and the UN Convention on the Elimination of All Forms of Discrimination Against Women (1979). Article 1 of CEDAW states:

No distinction, exclusion or restriction must be made 'on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.' (Article 1, CEDAW,1979)

These were important advancements for refugee women. Most importantly, the report recognises that "international protection of refugees also requires a human rights approach based upon equity, and refugee women should be informed about their rights as refugees and as women" (para.65,conclusion).

Moreover, reference is made to causes of persecution as "severe gender-based discrimination", while no reference is made to transgression of social mores as prerequisite. "Severe discrimination", the document goes on to say, "may justify the granting of refugee status" (para.18), explicitly naming for the first time persecution *based on* gender, in a comment on the need for proper documentation:

... it is important that decision-makers involved in the refugee-status determination procedures have at their disposal background material and documentation describing the situation of women in countries of origin, particularly regarding gender-based persecution and its consequences.

However, gender-based persecution is not defined. Moreover, physical violence and discrimination are said to arise from circumstances common to refugees (male and female), and "not [from the] fact that they are subject to such violations of their rights" (1990 para.14). Human rights violations against women refugees are not associated with sexual status, rather their increased vulnerability as refugees and females. Paragraph 17 explicitly states international protection will *not* be readily extendible to all persecuted or at risk refugee women because "the universal refugee definition contained in the 1951 Convention and its 1967 Protocol relating to the Status of Refugees does not include gender as one of the grounds for persecution which will lead to refugee status being granted." The document goes on to stress forms of female-specific persecution resulting from increased vulnerability, reiterating Conclusion No. 39 (1985) on the social group category for persecuted women.

The 1991 UNHCR Guidelines on the Protection of Refugee Women, toward which the above report had been geared, addressed issues of concern to refugee women generally, including female violence or persecution as a symptom of the need for economic and democratic development in the countries of origin. It reiterates the 1985 UN Resolution by stating that women "fearing persecution or severe discrimination on the basis of their gender

should be considered a member of a social group for the purposes of determining refugee status. Others may be seen as having made a religious or political statement in transgressing the social norms of their society.” The “gender-based persecution” aspect is not noted but a move is made toward a more political interpretation.

These international developments had both their limitations and possibilities, as we have seen. Their influence upon states began to emerge by the late 1980s, as national jurisprudence began to develop. Leiss and Boesjes (1994) uncovered and compared policy and jurisprudence in the Netherlands, Germany, France and the UK, describing the development of female-specific refugee jurisprudence in the late 1980s and early 1990s. The list of jurisprudence is small (typically ten to twenty cases in each country) but not intended to be comprehensive. Nevertheless they uncover six common themes: persecution arising from or involving sexual violence, grave discrimination, guilt by association, women breaking norms and values of society, women carrying out odd jobs (i.e. for political causes), and political activism. These reflect well the international frameworks described above. Leiss and Boesjes deal only ‘summarily with Canada’ (as with Belgium), thus the following considers the nature and growth of jurisprudence or refugee claims involving female-specific persecution in Canada in the same time period.

B. CANADA: REFUGEE CLAIMS INVOLVING FEMALE-SPECIFIC PERSECUTION UP TO 1992
Refugee cases involving female-specific persecution before 1993 are for obvious reasons difficult to trace. Previously there was no such category to be monitored, while cases involving female-specific persecution would most likely emphasise the aspect of their claims likely to be accepted, such as race or nationality. Moreover, aspects of claims that are considered irrelevant to the final decision are not usually recorded if a decision is positive.²⁶ However, women could in theory receive asylum through membership in a particular social group in accordance with the UNHCR’s 1985 Conclusion.

In 1987, the same year Canada adopted the UN resolution, precedent setting cases arose in which women were accorded Convention refugee status on the basis of “political opinion” in opposing Iranian laws governing dress [*Shahabaldin, Modjgan v. M.E.I. (1987)*]; and on the basis of belonging to a “particular social group” comprised of “single women living in a Moslem country without the protection of a male relative (father, brother, husband, son)” [*Incirciyan, Zeyiye v. M.E.I. (1987)*]. These cases reflect growing international recognition of

²⁶ Adjudicators deciding cases maintain discretion as to how detailed their report will be, but generally negative decision receive lengthy reports, and positive decisions do not.

the special vulnerability of women refugees and the harsh punishments they face for deviating from accepted gender roles in society.²⁷ However cases decided primarily on gender-related grounds remained difficult to monitor and appear highly uncommon, possibly due to inconsistent or scarce use of the 1985 UN recommendation by adjudicators.

On the other hand, there is evidence concerning the prevalence of female-specific persecution as a reason for flight before 1993, even if not the primary reason or the formal reason recognised by adjudicators. This appears in the IRB 1992 survey of Women Refugee Claimants in Canada, which considers the top five sending countries between January 1990 and September 1991. One of the "causes of flight" (as opposed to "types of persecution", i.e. race, religion, nationality, political opinion, social group) identified was "female violence", which unfortunately remained largely undefined. However, female violence did seem to have included both public and private forms of violence against women since the survey was not concerned with fitting the forms of violence into convention categories but simply establishing if female violence had occurred as an important element of flight.

According to the findings, four percent of all female refugee claimants from the top five sending countries at that time stated 'female violence' as a reason for flight. This was at a time when claimants could not reasonably hope to be accepted on those grounds, and would therefore find it in their best interests to demonstrate other more conventional reasons for flight, namely the five persecution categories identified in the 1951 Convention. Notably, the report further comments on the difficulties of documenting such cases:

It should be noted that the incidence of female violence (including sexual assault, rape and forced abortion) is probably much greater than has been recognised here. According to a recent study, most women refugee claimants feel highly uncomfortable discussing such issues with officials involved in the refugee process. Many experience great shame and, due to family or cultural expectations, often choose to avoid the repercussions of disclosure (Saint Pierre 1990). Although only four percent of the women in this study admitted to female violence, this form of persecution ranked sixth out of a total of fourteen potential forms of persecution. (IRB,1992:7)

Thus refugees of female-specific persecution for the most part remained 'hidden' within the existing five categories of persecution, or sought alternative routes of entry into Canada.

It is evident that while international developments were important for female asylum seekers' emerging national opportunities, other changes were necessary to encourage sensitisation, documentation and acceptance of claims involving female-specific persecution. To this purpose, a crucial global trend was the growing salience of ideas and legal norms

²⁷ They also might reflect anti-Islamic sentiments in the 1980s, which could fuel greater acceptances from Islamic countries as a political statement from receiving to sending countries.

concerning women's human rights, and the internationalisation of conceptions of violence against women, which culminated in the early 1990s.

III. THE INTERNATIONALISATION OF VIOLENCE AGAINST WOMEN: TOWARD A HUMAN RIGHTS APPROACH

As we have seen, recognition of women refugees by the international community grew suddenly and rapidly in the 1980s and did encompass particular types of persecution women experience, although the debate was never quite settled as to the structural causes of these experiences. By the early 1990's the stage was set for refugee women to be able to draw from the language of "women's human rights", which as Nahid Toubia, associate at the Population Council and the first female surgeon in Sudan observed, had been moving quickly into national and regional levels "at a pace that far exceeded that of any previous movement on behalf of women internationally" (in Friedman,1995:31). Ground-breaking work in several fields had broadened the definition of violence against women and 'internationalised' it, and a new literature was produced.

Conceptualisations of violence against women have been internationalised in two ways: both in practice or forms it takes, and in global causes of it. Emphasising the latter, the first recognition grew out of the negative female-specific *effects* of gender-blind development programs and policies (for example Beneria,1982; Sen and Grown,1988). Soon to follow was research on gendered means and effects of other inter-state relations in the wake of globalisation: militarism and war (Enloe,1989); the rise of nationalism and fundamentalism (Yuval-Davis and Anthias,1989; Jayawardena,1986); and humanitarian aid and refugee policy (Moser,1991; Camus-Jacques,1989; Martin-Forbes,1991). Violence against women was in itself recognised as an obstacle to development mainly in the early 1990s (Carrillo,1992). These researchers were among the first to show how gender hierarchies pervade not only state but *inter-state* relations, perpetuating or promoting the violent subordination of women that occurs through gender inequality and gender-blind politics inherent to state, societal, and family structures. These currents underpin the patriarchal nature of international relations, as specialists in that field have subsequently pointed out (Grant,1991; Peterson and Runyan,1993; Sylvester 1994; Grant and Newland,1991).

This interdisciplinary literature describes structural processes and foundations shaping how states have long inter-related in ways that reinforce and often exacerbate their inherent gender-biases, while virtually ignoring these gendered processes and consequences and state responsibilities for them. Violence against women must be understood as having

root causes not only within specific cultures and contexts, but within the superstructure of interstate relations (Peterson and Runyan,1993). The internationalisation of violence against women thus can be seen linked to the growth of a global market and international community, the globalisation of information and other technologies, development, colonialism and the subsequent rise of anti-colonialism, nationalism and militarism, as many specialists have noted (See Giles,1996; Grant and Newland,1991; Sylvester,1994; Peterson and Sisson-Runyan,1993), manifested for example in the international sex trade, child prostitution and 'mail-order' brides, rape in war, and severe gender discrimination in fundamentalist regimes. This has been explained in various ways, but Kandiyoti (1990) observes in a review of the discourses that different perspectives on women and nationhood in post-colonialism share "a recognition that the integration of women into modern 'nationhood', epitomised by citizenship in a sovereign nation-state, somehow follows a *different* trajectory from that of men." This trajectory is one which, alongside other effects, may create or amplify forms of violent subordination of females. However, it also may bring new sense of state and indeed inter-state responsibilities for gender inequality.

A crucial dimension of the growing literature on violence against women was the novel international perspective arising from local grassroots women's endeavours in developing countries, and multicultural projects by ethnic minorities in advanced industrialised countries (Schuler,1992). In 1990 Isis International produced a survey of documentation on violence against women during the 1980's, identifying over 650 entries from around the world, 350 coming from Latin America and the Caribbean. In countries like Canada, the United States and Britain, women's movements became increasingly multicultural in all sorts of ways (see Schuler,1992). They described different experiences of violence women of different cultural and ethnic backgrounds experience, exacerbated by discrimination in accessing resources, protection and rights within majority cultures. Schuler (1992:5) explains:

the discovery of gender violence... took different paths in different parts of the world", but "In general, it emerged in the context of activism and research on issues related to the social status of women and their right to participation... [I]n Europe and North America [it] coincided with the early stages of feminist theory development. In other parts of the world the convergence of development, human rights, and feminist praxis produced the framework for discovering the nature, forms, extent and pernicious effects of violence against women.

Increasingly, women in different countries also began working together, broadening conceptualisations of violence against women, and types of redress: "coalitions and networks based in Europe and North America tended to be more specialised – concentrating on one

form of violence such as rape – than those in the Third World where groups often coalesced to work on a variety of issues simultaneously” (Schuler,1992:5). Merging definitions, the Asia Pacific forum on Women, Law and Development describes “gender violence” in a way that can be applied to the divergence between male and female experiences of globalisation: “any act involving the use of force or coercion with an intent of perpetuating/ promoting hierarchical gender relations” (APFWLD in Schuler,1992). The Canadian Advisory Council on the Status of Women provides an equally broad definition: “Violence against women is a multifaceted problem which encompasses physical, sexual, psychological, and economic violations of women and which is integrally linked to the social/economic/political structures, values, and policies that silence women in our society, support gender based discrimination, and maintain women’s inequality” (CACSW,1991).

Violence against women made it onto the agenda of the 1985 Nairobi Conference largely at the prodding of non-governmental organisations, “although not yet on the same scale as other development issues” (Schuler,1992:4). That year the UN General Assembly passed its first resolution recognising the significance of violence in the home and the need for “concerted and multi-disciplinary action” (Res. 40/36 of 29 Nov.1985).

In 1991 an Expert Group Meeting on Violence Against Women reported to the UN Commission on the Status of Women and the Economic and Social Council, proposing a *Draft Declaration on Violence Against Women*. In it they affirmed “that violence against women is a violation of human rights”, and recognised “that violence against women is also a manifestation of historically unequal power relations, which have led to the domination over and discrimination against women and the prevention of their full advancement”. Violence against women was recognised as an obstacle to the achievement of equality, development and peace. The report called for a more expansive definition of violence against women and women’s rights by the UN, and a clear commitment in the international community to the eradication of violence against women (EGM/VAW/1991/1). This was one of the earliest reports to use a “women’s human rights” argument over non-discrimination.

The newest dimension of the literature is that on “Women’s Human Rights” based primarily in international law. It can be described as an outgrowth of the above developments. It goes beyond recognition of violence against women in all its forms in different countries and propagated through various means at the inter-state level, to look at explicitly how and why it is maintained through the underlying legal structure of states in an inter-state system. Romany (1993) explains that by relegating state responsibility to spheres of social life considered “public”, the legal structure succeeded in casting “women as aliens”

within their own countries, lacking basic citizenship rights and protections in social spheres considered “private”. Thus state interpretations and applications of international human rights law have generally been part of the system that supports underlying causes of violence against women. Women’s human rights certainly would not be protected nationally if women did not enjoy basic citizenship rights, nor would they receive international protection for violence considered ‘private’ and beyond state responsibility. We saw in the previous chapter how this was manifested in refugee law. If amended, receiving-countries should not simply ‘respond’ to female-specific human rights violations causing refugee flight, but address the overarching system that supports causes and prevents redress of such violence.

In North America, a body of literature in International Law and human rights began to emerge alongside several international migration studies in the late 1980’s and early 1990’s, relating specifically to violence against women and refugee status (Bonnerjea,1985; Heise 1989; Pope and Stairs,1990; Greatbatch,1989; Indra,1987). Like intergovernmental documents described in Section II, these articles based their arguments primarily on equality and non-discrimination doctrines, considering in particular sexual violence against refugee women in camps, and sometimes women in their home countries. However in North America important articles focused on abuses occurring at the intersection between domestic violence and the refugee sponsorship system (Pope and Stairs,1990; see also Chapter 4). This opened the question of whether human rights abuses of immigrant women are also fostered *within* receiving-countries through gender-biased refugee systems.

On the other hand, early intergovernmental documents reviewed earlier lacked a solid human rights theoretical framework, and concentrated on stereotypical images of women as passive and vulnerable rather than situating their persecution within a political social structural context. They also lacked concentrated “grassroots” political action. These were aspects that the women’s human rights movement had access to, creating the potential for further expansion in refugee policy discourses.

CONCLUSION: ASYLUMS SEEKING AND THE OPPORTUNITY-IDENTITY CONFLICT

We have seen the progression and persisting stereotypes of women in policy discourses on female refugees in relation to changing migration trends by women, and considered the emerging potential of the women’s human rights literature.

From the onset, invisibility and depoliticisation of women refugees’ experiences was eminent. Not surprisingly, the most readily accepted image of persecuted refugee women was ‘vulnerability’. This went hand in hand with recognition of sexual violence, particularly

against women who had 'lost their traditional status as wife'. A shift also occurred toward viewing female-specific persecution as the result of women's "deviance", suggesting that their actions were not political but criminal, in their societies. It implied that a woman had to act out in order to be persecuted (not be persecuted for following expected roles), while transforming the political nature of flight into voluntary, irrational or indeed criminal actions from the point of view of the persecutors. Finally, with the exception of the European Parliament's 1982 Motion for a Resolution, policy recommendations up to 1992 tended to focus on forms of violence against women considered 'public', thus excluding violence by non-state actors. Conclusions and Recommendations concentrated on images of women as vulnerable, passive, and deviant. These themes have their rightful place in categorisations of female-specific persecution. But when elaborating upon the particular scenarios in which such persecution occurs, they fail to get to the root of the persecution.

The overarching conflict which emerges is between: (a) The non-political nature of women, both as females and as refugees; for example, violence as a factor of women's vulnerability as females or due to the loss of traditional male protection. (b) The political nature of women's flight as refugees as the result of "deviance" or "transgression" of cultural mores of society. This conflict is one endemic to women's position in modern transformations of society. Feminist writers on race and ethnicity and on international relations have remarked that as the cornerstone of many ideologies of national identity, women often find their rights as citizens defined by their female-specific role as cultural markers, such that their needs and identities are equated with those of the nation and culture in which they live (Yuval-Davis and Anthias, 1989). Often highly praised as "mothers of the nation", their guarded rights become a catch-22 hinging on both national and gender stereotypes, which *may* fragment the basic principles of universal human rights. This is no less true for women seeking asylum in a foreign country, where they have long been perceived as symbols of cultural continuity, bringing with them categorical belief systems, values and culture specific traditions and social structures.

Refugee creating factors in the global system have increasingly thrown women into positions where they increasingly seek asylum, have increasing opportunities for their needs to be recognised, but still face stereotypes both in sending and receiving countries. The latter prevents recognition of causes of refugee movement different for females because of their sex or sexual status. Human rights discourses provide a logical vehicle for such recognition, to evoke state responsibility beyond the immediate citizenry and beyond culturally relativist conceptions of women's rights as citizens of other countries.

The refugee policy discourses and the human rights literature discussed here were important stepping stones for Canada's *Guidelines for Women Refugees Fearing Gender-related Persecution*, instated in March 1993, and also for other important developments in state responsibilities for women's human rights the same year. In June 1993 the fourth World Conference on Human Rights took place which was the first ever to address women's human rights. That year the United Nations accepted the draft Declaration on the Eradication of All Forms of Violence Against Women (December 1993; ratified in 1995), and for the first time appointed a special UN Rapporteur on Violence against Women.

Canada's Guidelines must be understood, like each of these developments, as part and parcel of a global Women's Human Rights Movement gathering strength since the late 1980's. But the Guidelines and their advocates also directly contributed to the movement. At these and other international gatherings IRB Chairperson Mawani promoted the Guidelines as a strong example of a women's human rights protection mechanism. In fact, the Guidelines may be described as an early attempt "to move beyond mere visibility for women's human rights to actual accountability for abuse", a challenge women's human rights advocates observe must still be faced by the movement generally (Friedman,1995:31). They build upon, transcend and institutionalise earlier frameworks and typologies of female-specific persecution, bringing together the strands of feminist theorising and research described above and making them actionable. They reinterpret international human rights and refugee law and apply it to national refugee policy with direct effects for persecuted women. They also incited a surge of work on women's human rights, state responsibility, and more specifically, female-specific persecution between 1992 and 1996 (for example Beasley & Thomas,1994; Romany,1993, 1994; Cook,1994; Peters and Wolper,1995).

Concluding Part I of the thesis, we have seen the international structural context and some of its links specifically to Canada, which were important for the growth of the particular asylum seeking trend and its recognition in policy. The asylum seeking system and trends illustrated were also described as essential for stimulating and enabling activism 'from below' on the part of asylum seekers themselves. Part II of the thesis will now look closely at just how policy developments in Canada came about, in particular the dynamics of government-nongovernment interaction and the role of asylum seekers therein.

PART II.

**CHALLENGING REFUGEE POLICY AND POLICY-MAKING IN CANADA:
EVOLUTION, PROCESS AND IMPACT OF CLAIM-MAKING AND
CAMPAIGNING**

6. THE CANADIAN CONTEXT: EMERGING RESOURCES, RIGHTS AND OPPORTUNITIES FOR ASYLUM SEEKERS IN THE 1980S

We have seen the inter-state structural context of law, asylum seeking, policy development, ideas and political discourses. We now need a picture of the Canadian structural context and emerging opportunities for asylum seekers, which this chapter provides. This sets the context, reveals the emergence of number of avenues for institutional *and* extra-institutional actions by asylum seekers, and introduces the main participants in a core advocacy network.

Section I provides a brief historical background on Canadian refugee policy and policy-making, followed by an examination of significant changes in the 1980s. Emerging opportunities with both direct and indirect effects upon asylum seekers are described. The former included the growth of new institutional rights, resources and political access specifically for refugees and refugee women. The latter included increasing structural vulnerability of Canada's political climate and refugee regime, and rising organisational strength and interest of nongovernment advocates. Together these trends helped shape imperatives, opportunities and perceived potential for successful influence in refugee policy, a typically a 'high risk' area (Dirks,1995).¹ We see that despite increasingly restrictive immigration practices in the 1980s, a number of key political and organisational opportunities emerged that framed asylum seekers' and supporters' abilities to challenge refugee policy, both separately and together in new working relationships. Section II presents consequences for asylum seekers in the study who went public, describing important characteristics they shared. The ways these opportunities were used by asylum seekers and supporters is explored in chapters 7 through 9.

I. GROWTH OF ASYLUM SEEKERS' RESOURCES, ACCESS AND RIGHTS

A. POLICY-MAKING AND ADMINISTRATION: GROWTH OF CORE NGOs IN THE ADVOCACY NETWORK IN THE 1980S

Jurisdiction over migration is one policy area beside agriculture in which federal-provincial authority has been shared since Confederation in 1867.² Unlike the United States and Australia, Canada has never had a Federal organisational base devoted exclusively to immigration and refugee matters. Immigration has been combined with other policy and

¹ Edelman (1971) refers to signs and signals that the establishment may be vulnerable to influence, and the timely convergence of ideas and opportunities for their transformation into strategies, as 'social cueings'. Similarly, McAdam (1982) describes social cueings in relation to 'expanding political opportunities' for potential actors' mobilisation.

² Section 95, British North America Act, now the Constitution Act, 1867

administration areas, primarily expressing security or labour priorities (Hardcastle,1994:106). The Federal government has also been hesitant to raise debates, make legislative changes, and commit itself to a long-term vision. It avoided contentious issues in parliamentary debates over proposed legislation by using 'orders in council' to modify immigration regulations and procedures (Dirks,1995).

Provincial interest in migration authority grew markedly in the 1970s (Simeon,1987:265-267) as immigration became a tool for protecting regional and language rights. Provinces began contributing to immigrant selection and target levels and shaping and managing settlement programs (Dirks,1995:98). Section 7 of the 1976 Immigration Act finally formalised inter-governmental authority by requiring the Immigration Minister to actively consult with provinces as well as nongovernment organisations to determine annual immigration levels (see Boyd and Taylor 1990:37). Settlement services were to be provided "by promoting co-operation between the Government of Canada and other levels of government and non-governmental agencies in Canada." (3(d) Immigration Act 1976).

Although the real extent of voluntary sector influence upon refugee policy-making has not been ascertained,³ it is well recognised that voluntary sector humanitarian interest in immigrant and refugee matters has long been a significant dimension of Canada's refugee regime, and has become fundamental in the provision of services (Hawkins,1971; Ruddick,1994). NGOs' formal involvement in immigration consultations, representing the interests and needs of immigrants and refugees regarding entry levels, composition and social services during and after status determination, reflects this history. It also indicates the increasing number, types of involvement, and issue interests of ethnic organisations, immigrant and refugee advocacy groups, and other humanitarian groups (Hawkins,1971; Chapman,1994; Ruddick,1994).

Unlike federal and provincial governments, NGOs have always struggled for greater involvement, legitimacy and authority in international migration matters. In the immediate post-war years church involvement was institutionalised in overseas activities including screening and selecting refugees (Hawkins,1972:303). Federal government financed their activities until the early 1950s, but support tapered off as government began institutionalising its own professional system of management (Dirks,1995:101). In particular, government no longer wanted nongovernment agencies to handle the selection of immigrants and refugees abroad. By 1960 voluntary organisations were strongly redirected toward family reunion and inland resettlement operations. A labyrinth of inland services for immigrants and refugees

³ NGO participation in Immigration Consultations is regarded both as significant to democratic processes of policy-making, and an effective mechanism for government to manage opposition, providing a forum for NGO cooperation without actual decision-making power.

developed, but with little guidance in relation to the federal government's immigration program and with little inter-organisational structure. This contrasts markedly with the experience of the United States and Australia which early on boasted large associations as co-ordinating bodies and forums for exchanging ideas and information for voluntary activity, with good working relationships with government (Hawkins 1972:304).

Against this background we can see that remarkable changes occurred in the 1980s which fostered both greater advocacy power and inclusion in consultative style policy-making for NGOs. The 1980s brought increasing co-ordination between NGOs and government in service provision (entry, advocacy and settlement services). This was in part an effect of dramatic changes in international migration coinciding with economic downturn and restructuring of economies. Government downloaded more service provision to private and voluntary sectors in order to cope with these tremendous changes. A proliferation of NGO activity occurred in the international migration sector like other voluntary sector areas (see Chapman 1994; Ruddick 1994), however under incredibly sharp increases in demand arising from skyrocketing international migration levels. Thus both government departments and services, and NGO services grew, bringing new relations with government, in policy-making and implementation, status determination and settlement issues (Dirks,1995:102). By the 1990's government was boasting NGOs as an integral part of its immigration and refugee regime. Government services and investments continued to expand, including the development of 'arms-length' government or semi-government organisations. Some organisations, primarily nonsecular, were created or remained independent of government funding. To co-ordinate this growth, secular and non-secular umbrella groups emerged.

With the growth of international migration NGOs that occurred in this period, the sector as a whole became increasingly fertile, involving professionals and highly articulate activists sceptical of government but able to move government funding to their advantage and have a strong voice in politics and policy. They have been increasingly regarded with a high degree of legitimacy. As Hardcastle et al (1994:117) observes, Canada's humanitarian NGOs "have played a role disproportionate to their size". This is in no small part due to the energy and capabilities their membership.

It contributed to what Adelman et al (1994) have described as a refugee policy-making situation in Canada characterised by "the tension between two embedded dynamics: a 'nation-building statism', involving the management of policy by governmental elites according to an agenda which legitimates state action and promotes national goals, and a 'pluralistic' social and political structure which enables particular social pressures to bear on the process" (Adelman et al,1994:121). On the side of "interests" they observe the influence of political parties, organised labour, business, ethnic minorities, humanitarian interests,

environmental interests, ethnocentric anti-immigration groups, and public opinion. Refugee policy-making has become increasingly vulnerable to pluralist intrusions since the late 1970s.

These changes affected core constituents of the advocacy network studied, made up of traditional refugee/humanitarian groups and women's organisations. The former included the Canadian Council for Refugees (CCR), International Centre for Human Rights and Democratic Development (ICHRDD), Refugee Action Montreal (RAM), and Table de Concertation des Organismes de Montreal au service des Refugies (TCMR). Women's groups included the National Action Committee on the Status of Women (NAC), National Organisation of Immigrant and Visible Minority Women of Canada (NOIVMW), three women's shelters catering to immigrant and multi-cultural women – Flora Tristan, Women's Aid and Multi-Femmes, as well as one mainstream women's shelter, Auberge Transition.

All of these organisations experienced three important trends in the 1980s: (1) growth and institutionalisation; (2) the bridging or integration of international migration and women's issues in their organisational mandate; and (3) the development and diversification of their political status and advocacy strategies in the increasingly 'mixed' economy of welfare. The group of organisations also represent a wide range of types of service organisations, from front-line service, to umbrella groups for advocacy, education and research. They operate at a number of levels, from local/community, to provincial, national, international. They have a wide range of funding relationships to government – complete, partial, none – as well as political access to government (high, medium, low). They include the most prominent, largest and most influential national and/or umbrella groups on human rights, refugee issues, women's issues and immigrant women's issues. These basic characteristics of core organisations are presented in Appendix C, which also describes NGO characteristics discussed in following chapter.⁴

The characteristics and capacities these organisations developed in the 1980s set important organisational foundations, interests, and strategic frameworks for future advocacy. They developed the resources, interests and abilities to successfully mobilise and organise, while also contributing to the growth of a new issue-niche combining refugee with women's issues and organisations. They also developed and expanded specific skills and forms of influence in advocacy situations.⁵

⁴ With the exception of Amnesty International whose development followed international trends

⁵ Characteristics and development of these organisations described in annual reports (ICHRDD 93/94; TCMR 94/95), special reports and unpublished organisational documents (RAM, CCR, Flora Tristan), and interviews with representatives of all the organisations (Appendix A). Detailed historical and organisational overviews of NAC are provided by Vickers and Appelle (1993), for other organisations by Schreder (1990) and Agnew (1996).

B. REFUGEE POLICY AND IMPLEMENTATION: INCREASING EXTERNAL AND INTERNAL PRESSURES ON THE STATE

B.1 Historical background

Although Canada ratified the 1951 UN Convention Relating to the Status of Refugees, it was not until 1976 that refugees began enjoying statutory recognition. Refugees and those in "refugee-like" situations were previously admitted into Canada through ad hoc provisions or Orders in Council which "suspended normal immigration regulations and routines and permitted relaxed criteria for screening and processing to be substituted" (Dirks,1995:61).

By the 1970s, a changing immigrant and refugee constituency and volume brought mounting pressures and a radical reassessment of policy. International migrants increasingly arrived from less developed countries, and illegal migration with which the government was ill-prepared to deal steadily rose. The 1976 Immigration Act stressed educational and employment preference over racial determinants as the major criterion for status determination in order to address Canada's need for economic growth (Hawkins,1971:52). Three classes of migrants were identified: independent immigrants, family class, and refugees. Most controversial was perhaps the statutory recognition of refugees, both Convention and extra-Convention (Designated Classes) refugees, and the establishment of status determination procedures for inland refugee claimants – asylum seekers.

Like other countries adhering to UN conventions on refugees, previously Canada was not greatly concerned with asylum seekers claiming refugee status from within Canada or at its borders. Unlike refugees resettled from overseas, asylum seekers do not first undergo screening and selection processes by overseas officials, and thus often lack travel documents and generally raise very different management issues, needs and rights. Regularising acceptance of such refugees changed Canada's refugee regime from a 'resettlement from abroad' oriented system to a "country of first asylum", subsequently opening Canada to a much larger pool of potential refugees (Dirks,1995).

However the Act was weak in defining long-term objectives for Canada, and by the early 1980's its operational structures were already proving cumbersome, particularly in the area of refugee determinations. Canada was experiencing a tremendous increase in refugee claims, for which it was ill prepared to deal.

B.2 Canada's refugee crisis

Since the 1970s, the annual number of inland refugee claims had grown at a remarkable rate. In 1976 approximately 600 inland refugee claims were made. Of these, 25% were found to be invalid, 15% were allowed entry on Humanitarian & Compassionate grounds, and the remainder entered as Convention refugees (see Dirks:1995:77). In 1986 there were 18,280

inland claims made, and in the next three months alone more than 10,000. These thousands of inland claimants were further confronted with “a cumbersome, multi-step process” including appeals that could provoke long delays (Knowles,1992:173). By May 1986 there were 23,000 backlogged claims awaiting determination (see,Malarek 1987:104). Just three years later that number reached nearly 50,000.

While Canada’s refugee crisis did not reach the proportions European countries faced, it became hugely unmanageable and ushered in a period of public panic, controversy and conflict between government and NGOs. The Conservative government was unable to find adequate long-term solutions, issuing instead a confusing blend of responses with both disadvantages and advantages for asylum seekers, as we shall see later. First, it is important that this weakness coincided with a turbulent domestic political climate generally, setting the stage for the emergence of important new rights, resources, and collective interests for asylum seekers.

B.3 Canada’s identity-crisis and structural vulnerability

The domestic socio-political climate of the 1980s and early 1990s has been described as one of turmoil unlike others in Canada. During this period Canadians exhibited what has been described as a dramatic “decline of deference” (Nevitte,1996), a reallocation of authority (Roseneau,1992) or shift from “a devotion to authority to cynicism and self-assertiveness” (Flanagan,1987:403-43), quite unlike the high degree of trust and co-operation traditionally characterising Canadian attitudes toward government.

Individual and group rights, and Canadian identity itself, were hotly contested. Conflict over French/English citizenship rights *within* Canada became complicated by increasingly organised non-regional and non-language interests, such as First Nations, Women, and Ethnic Minorities. This co-existed with increasing conflict over Canada’s place in the world and the identity of its population as *Canadians*. Dominant national issues were the Constitution, Free Trade, welfare state devolution, and international migration. The following concentrates on implications of Constitutional debates and the general climate, for international migrants.

Constitutional debates raised fragile Canadian identity issues internally, the most extreme being the spectre of Quebec separation from Canada. Controversy evolved around how the Constitution was to set out the division of powers between federal and provincial governments, and subsequently how status and powers should be divided among the provinces. Quebec’s insistence on special status as one of the two founding cultures of Canada pitted French Canada, or French Quebecers, against “the Rest of Canada”. Canadian

nationalists and Quebec sovereigntists became increasingly polarised and unable to reach agreement on government proposals in 1982, 1987 and 1992.

Constitutional debates also evoked demands by non-regional and non-language interests whose needs were being overshadowed by the French/English question. Two fundamental vehicles for such demands were the government's policy on Multiculturalism and the 1982 Canadian Charter of Rights and Freedoms. Multiculturalism was brought to the fore in the 1970s by Prime Minister Trudeau to recognise the racial and ethnic diversity of Canada within a 'bilingual framework'. Knowles (1992:169) comments: "In a sense it was both the logical child of official biculturalism and a polite gesture to non-English and non-French Canadians, who now made up a significant source of potential support for the Liberal Party." In 1972 a minister of Multiculturalism was appointed and a Multiculturalism Council and Multiculturalism Directorate were established within the Department of the Secretary of State. In 1988 Prime Minister Mulrooney established a separate ministry for multiculturalism and in July of that year Bill C-93, The Canadian Multiculturalism Act, was passed.

The Canadian Charter of Rights and Freedoms arose out of the Constitution Act of 1982, which provided for a domestic amending process that as Simeon (1987:268) explains, "bypasses federal-provincial relations and makes salient identities and interests that are nonregional – that are, indeed, hostile to regionally defined interests." The Charter, and more specifically the equality rights section fought for by NGOs, was both instrument and effect of changes in Canadian attitudes toward government described above. Together the Constitution and Charter "not only define the relationship between the individual and the state, and between various parts of the state, it also includes principles defining the relationships between various collectivities or groups of people" (CACSW,1992:57).

Processes of establishing the Charter also "demystified the federal-provincial process for many groups" (Simeon,1987:268). Mechanisms were set into place giving greater attention and legitimacy to NGOs and nonregional issues in intergovernmental relations, in particular the use of the legal system and court rulings (Ibid. p268). Greater NGO pressure could be, and was, brought to bear on federal government and federal-provincial relations. The Charter and the ideology of multiculturalism were important for citizens generally and for specific groups, as Cairns (1988:121) describes:

The Charter brought new groups into the constitutional order or, as in the case of aboriginals, enhanced a pre-existing constitutional status. It bypassed governments and spoke directly to Canadians by defining them as bearers of rights, as well as by according specific constitutional recognition to women, aboriginals, official language minority populations, ethnic groups through the vehicle of multiculturalism, and to those social categories explicitly listed in the equality rights section of the Charter. The Charter thus reduced the relative status of governments and strengthened that of the

citizens who received constitutional encouragement to think of themselves as constitutional actors.

According to Section 27, the Charter must be interpreted in a manner consistent with the aims of multiculturalism, described as “reaffirming two fundamental human rights in Canadian society - the right to be different (preserving culture) and the right to remain the same (receiving equal treatment)” (Agnew,1996:145; see Elliot and Fleras,1990:65).

Nationalism and sovereignty encouraged public panic over rising international migration levels, but multiculturalism as a defining feature of Canadian identity gained increasingly organised support. The Canadian Multiculturalism Act was passed in 1988, recognising and promoting multiculturalism as “an invaluable resource in the shaping of Canada’s future” (section 3(2)). It drew upon the Canadian Human Rights Act, (1977, amended 1983) which provides that “every individual should have an equal opportunity with other individuals to make the life that the individual is able and wishes to have, consistent with the duties and obligations of that individual as a member of society” (preamble). In recent years multiculturalism has increasingly been accepted as encompassing non-ethnic identity groups in a broad ‘politics of identity’ (Kymlicka,1998:9)

At the same time, international migration matters were becoming a real priority for government and publics for the first time. Support grew for multiculturalism and recognition of the importance of international migration in founding and building Canada (settlement, agriculture and industrialisation) and its constituency, past and future. By the mid 1990s, 16% of Canada’s population was foreign born, more than twice that of US (see Kymlicka,1989). Government support for marginalised racial, ethnic and immigrant populations had increased substantially. International migration remained high on government agenda, and indeed is now considered crucial if to stabilise Canada’s ageing population and declining birth rate.

International migrants saw their status and legitimacy rise in many respects, including rights as Canadians or potential Canadians with citizenship rights.⁶ The Charter was fundamental for the latter, gradually being applied to most people within Canadian territory: citizens, denizens, and non-citizen residents and visitors.

B.4 The new rights of refugees and the mobilisation of mediating groups

In the 1980s the state instituted a patchwork of responses to the refugee crisis which actually increased asylum seekers political leverage in some important ways, and increased anti-state mobilisations. Alongside the growth of resources and support described earlier, asylum seekers experienced: (1) Increasing opportunities to make use of emerging resources and to

⁶ In Canada, three years residency are required before an international migrant may apply for citizenship.

gain political leverage vis-à-vis the state. (2) The mediation of the judiciary and of an increasingly co-ordinated NGO sector. The following analysis, depicting these emerging opportunities, also provides a picture of how the Canadian refugee system works, how asylum seekers must navigate it, and what kinds of rights, opportunities and support they have to challenge it. It draws upon examples and implications for claimants fleeing female-specific persecution.

The Administrative response: increasing processing delays and asylum seekers' stay in Canada

Canada has generally been more successful coming up with short-term administrative solutions to international migration (see Cox and Glenn, 1994:290-291) than long term legislative solutions. In the early 1980s these involved imposing non-universal visa system requiring visas for visitors from countries likely to produce illegal migrants, and carrier sanctions for airlines carrying passengers without proper documentation. But as processing delays continued to grow, government fell back on adjustment of status tactics, initiating a mass clearing of backlogged claims through two Administrative Review programs without simultaneously taking steps to prevent future build-ups. In order to address a backlog of 23,000 claims the first program essentially granted amnesty to all claimants entering Canada before 21 May 1986. The backlog took several years to process while new claims accumulated under the still inadequate system, prompting a second backlog clearance program in 1989 to deal with some 50,000 claims (see Dirks, 1995).

Administrative alternatives such as applications for Minister's Permits and Humanitarian and Compassionate (H&C) grounds became increasingly popular. Minister's Permits offer residence on H&C grounds through the Immigration Minister's personal review and authorisation in individual cases. H&C applications can also be made any time through what was then the Employment and Immigration Commission, an administrative body. In a rarer procedure for change of status, known in Quebec as the "Buffalo Shuffle", applicants cross the border to the US where they remain for a proscribed period of time, apply for immigrant status with an informal guarantee of acceptance and re-enter Canada as landed immigrants.⁷

These administrative solutions added to processing times of claims. Backlogs took years to clear, and last resort Minister's permits and H&C class applications add another layer to determination processes. However they provided both alternatives and time for rejected claimants to seek support and information. All lawyers interviewed described processing delays and its effects upon claimants. One commented:

Sometimes cases were postponed, even three years... This affects people. Living in a country for four or five years, waiting for your case, you meet someone and start another life, you have children, and then you are refused! Those people then go in appeal and wait another year. (Piriou, Interview,1995)

Others noted that case could run between four and eight years (Jackson, interview 1994). While typically a cause of great instability and anxiety, such delays may provide claimants opportunities to establish themselves in Canada, make contacts with Canadians, attain support, learn about how the 'system' works and how to challenge it. This capacity was enhanced by other changes to the refugee system implemented around the same time.

The Judicial response: New rights and increasing mediation in status determination processes

A new judicial approach was developed which granted individual rights to refugees such that they could not be turned away without full oral hearing. This profound change had been advocated by voluntary sector organisations since the early 1980s. But the greatest influence and determining factor was a landmark decision handed down by the Supreme Court of Canada in the case of *Singh vs. MEI Canada* in 1985, the same year that the Canadian Charter of Rights and Freedoms came into effect. Dirks observes that with this decision "the long and rancorous debate over oral hearings came to an abrupt close... As a result of this judgement, the government introduced amendments to the immigration Act in Parliament in June 1985" (Dirks,1995:82). In the *Singh* case, failure to grant refugee claimants the right of full oral hearing, even at Appeals stages, was found to be a constitutional violation according to Charter (Knowles,1992). This had a number of profound implications.

First, recognising right to oral hearing through the 1982 Canadian Charter of Rights and Freedoms in effect equated asylum seekers' rights to those of Canadian citizens (Knowles,1992:174). Institutional recognition of the Charter as a basis for refugee and immigrant rights expanded and solidified in subsequent years. In 1995 IRB Chairperson Mawani declared in a speech to an International Judicial Conference in the UK: "All claimants have the protection of the Canadian Charter of Rights and Freedoms, concerned as it is with life, liberty and security of the person" (Mawani,1995a).

Second, between 1985 and 1989 Canada's determination system changed radically to meet new requirements raised by the *Singh* decision. Bill C-55 (Refugee Reform Bill), proposed in May 1987, altered the entire structure of the refugee department from an administrative to a quasi-judicial branch with autonomous decision-making power. In 1986 the Immigration and Appeal Board was expanded and by 1988 refugees came to enjoy the

⁷ For example, Dulerie (an asylum seeker in the study who made her case public) was accepted in this manner in September 1992.

benefits of an adjudicative status determination model involving full oral hearing, review and appeals processes. In 1989 when the Bill came into effect, the new system was renamed the Immigration and Refugee Board (IRB). Operating independent of the EIC, adjudicators and lawyers became mediators between the state and refugee claimants.

The application of the Charter to non-citizens and the resulting status determination process both distanced claimants from the administrative arm of the state, and provided rights and opportunities to debate the legitimacy of claims. The fact that a refugee claim setting a judicial precedent actually drove through the above changes indicates the potentially profound impact non-citizen claimants can have upon policy and policy-making, and consequently upon noncitizen rights and state responsibilities.

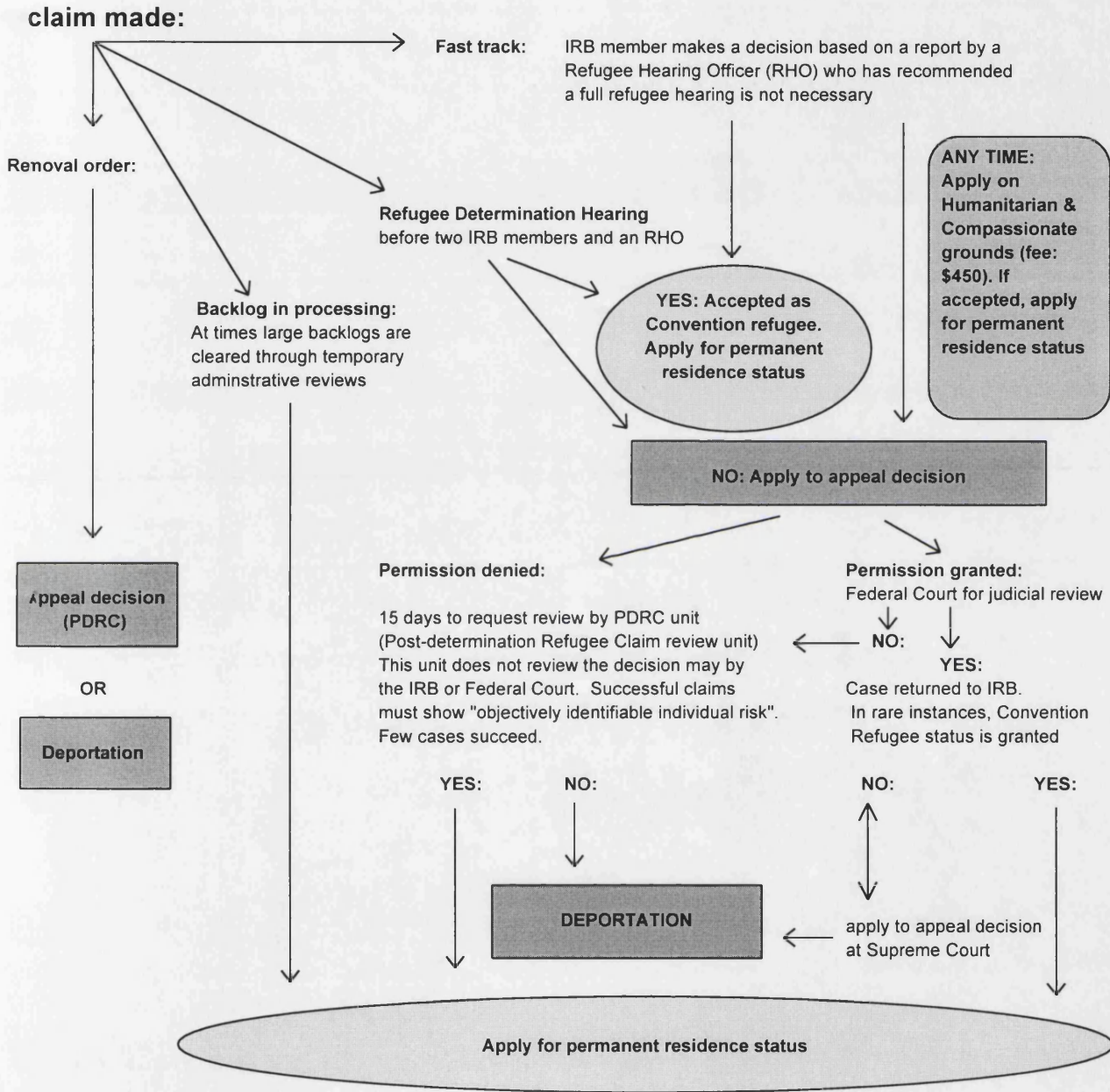
The individualised aspect of the asylum seeking process also fostered the growth of rights for particular *groups* of asylum seekers, as refugee jurisprudence grew. Women seeking asylum from female-specific persecution benefited from the new access to rights and opportunities. Under the new system the first precedent setting decisions on female-specific persecution emerged in 1987.⁸ Later, the growth of such jurisprudence was no doubt aided by the development of special Working Groups within the IRB, in particular the Working Group on Refugee Women (Gilad,1999). However the new system still suffered certain disadvantages, particularly for untraditional types of claims. Its decentralised structure could foster inconsistency in decision-making (see Young,1994). More widely recognised, the adjudicative model made expeditious hearings virtually impossible and added considerably to the costs of processing refugee claims (Knowles,1992:174). The status determination process proposed in Bill C-55 involved three claim-making stages. Later a 'fast-track' class was added, enabling applicants from designated countries or suffering obvious persecution to be granted refugee status at the first stage.

Figure 6.1 depicts the full range of "possible pathways" in refugee status determination processes in effect to 1995. It indicates the complexity and extent of procedural options, including access to appeals with full oral hearing at Federal and Supreme Court levels. As critics later pointed out, in effect the proposed system was not three-tier, but potentially involved a lengthy seven stages (see Knowles,1992:174; Young,1997:9-10) which would increase the backlog of claims. It made essential the second special administrative review for backlogged claims, but vast numbers of new claimants entitled to review continued adding to the backlog. Like previous backlogs, this may have increased the

⁸ Described in the previous chapter, these were *Shahabaldin, Madjyan u M.E.I. (1987)* ; *Ināciyan, Zeyje u M.E.I. (1987)* .

FIGURE 6.1

Refugee Determination Process: possible pathways for Inland Asylum Seekers



Source: Adapted from Community Legal Education Ontario. *Immigration Fact Sheet*, 1994. Schema depicts the process in effect to 1995.

likelihood of claimant contact with nongovernment services and support, including appropriate lawyers. Thus the triple effects of this cumbersome system were to increase the both ways asylum seekers could gain entrance (possible pathways) and their rights to make claims; increase delays and add to time spent living in Canada awaiting decisions and getting into contact with Canadian residents as sources of support; and fuel anti-government responses which increased refugees' support base. We turn now to the last of these, followed by a description of the consequences of all three in the cases studied.

The New Right response: restricting refugee flows, mobilising dissent

Canada's system was still acclaimed for being strong on refugee rights, but was increasingly criticised for catering to illegal immigrants and "illegitimate" refugees who might take advantage of a time and money consuming process. The pervasive NewRight political atmosphere undoubtedly fuelled these criticisms. More pointedly, as Knowles notes, "it raised the question of whether it was possible to manage an immigration program when aliens were given the same rights as Canadian citizens." (1992:174). Thus Canada's immigration system also became increasingly restrictive in a number of ways, in turn triggering a backlash as anti-government sentiment increased among NGOs and other refugee supporters. Given Canada's international migration NGOs heritage of fragmentation, the development of stronger links between organisations themselves is important. The restrictive aspects of Bills C-55, C-84 and C-86 were pivotal in this respect, intending to crack down on 'illegitimate' refugees at the same time that amnesty for thousands of others, and individual rights to oral hearing and judicial review, were being granted.⁹

In contrast to governments' mixed responses, NGOs became more directed and organised. They were increasingly concerned with refugee legitimacy being compromised by management problems, saying that these Bills endangered legitimate refugees' ability to be accepted. The Bills met considerable sustained opposition by NGOs, the immigration bar, church groups, immigrant associations and unions (Young 1997:8).

The legislation was passed in 1989 but the consequences of NGO dissent were long-lasting. Voluntary sector dissent as an outcome of government's constraint tactics has been noted (see Young 1997), but its implications not explored. It was highly organised. In fact from the mid to late 1980s this historically fragmented sector was mobilised and organised to an extent unprecedented in Canada, involving a range of advocates opposed to the proposed legislation. Major vehicles for this were no doubt umbrella groups such as CCR and TCMR (both members of the core advocacy network studied) which were either created or

⁹ For details of restrictive aspects of Bill C-84 and C-86, see Dirks (1995); on Bill C-55, Young, 1997.

formalised in that period, as discussed earlier. TCMR president Rivca Augenfeld described the legislation as a mobilising force for the TCMR, refugee groups generally, and for the network that later formed around women seeking asylum from female-specific persecution:

It was in opposition to the legislation all those years ago that we really got organised, when we had Bills C-55 and C-84. The legislation, as far as we were concerned, was not what we had hoped, so we mobilised, we worked very hard to present our... parliamentary briefs and our senate briefs. We worked very hard and the network developed out of that. (interview 1995).

Augenfeld remarks that for the CCR, in which TCMR is a member, "it was the same thing, it was around the legislation, Bills C-55 and C-84. The CCR had a sort of quantum leap in this time, when the office became an office" (Ibid). The network Augenfeld mentions linked Montreal based refugee organisations as well as organisations across provinces, through national umbrella groups. In co-ordinated opposition, the network brought into contact a variety of people and groups working with different international migration issues through various approaches: those "more interested in the settlement part", and those "more interested in the protection part of it... those who do *rights*" (Augenfeld, interview 1995). It also involved new organisations whose membership not only spoke *for* refugees, but was comprised *of* refugees, such as the Montreal Refugee Coalition.

The implications of this mobilisation and co-ordination are manifold. It increased the international migration voluntary sector's strength and legitimacy, and thus that of refugees themselves. Like the judiciary system, increasingly co-ordinated NGOs took on more of a mediating role between refugees and the state, both in policy advocacy and case-work with particular claimants. This was undoubtedly both instrument and effect of the growth experienced throughout the decade, with increasing support of other voluntary sector groups. Augenfeld (TCMR) describes:

I think the big thing that we accomplished here over the years, something that people don't even realise now because it seems so obvious, was to bring people together from different political stripes, different opinions, right across the spectrum from left to right, and establish the idea that a refugee is a refugee no matter what kind of a regime you come from. (Augenfeld, interview 1995).

II. EMERGING RIGHTS AND OPPORTUNITIES FOR ASYLUM SEEKERS WHO WENT PUBLIC

Asylum seekers' increasing opportunities to get into contact with and make use of evolving resources and support networks is suggested in the cases of asylum seekers who went public with female-specific persecution claims in the campaigns studied. Here we see claimants use of services and participation in NGOs with long-term Canadian residents, their growing use

of the evolving judicial system for refugees, and subsequently their emerging ability to challenge the refugee system through both institutional and extra-institutional means.

As indicated in Table 6.1 these claimants arrived in Canada between 1984 and 1991 while refugee backlogs were building up and being cleared. As we can see, many experienced a significant time lapse between year of arrival and first independent refugee claim. This was influenced by the *types of first claims* that were made, which included claims both as Dependents (sponsored) and Principal Applicants (independent).

Seven of the nineteen claimants were sponsored by spouses or boyfriends (whether immigrants, refugees or Canadian citizens) upon arrival. They made independent refugee claims only upon breaking the sponsorship contract. These cases usually involved domestic violence, and sponsorship was broken for various reasons: the woman left and divorced the husband; or if not divorcing, husbands/boyfriends withdrew their sponsorship as 'punishment' for her leaving the relationship; or the sponsor eventually left the country, either deported for rejection of his claim (which often had been caught in a processing backlog for several years while they awaited decision), or having chosen to leave, in several instances to evade criminal charges of domestic assault.

In the case of deportation, sponsors' claims were sometimes caught in backlog, creating a delay between arrival and rejection. In either of the cases of women leaving relationships, the time allowed for growing awareness of rights and resources for protection in Canada was likely to have been important. This is common among Canadian citizens who experience domestic violence. The 1993 Violence Against Women Survey reports that only 24% of women abused by a marital partner used social services, and only 26% reported violence to police. Reasons for not seeking help included shame or embarrassment, being too afraid of their spouse or not having anyone to turn to (Statistics Canada, 1994). As MacLeod and Shin (1990) reported in a study of immigrant women's use of shelters for women who are battered, these factors are even more important for women from other cultures where violence may be accepted and state protection is not offered, and who may not be aware of their rights or resources in a host country. They are also relevant for other types of claimants who either do not apply for refugee status upon arrival, or apply on grounds other than female-specific persecution because they are unaware that gendered violence may be grounds for refugee status. Delays in claim processing may provide opportunities to gain the resources necessary (knowledge and support) to decide to leave abusive partners, make such claims or potentially challenge negative decisions.

Change of status applications arising from the above scenarios occurred a further two to three years after sponsorship breakdown, probably because of the time required for the immigration office to review their sponsorship status, determine that they were no longer

eligible to live in Canada, and issue deportation notices. During this time, women had opportunities to make contacts and gain support and resources that became necessary to challenge decisions on their claims. Upon making independent refugee claims, they entered into another waiting process, involving reviews, hearings, decisions and appeals.

But for one exception, a claimant who arrived as a student and two years later applied for refugee status when her country of origin circumstances changed, the remaining eleven claimants made their first refugee claim as Principal Applicant. Of these the majority (seven) applied for refugee status immediately. This is important because the longer claimants wait, the more the credibility of their claims is in question. Only three claimants applied between two to three years after arrival.

Table 6.1 presents the distribution of both sponsored and first principal applicants by three characteristics: year of arrival; time lapse between arrival and *first claim as principle applicant*; and years of residency before *going public*. Thus, for example in the second column, five of the women made claims between 2-3 years after arrival; two of these were in change of status claims, and three as the first claims ever made by the applicants.

Table 6.1 Asylum seekers who went public: year of arrival in Canada, time lapse before first independent claim, total years residency before going public.

Claimants by year of arrival in Canada	Claimants by time lapse between entry and first claim as <i>Principal applicant</i>	Claimants by total years of residency before going public
1991: 8	0-1 years: 7	0-1 years: 1
1990: 2	2-3 years: 5	2-3 years: 6
1989: 2	3-4 years: 3	3-4 years: 4
1988: 3	4-5 years: 1	4-5 years: 3
1986: 1	5-6 years: 1	5-6 years: 1
1985: 2	6-7 years: 0	6-7 years: 1
1984: 1	8-9 years: 2	8-9 years: 2
		9-10 years: 1

Source: Case histories of claimants who went public, 1991-1997

Claimants who applied immediately and were rejected, as well as those who applied later, experienced various forms of female-specific persecution, from domestic violence to gender-related political persecution. They entered the same processes of hearings, rejections and appeals which previously sponsored claimants faced, and tended to face delays of between one and five years. Like claimants who were initially sponsored, their length of stay in Canada provided opportunities to find and use resources necessary for challenging negative decisions and going public. *Before going public*, thirteen (68.4%) of all claimants had lived in Canada between 2 and 5 years, five (26.3%) had lived in Canada between 5 and 10 years, and only one (5.3%) for less than a year. Thus alongside their need, a determining factor and significance of time lapses between making refugee claims and going public, may well have been the discovery of necessary resources and opportunities.

Refugee resources and rights, and particularly those for women refugees, were developing during the period of these asylum seekers' residency. They had by then gained rights to full oral hearing, recourse to the Canadian Charter of Rights and Freedoms, and a host society with declared multiculturalism and human rights commitments. They could access a broad range of organisations and memberships whose capabilities and particular interests later provided a crucial framework for specialised networks concerned with female-specific persecution to emerge. The majority of claimants who went public got into contact with *both* NAC and one of six different women's shelters. Many were in direct contact with the CCR, the ICHRDD, RAM and NOIVMW. Many went through a number of lawyers until arriving at one attuned to female-specific issues. Shelters were particularly important sources of information about asylum seekers' rights and resources, providing referrals and offering sanctuary and emotional support. These contacts were among the most important for the women when going public, rather than an exhaustive list of organisations with which the women were involved, which were often quite numerous. Some women received direct support from community organisations, church groups, and even schools they or their children had attended.

Some claimants came to Canada expressly to escape female-specific violence in their countries, and made claims to this effect well before the Guidelines were instated. Others, primarily those in sponsorship situations, had no initial intention of making such a claim. On the contrary, some hoped that moving to another country would bring a fresh start to their troubled relationships, only to see problems intensify. Others were neither sponsored nor explicit about the female violence upon entry, although they later claimed they had purposefully fled it. They may have been initially unaware of the potential to make such a claim, or were afraid to discuss their abuse. These were most likely influenced by their long-term residence and contact with organisations and individuals.

Some in this situation may well have realised they could make gender-related claims by seeing other cases going public with the support of powerful organisations in late 1992 and early 1993. This coincided with the end of the last administrative review program, announced in 1991, and the introduction of another restrictive immigration Bill (C-86). The combined effect was a deportation panic and a rush of claims among those in dire situations who needed to formalise their status in Canada. This brought to NAC's doors a mass of asylum seekers, among them those facing female-specific forms of persecution resembling the experiences of asylum seekers whom NAC helped go public (Fernandez, NAC Executive committee, Women's Aid Director, interview 1995). Chapter 7 discusses in detail advocates' and asylum seekers' interactions and motivations to campaign.

CONCLUSION

In Canada the 1980s are typically described as years of political turmoil and identity crisis, increasing restraint in government spending, rising 'refugee panic' and restrictive immigration practices. This domestic political climate deeply affected attitudes toward government, multiculturalism and international migration, with important consequences. Yet refugee rights and opportunities actually expanded in some important ways during this period of cutbacks and constraints on immigration. The chapter highlighted the changing nature of relationships between government and refugees as an outcome of increasing internal and external or *national and international* pressures upon the state, in so doing describing the Canadian context immediately before the asylum seekers and supporters in the study began campaigning.

Canada's crisis culminated in a panic over "illegitimate" refugees in the 1980s and 1990s, a continuously flip-flopping government approach, the growth of important refugee rights and opportunities for entry, and an increasingly fertile and organised voluntary sector with increasingly overlapping interests in women's and refugee issues. Government's patchwork responses provided incentives and opportunities for both asylum seekers and advocates to exploit the increasing structural vulnerability of the establishment, thus producing new refugee rights and opportunities during a time of rising constraints and cutbacks. Both an effect of the refugee crisis and a crucial vehicle for refugees to exploit emerging political opportunities, was increasing mediation between refugees and the state in status determination processes, by a new semi-judicial system with an active Working Group on Refugee Women, and by increasingly co-ordinated international migration NGOs. This combination of forces created political opportunities and organisational or resource basis for advocacy networks concerned with Canadian responsibility for female-specific persecution.

Implications of the changes for the asylum seekers studied were manifold. Increased resources, both ideological and material support; increasingly co-ordinated support by a very wide range of organisations; increasing opportunities (such as processing delays and legal rights) to *make use of* resources and emerging interests. These trends pre-conditioned the mobilisation of a final emerging resource and opportunity: new working relationships between asylum seekers and Canadian residents in policy advocacy situations. The following two chapters explore how the core advocacy network was actually mobilised, how it operated internally and in relation to the external environment and to what effect, and the role of asylum seekers in all these aspects.

7. DECIDING TO CAMPAIGN: ASYLUM SEEKERS AND THE INTERNAL POLITICAL CULTURE OF THEIR ADVOCACY NETWORK

The importance of ideas, or ideology, and their formal and strategic expression by actors attempting to influence the external environment, can not be understated. McAdam explains (1982:48): “Mediating between opportunity and action are the people and the... meanings they attach to their situations”. This chapter explores why and how asylum seekers and supporters got involved in campaigning for refugee policy change, in particular through extra-institutional actions. It describes key factors in the generation and nature of the networks and challenges traditional ideas about asylum seekers and participants of national policy-making processes. It shows that far from being simply 'forced migrants' without options, dependent on the goodwill of the state or desperate to challenge it, asylum seekers made rational political decisions and acted on them. They also both symbolised and profoundly influenced the translation of ideology into aims and participatory action among supporters. They subsequently played an important role in shaping the structure and political culture of the core advocacy network that developed. This emerges in analysis of their own decision-making processes and actions, that of their supporters, and the dynamics of their interaction and participation. I draw on case histories of the asylum seekers, including the intense media coverage they received and interviews primarily with supporters.

The term political culture describes both internal movement or advocacy culture, and relations with external environments, including how the latter is approached in order to achieve policy goals. The following chapter explores how the advocacy network challenged the external environment to achieve their aims. This chapter concentrates on asylum seekers in relation to the former, internal life of advocacy networks.

By exploring why and how actors got involved in public pressure tactics for policy change, their belief systems and corresponding aims are illuminated. Smith and Sabatier (1994:180) explain:

... public policies/programs incorporate implicit theories about how to achieve their objectives (Pressman and Wildavsky,1973; Majone,1980), and thus can be conceptualised in much the same way as belief systems. They involve value priorities, perceptions of important causal relationships, perceptions of the state of the world (including the magnitude of the problem), perceptions of the efficacy of policy instruments, etc.

This chapter draws out actors “deep core policy values”, which as Smith and Sabatier (1993, 1994) describe, link identity and ideology with underlying policy aims and strategies for achieving them. It shows why and how asylum seekers were integral to this link being made. The following chapter illuminates ‘near core’ and ‘secondary’ policy aims as evolving

strategies for achieving deep core goals, in what Smith and Sabatier describe as a 'hierarchy of policy values'. In both chapters we see asylum seekers roles and the significance of their participation.

Section I below at how asylum seekers conceptualised and approached extra-institutional actions – 'going public'. It explores the personal and political considerations that informed asylum seekers' decisions. These crucial factors mediated between the need for safety as driving force behind both their flight and subsequent willingness to engage in radical tactics to secure asylum, and also between these factors and supporters' influence upon asylum seekers' decisions and opportunities for action.

Section II looks at how core supporters conceptualised the relation between asylum seekers and their own belief systems in ways that influenced their participation, policy values and approaches to achieving them. It reveals factors predisposing supporters toward participation, how contact with asylum seekers served as a linchpin between their 'deep core' ideology and participatory action. Implications of asylum seekers' involvement are discussed in Section III, with a schematic presentation of the advocacy network.

I. ASYLUM SEEKERS 'GOING PUBLIC': THE POTENTIAL FOR EXTRA-INSTITUTIONAL ACTION

To understand asylum seekers' role in shaping the nature and structure of support, we must begin with an enquiry into why asylum seekers themselves choose to 'go public'. First, an obvious point is that failing institutional means to securing safe asylum, the life and death situations that refugees may face if deported provide the predominant motivating force for extra-institutional action. Second, among a typically resourceless and politically powerless population, actually pursuing extra-institutional action requires opportunities and support. I shall return to these two crucial factors later. First we must question both of these explanations as sufficient in themselves. This is important because over-reliance on the former may support the idea that real refugees must be primarily 'forced' actors to whom receiving-countries simply respond, or else illegitimate refugees, rather than political actors in their own right within receiving-countries. Over-reliance on the latter may similarly exclude the political role of asylum seekers, instead explaining policy change primarily as result of activism by Canadian residents advocating 'for' asylum seekers.

Empirically, problems with both explanations emerge when we consider that generally, asylum seekers receive support and advocacy from a variety of sources (e.g. refugee, ethnic and community organisations offering entry and settlement services) and for a number of reasons before, during and after claim-making. Yet the actions typically taken

with such support are a long way away from 'going public' to campaign for individual and collective claims to be accepted. Similarly, the traditional 'forced' image of refugees, desperate to attain entry, does not explain what is in fact an extremely small number of rejected refugee claimants who do or will 'go public'.

As McAdam and others have observed, neither grievances (such as persecution) nor opportunities and support structures are sufficient to explain the generation and influence of collective action. Grievances, opportunities and 'organisational readiness' may have little influence at a particular time if potential actors are unable or unwilling to make use of or exploit them (see McAdam, 1982, 1996). In this case going public was a central pressure tactic, and constituted a driving force behind policy demands, so we need to understand why asylum seekers would make their intimate life stories public knowledge, and what would be involved in making such a decision. Their *willingness* to go public must be explored. Thus I shall first concentrate on important decision making processes that mediate between grievances and opportunities on one hand, and actions that asylum seekers may or may not take because of or through them on the other.

A. DECIDING TO GO PUBLIC

Looking at the asylum seekers in this study who did choose to share intimate life details with the public through mass media in campaigns reveals important personal and political considerations behind their decisions and actions. These claimants went public from a range of female-specific experiences raising a variety of case-specific complications that would shape why and how public action was chosen and at particular times, sometimes with different outcomes.¹⁰ But all contributed directly to the public debate and pressure brought to bear upon government, and most were allowed to remain in Canada.

Strong commonalities can be seen in the *ways and extent* that claimants went public, within which we can look for important elements informing their decisions to go public in the first place. All provided personal testimony of their experiences as persecuted women and as claimants discriminated in Canada's refugee system. Going public raised contentious debates about persecution and rights to protection in Canada *as refugees*. The grounds for their acceptance under any category subsequently set important precedents. Seven claimants who individually sought and received particularly extensive media attention spoke at press conferences, gave interviews and/or wrote articles. Three of these cases (Dulerie, Nada and Basdaye) were concluded before the Guidelines' instatement and four began before but were

¹⁰ Inconsistency of outcomes was due in part, at the time, to (1) technical and administrative difficulties due to cases having begun before the Guidelines were instated, (2) these cases being forerunners of certain interpretations on certain types of cases, both before and after instatement of the Guidelines. See chapter 2, on methodology.

concluded after (Ferdousi, Tamarati, Thérèse, Ginette). Two claimants attracting major press coverage after March 1993 were also among a group of fourteen claimants who collectively went public between January and February 1993. The remainder of the fourteen had less individual press coverage but a collective force for their demands. These fourteen were from a group of what NAC initially announced were about 50 claimants in similar situations (*Montreal Gazette* 30-11-92) who had gone to NAC for help (Fernandez, interview 1995).

All the women worked directly with and through supporters in order to voice their stories. Some chose pseudonyms to protect their identity, but others did not.¹¹ Several were particularly open about their experiences, accepting to be photographed and generally making extra efforts to be accessible to the media and other interested individuals and potential supporters. At least one was emphatic about revealing her identity along with her experiences, in a sense claiming due credit and strength for the difficulty of the choices she made and actions she took. Others were interviewed by the press, under alias or not, several only after being accepted. Of up to 50 known to NAC (*Montreal Gazette* 30-11-92), 36 chose never to go public at all.

Considering those with the greatest media attention, it is evident that decisions to go public, and to do so in particular ways, were made both for personal and political reasons deeply intertwined in what we might call identity politics. This describes ways of thinking about self within the world. It involves recognising self within social and political contexts and power structures, and from that recognition and the understanding gained from it, either reconstructing (on one's own terms) or reifying self identity.

Choosing to use real or invented names was one way of expressing social political identity which claimants made use of in different ways and based on various considerations. When asked if she would prefer to use another name in the interview for this study, Thérèse stated without hesitation: "You are using *my* name." She explained that she was "not talking lies", people would hear her story in any case and there should be no misunderstanding that what she was telling was the truth; why hide behind another name?

Some people don't want to use their name. I don't care... You can use "Thérèse"... I remember when my lawyer in 1992 wrote an article and she told me she is not going to use my name. I said 'No. I want you to use my name.' And she said most of the women use another name. That they come to this country and they use another name, they don't use their *own* name. And I said: 'You use my name.' And whenever my lawyer tells people, she calls and she says: 'I told them to use your name!'(Thérèse, interview,1995).

Revealing the truth or reality of life experiences, and standing behind her words by revealing her full identity, appears as not only self-affirming process, but also a cathartic process as the

reality of abuse and persecution is publicly recognised. Identity as a persecuted individual invokes the intimate details of the persecution. Thérèse explains:

Back home we don't talk about that: our rape, our abuse, everything. We just close our mouths. So I don't know, I changed a lot since I've been here in Montreal. Like, I never keep secrets now. Everything that comes, I just say it. [I talk to] anybody who calls me and says, 'I am doing this and I want your help...' It's hard when I am talking about it still, but after that I get over it. I used to have headaches when I used to finish telling everything, but now I don't get it anymore. And I used to cry a lot, but now I am just a little bit. It doesn't hurt as much. (Thérèse, interview 1995)

The need to constantly reassert and prove one's identity by revealing personal experiences is basic to the refugee determination process. To be recognised as a "refugee", identity must be proven through the experience of structural persecution and lack of protection. But for claimants like Thérèse, structural invisibility of the persecution as such, and subsequently their identity as persecuted individuals, initially prevented protection both in their home countries and in Canada. For Thérèse, revealing her identity went hand in hand with the structural nature of the abuse she experienced, and as she describes above, the ways it had been enshrouded in a culture of secrecy which was self-perpetuating and isolating for victims. Voicing the truth was both a personally liberating process and an act keeping strongly in mind the similar experiences of other women, the "we" who "don't talk about... our rape, our abuse..." in the Seychelles Islands.

The lengths to which such claimants went to prove their identity also went far beyond the confidential closed hearing room status determination processes that all refugee claimants must undergo. Expressing her truth about self and society became increasingly important for Thérèse after being rejected by immigration authorities. It was not only about conditions in home countries, but conditions in Canada. Thérèse's adamance emerges not only as a strategy to influence and reverse the decision on her claim, but also as crucial part of reclaiming a sense of integrity after being disbelieved in Canada. Describing the dismissive treatment she received by Canadian immigration authorities, Thérèse again emphasised the truth of her story against disbelief in its reality or validity.

On the immigration side there is nothing that you can say that they were really there for you... They are very rude, they don't think that they are like us, like you. They just take pity on you. I don't want them to take pity for me, but just to think: if it were *you*, or your family! And I have a lot: everything that is written, everything that is in my file, it is *true*. It's not something that was made up. It was true. But they didn't look at it. Their idea was just that 'we have to deport her, and that is it'. (Thérèse, interview 1995).

Taking the opposite approach with regard to revealing her identity, but no less emphasising the structural nature of the violence experienced, was perhaps the most well

¹¹ See Chapter 2 on confidentiality of claimants and by supporters.

known claimant of all. Despite the most widespread, even international, coverage this claimant never revealed her name or showed her face to the public while arguing her case. The pseudonym she chose was “Nada”, signifying ‘nothing’ or ‘zero’ in her country of origin. Concealing her identity while going public was intended both to protect her privacy and safety as well as that of her family in Saudi Arabia. But Nada’s portrayal of herself as a woman without an identity, and without a face, was also a powerful image of the treatment of females in Saudi Arabia. She claimed persecution on political grounds for opposing the formal and informal laws of her society on roles and behaviours appropriate to females, such as the dress code. Nada described the required chador, or veil, as literally rendering women faceless and identityless. Refusal to comply would result in public flogging and stone throwing as well as the private punishments inflicted by family. She explained:

Wearing the veil made me feel dirty. It made me feel faceless and bodiless, like some sexual object in the street. I felt like I was nothing. I was not a human being. So I decided I would not do it anymore. I would rather stay home all day. I preferred to be stoned rather than to be without an identity. (“Nada”. *The Ottawa Citizen*, 11-03-93).

In Canada, in the only photograph Nada allowed to be taken for use in the media, she appeared modelling the traditional “abaaya”, which conceals the body and face. After her claim was accepted Nada participated ‘as herself’ in Consultations between NGO’s and government concerning gender-persecution, the Canadian refugee system and the Guidelines.

Nada’s nameless and faceless identity as she portrayed herself to the Canadian public also suggested the invisibility of persecuted women in the Canadian refugee system. Her appeals to the public were moral and political, highly intelligent, eloquent and educational. Like Thérèse she brought both foreign and domestic blindness to her person, as an individual and as a woman, clearly to light.

When I was in Saudi Arabia, I thought that women in other countries were more respected and more powerful. I was naïve. I first realised my naivete when they laughed at me at the airport when I said I have problems because I am a woman. (Ibid,11-3-93).

The dismissive treatment Nada received upon arrival in Canada was mirrored during the oral hearing of her refugee claim. Nada was refused refugee status based on the assertion that she should not disobey the laws of her society and family. The adjudicator in her case stated:

The Claimant would do well, like all her compatriots, to abide by the laws of general application she opposes, and to do this under all circumstances, and not only, as she has done, in order to study, work or to show consideration for the feelings of her father, who, like everyone else in her large family, was opposed to the liberalism of his daughter. (Informal translation; see M.Young, 1994)

As later recognised when this decision was reversed, it disregarded the discriminatory nature of laws that target females, and the persecutory nature of punishments inflicted for transgressing discriminatory moral and legal codes. It took a typically patriarchal stance in stating that Nada, a grown woman, should “show consideration for the feelings of her father.”

Nada was particularly emphatic about the hypocrisy inherent in a culturally relative approach to determining refugee status eligibility. She describes:

... Throughout the agony of waiting for my case to be determined, many issues were raised in the media. The minister of Employment and Immigration, Bernard Valcourt, argued that Canada should not intervene and impose its cultural values. He was missing the point. (“Nada”. *The Ottawa Citizen*, 11-03-93).

At the same time, Nada was concerned with the likelihood that going public, while challenging cultural relativism in women’s human rights, would provide ammunition for racist public responses toward the treatment of women in Arab countries. Diana Bronson from the ICHRDD, one of Nada’s primary supporters, explained how the campaign was prepared before Nada decided to use a pseudonym. Nada had gone into hiding (remaining illegally) after receiving a deportation order, letters and documents had been prepared and the campaigning was set to go public.

I asked her again: ‘are you sure you are ready to go through with this? The media is going to use every anti-Arab stereotype you ever heard, they are going to be talking about veiled women in the Arab world, they are going to want to know all your personal stories, they will not stop at anything to know everything that is personal about you, they will ask you insulting questions, and there may be repercussions back home, for you or your family. Are you sure?’ And she said No. (Bronson, interview 1995).

Ultimately, Nada’s decision to go public became a political one wrapping up personal need for safety, with her rights as a woman in her country and with what Nada felt were Canada’s political responsibilities for the persecution she faced. It also prompted her to choose a pseudonym in order to protect her family. The incident that triggered her final decision involved a Bulgarian musician who had been granted refugee status because of a fan who happened to be the daughter of an influential federal bureaucrat. Journalist Andre Picard concluded his column on the story saying: “We turn back women who are being beaten by their husbands but a white guy got in for a song.” Working closely with Nada, Bronson described: “I don’t know if I showed this article to Nada or if someone else did, but she got wind of it. She got so mad at the federal government that she decided to go public, for sure. So we went public” (Bronson, interview 1995).

The political nature of Nada’s decision was made clear in her criticism of the Canadian government’s attempt to shirk responsibility for violence that it claimed was

cultural rather than political. This she counter-poised against the extreme realities of life for women in Saudi Arabia:

The discrimination and repression I lived with in Saudi Arabia had political and not cultural roots. When governments impose a certain set of beliefs on individuals, through propaganda, violence or torture, we are dealing not with culture but rather with political expediency. To claim that such practices are cultural is dangerous, if not racist.

When a woman walks down the street in Saudi Arabia without a veil and the *Mutawwiri'in* (religious police) flog her, this is not cultural, it's political. Who gave permission to the *mutawwiri'in*? The government. They fear that women will try to change things, and they'll lose their power.

I'm suspicious when I hear the Canadian government expressing concern for cultural integrity.... When women are publicly flogged for wearing perfumes or cosmetics imported from the West, do westerners protest about cultural imperialism? (*The Ottawa Citizen*, 11-3-93).

Here Nada points out again that the treatment and recognition women receive both in Saudi Arabia and in Canada is a structural issue, the instability of women's human rights a form of "political expediency". Thus pressure was put on Canadian Immigration to recognise human rights violations against women, not as an act of compassion and pity but as the act of a socially responsible and accountable state within a global system, where states already influence one another and state politics and cultures are intertwined.

Like Nada, other claimants also expressed concerns that going public could further jeopardise their safety and that of their family. This could occur in three ways, each of which might be affected by choosing either to use real names or pseudonyms. First, going public could notify violent family members of the claimant's location. For this reason, one woman's case was publicised *after* her claim was accepted and even then her identity was not revealed (*Montreal Gazette*, November 1992).

Second, going public could endanger the lives of claimants' children, either through violent family members tracking them down, or in the case of custody battles in Canada or between claimants in Canada and family members in the country of origin. In cases of domestic violence, the extent to which violent men may go to track down their partners is well recognised. Despite the geographical distance, this is sometimes true for asylum seekers. For example, when Dulerie fled to Canada claiming refugee status with her three children after 17 years of violent abuse by her husband, he followed and was subsequently convicted in Canada eleven times for assault and death threats. During that time, her eldest child returned to Trinidad to escape beating by her father.

Another case involved a Bangladeshi woman married at age 11 to a man 20 years her senior who beat her for 18 years. They arrived together in Canada with three children.

Ferdousi's husband threatened to marry off their two daughters, age 11 and 13, and to kill Ferdousi or drive her to suicide, if she complained to police and he was deported. Men in many countries have custodial rights over children, making his threat very plausible. When charged with assault and uttering death threats in Canada he failed to appear at trial. The family remained in hiding, both from Canadian authorities and from Ferdousi's husband whose location remained unknown, while fighting to overturn their deportation order.

This ties into a third type of risk raised by going public and using real names: amplifying dangers faced back home if the claimant is still rejected and deported. For example, having divorced her husband and failing to return with him to Bangladesh, Ferdousi's family would no longer accept her. Moreover, the fact that cases had been publicised could get back to family members, community, and the government. In some countries, social ostracisation for having defied social norms might also be accompanied by physical forms of punishment, and both could be enhanced by the 'shame' the woman brings to her people.¹² In countries where women have little means to support themselves, ostracisation by family and community could be indeed dire.

These examples suggest asylum seekers (particularly mothers) must have great impetus to attempt every possible means to secure safety; they were willing to take the above named risks, and those receiving the greatest publicity did tend to use their real names. Being mothers may also have served a strategic purpose; mothers often provoke greater public sympathy and support than childless women, particularly when they allow photos to be taken, a consideration in favour of trying the strategy. Of the seven most publicised cases, all using real names, five involved children.

But public pressure tactics always remained a last resort strategy after careful consideration, and as indicated earlier, others did not go public at all. They tended to be used after all institutional options had been exhausted and deportation orders had been issued, in attempt to overturn negative decisions. Of the fourteen women who went public collectively, all had been rejected or were in the final stages of Appeal and were or would soon be facing deportation. Three were in hiding, the date of deportation having passed. The last resort aspect was a strong indicator of the *needs* of these asylum seekers (discussed later) outweighing the risks and unpleasantness of going public. But it also served the strategic purpose of highlighting failures of the Canadian refugee system.

The fact that some claimants went public after receiving deportation notice but before exhausting all Appeals processes (in one case), or that some claimants *wanted* to go public earlier on (in at least one case), while others ultimately chose not to go public at all,

¹² These scenarios are elaborated in the typology presented in Chapter 9. See also Paul, 1992:15.

indicates the influence of other considerations mediating between need and public actions. In at least one case a rejected claimant went public while still in Appeals processes to overturn the negative decision on her claim. Under a pseudonym (so as not to interfere with the Appeal) this claimant went public with the fourteen claimants, asking NAC to publicise that she made the decision in order “to make her story known in order to help the Minister reconsider the Guidelines regarding gender-related problems in some countries, including her own.” (NAC press packet, February 1993).

The fact that others chose not to go public at all indicates many mediating considerations, often raising competing priorities that won out. It also shows that pursuing refugee status on untraditional grounds, an expressly political act challenging the refugee system, was not always the only recourse or was not always considered most desirable. Entry could sometimes be sought through other types of status that, while perhaps not adequately reflecting reasons for international migration, and not challenging the status quo in that regard, nevertheless achieved individual aims to secure safe asylum in Canada. At least another thirty-six claimants who sought NAC’s assistance considered going public but ultimately did not do for various practical and technical reasons, together with personal and political considerations and risks discussed above. Handling the cases, Flora Fernandez (Executive Committee, Violence Against Women Unit, NAC; and director of Women’s Aid) explained that some women chose alternative solutions where possible, including marriage to Canadians, thus securing immigrant status while avoiding the media or risk of rejection in this uncertain area of refugee policy. Others still in determination processes (Appeals) decided “not to push more at that time” out of fear that publicity could result in negative decisions on their claims, even though the likelihood of receiving positive decisions was extremely low to begin with (Fernandez, interview 1995).

Another last resort strategy was going ‘into hiding’ from Canadian authorities after receiving deportation notice. It was primarily due to lack of alternatives. While not necessarily uncommon among asylum seekers generally (the real number of illegals residing in Canada is unknown), what *was* unusual was the choice to *publicise* the fact of being in hiding, speaking to the media just *before* going into hiding (announcing the intention) or *while* in hiding, thus blatantly defying and challenging Canadian law. This may be regarded as a form of civil disobedience. Their claims had already been rejected. These ‘illegals’ were seeking institutional recognition of their right as part of a collective identity to remain in Canada, even if it meant jeopardising actually staying hidden. Announcing the fact of being in hiding was also a powerful way of conveying to the public the depth of desperation and realities of persecution faced. Thérèse explained:

... otherwise, I had three choices: Go in hiding; leave the country; or go in hospital because I was suicidal -- I was telling my sister 'if you don't send the letter, the journal showing there is no protection for women in our country, I will throw myself under the metro'. And always [my lawyer] was saying 'no no you must be brave, you have been so brave always, you can keep on -- braving'. (Thérèse, interview 1995)

As many asylum seekers and supporters have commented, 'going underground' is a last resort because it creates a life of insecurity and risk, without legal rights to work or to health and welfare benefits, in constant fear of being discovered and deported. Ginette went into hiding after both her refugee and Humanitarian and Compassionate appeals refused, she had gone public and the Immigration Minister refused to intervene. In hiding she told reporters: "I'm really in a state of despair. I really don't know what to do. Living in hiding is no life at all." (Ginette, *Montreal Gazette*, 7-12-94)

Going into hiding did have strategic advantages which some claimants made use of. For the better part of her 21 months in hiding, Nada attempted to find people both sympathetic and in a position to help her remain in Canada legally. It gave her the time to go public, and allowed her a time of reflection and planning not available to others facing the urgency of upcoming deportation who would not consider going underground, like Thérèse. Nada's campaign was well thought out and prepared. Having received the greatest media attention of all those who went public, Nada in many ways lay a road-map which other claimants and supporters later used to put pressure on the Immigration Minister and Immigration Canada. During and after Nada's campaign, the ICHRDD offered campaigning advice to other groups based on its experience with Nada (Bronson, interview 1994).

As indicated, the desperation inherent to 'last resort' strategies provided forceful images of Canada's refusal to provide protection, while highlighting structural considerations linking personal identity to collective grievances and potentially collective rights. Although at the time the fourteen claimants who publicised their claims together received less individual press attention, the collective nature of their claims provided a strong example of the macro-structural and cross-cultural nature of female-specific persecution. They arrived from twelve different countries: St. Vincent, Bulgaria (2 claimants), Guatemala, Zaire, Seychelles, Dominica, Trinidad & Tobago (2 claimants), Bangladesh, Iran, Turkey, Peru and Russia.

Thérèse's depiction of her final press conference -- after fighting for status one year before the Guidelines and one year after, being deported to a third country with her children, detained, rejected and sent back to Canada for deportation to the Seychelles Islands -- is more than ever an emphasis on structural persecution and rights. She went public both collectively, and again individually. While in detention she decided to hold more press conferences a few days before final deportation. She describes the experience of telling her story to the media, and how she approached the topic when confronting the public:

So we had the press conference. Twelve o'clock I arrived with Father Robert, Glynis [Refugee Action Montreal] was there, we stepped out of the car and I saw a big white van and Father Robert said: 'You know what it is, it is for you, the CBC.' The room was all packed, people all around, so many journalists and my friends. And when I started to tell my story, I just said, 'I don't know the meaning of 'abuse'. Abuse is a culture.' (Thérèse, interview 1994)

Like Nada, Thérèse's depiction of how she went public was a story of defiance and desperation, but also careful reflection on the conditions and structural reasons for the abuse suffered and rights to asylum from it. Thérèse emphasises the cultural rootedness of domestic violence, which prevented protection in her country of origin.

From the testimonies of all the women, it is evident that going public was not simply a 'forced' outcome of their needs. It was a conscious decision involving many considerations that tied together personal experiences, identity as a persecuted woman and as part of a broader persecuted group and ethnic minority in Canada, and status as 'invisible' refugees in Canada's refugee system. It also took into account children and other family members, as well as abusers' abilities to track them down. These mediating factors are significant firstly because making personal and political decisions and acting on them challenges the notion of refugees as simply 'forced' migrants and 'beneficiaries' of foreign aid. Secondly, for the public, asylum seekers' decisions and actions gave human faces with strong symbolic content, to political and structural persecution, making a strong bid for accountability on the part of *both* sending and receiving-countries. They were both symbolically and strategically forceful.

Public pressure tactics were no doubt a last resort option for all the women concerned. However some put it before going underground, while others found themselves having to go underground in order create time and opportunity for going public. As we shall see below, supporters had mixed feelings about how to combine these strategies. Some preferred to leave public pressure as a last resort, while others hoped to avoid claimants' need to go underground by keeping that as a last resort. For claimants, in either case, going public followed the failure of institutional options but was mediated by important decision-making processes about self and family, structural representation and collective identity, and sending and receiving-country responsibility. To take these processes for granted would be to discredit asylum seekers' abilities to seek out options, understand their situation and identity in relation to the broader political context where social constructions occur, think through possibilities and consequences, and make informed decisions.¹³ Subsequently it would discredit their role in national policy-making processes *before* attaining citizen or permanent resident status. These processes illuminate that asylum seekers are first political actors and

symbols in seeking membership into a host country, and only secondly refugees according to the outcome of their claims and/or abilities to challenge decisions.

B. NEEDS AND OPPORTUNITIES FOR ASYLUM SEEKERS' DECISIONS AND ACTIONS

Willingness to go public is only one of several necessary elements shaping asylum seekers decisions and actions. Here we shall return to two other extremely important and mutually informing factors mentioned earlier, and their inter-relationship: primary individual *needs* for safety, and *opportunities* to pursue alternative means to attaining safety when institutional methods fail. The first factor puts constraints and pressures upon asylum seekers, and the second presents options and strategies which asylum seekers may choose to exercise.

B.1 Immediate Individual Need

The number one motive and goal of seeking asylum from female-specific persecution is immediate safety. It is a driving force behind willingness to go public, mediated by important decision-making processes discussed. It must be understood in its structural context, arising from fear of persecution *and* lack of alternatives. The violence feared may take a range of forms from more to less traditionally 'public' in nature, but all must be structurally rooted in, and encouraged, condoned or ignored by, society and the state. Because of the structural embeddedness of the persecution, seeking asylum is – according to standard refugee definitions – a last resort option.

We have seen how asylum seekers linked personal experiences to the political structural context in identifying themselves with a persecuted group and claiming collective rights. But their *expression* of experiences of persecution (or fear of) and perceived lack of alternatives – is itself important for several reasons. It is informative and path-breaking in that it reveals forms of persecution previously unrecognised as well as the undocumented lack of protection in certain countries. It is also a powerful tool of public persuasion, as the following chapter shows. Finally, their life-stories and the *telling* of life-stories highlights tremendous courageousness in the face of extreme danger and uncertainty, which itself merits attention. By no means is the amount of space which can be devoted to their life-stories sufficient. The affidavits, argumentation and court decisions on each of the 147 claims studied in Chapter 9 tell similar experiences of persecution, and thus easily, though unfortunately, illuminate the shared desperation they communicated. The claimants quoted here regarding experiences and fears of persecution provide an idea of the extreme nature

¹³ The collective action literature discusses these processes in the formation of collective identity for movement development and mobilisation. Whether politicisation occurs before or through contact with other actors or potential actors, the politicisation of identity and aims must eventually occur.

and complexity of their situations, and the tremendous fears and urgent needs they shared. Some, like Nada, have already been discussed in a sufficiently detailed manner that the issue of need has already been touched upon.

As indicated, different forms of persecution seemed to influence how these asylum seekers went public. Those forms least recognised institutionally and consistently, formed the basis of the greatest proportion of types of claims made public.¹⁴ These involved intra-familial or 'domestic' violence, which brings the personal and the political together at its most insidious level. Of the seven cases with the greatest individual media attention, only Nada's involved 'public' rather than domestic violence. However, as in many other cases, the persecution Nada faced was condoned by her family who therefore deprived her of one source of protection in her home country. Nada and these women's experiences of persecution exemplify opposite ends of the range of *forms* of female-specific violence that may amount to persecution, both being culturally accepted human rights violations and thus structurally rooted. Of the fourteen asylum seekers who went public collectively in February 1993, eleven involved domestic violence. One involved Female Genital Mutilation (FGM), which may fall under a broad definition of domestic violence as any violence inflicted by or enforced through family members. One case involved both domestic violence and 'guilt by association' (familial relation to political dissidents).

These cases involved fear of persecution by a husband and/or in-laws. In one complicated case, the death of the abusive husband while in Canada incited fears of persecution by in-laws in Cameroon. In statements to the press Ginette explained that her husband called police to resolve a domestic dispute: "he thought the police would arrest me because that's what would happen in our country. But when the police saw how badly I was beaten, they arrested him instead." Ginette fled to women's shelter while he was in jail. After his release, discovering she had left, "he mailed a letter to his family in Cameroon saying his wife was responsible for his death", then "stabbed himself in the stomach, doused his body with gasoline and set himself on fire" (Ginette, *Montreal Gazette* 6-12-94). Ginette subsequently received death threats from her husband's family. She explained: "his family is very powerful and they can do what they want [in Cameroon]. They could kill me with a machete and nothing would happen." (Ibid,6-12-94). Ginette went public after her H&C claim was turned down, the Immigration Minister's refused to intervene, and her request to remain in Canada until the Federal Court could hear her appeal was rejected.

¹⁴ As shown in Chapter 5 claims made public were not the first involving female-specific persecution that were accepted, contrary to the ways they were portrayed in many media reports. However they received inconsistent treatment, perhaps inciting public campaigning.

Tamarati's situation was also complicated. She fled to a women's shelter after two years in Canada, applied for refugee status and saw her husband deported to Trinidad. But two years later, while her claim was still being held in a backlog, her ex-husband married a Canadian and was accepted in Canada. Tamarati's own claim was no longer considered credible because her husband no longer posed a threat to her in Trinidad. Besides the unfairness of the situation, in which a convicted criminal was accepted into Canada and not his victim, Tamarati's future in Trinidad looked grim after having left her husband. To the press she stated: "I'm scared to go back, because of my in-laws." (*Montreal Gazette* 10-2-95).

Dulerie's case raised similar difficulties. She fled seventeen years of domestic violence involving rape, beatings, use of razors and knives, having her head slammed into a car door, and other forms of torture. From Trinidad Dulerie's husband continued to threaten her in Canada, saying he would "chop her into little pieces". Such threats, in letters and in phone calls which Dulerie taped, served as evidence in her claim for refugee status based on the risk she currently faced and lack of protection she had formerly experienced in Trinidad. After her acceptance she said to the press:

If they had sent me back, I would have killed myself. If I had gone back to Trinidad my husband would have killed me, so one way or another I would have been dead. Now it's like being dead and waking up again. I feel like I'm alive again. (*Montreal Gazette* 23/9/92)

Other claimants described similar stories involving lack of protection in countries of origin. One claimant described: "Even if you get in touch with the police back home, it's different from here in Canada. If it's a husband beating a wife, the police don't want to get involved. They just say it's a family problem" (Basdaye, *Montreal Gazette* 11-02-93). Another claimant, whose leave to Appeal was granted by the Federal Court in the first decision of its kind stated:

I was terrified for my life and felt that escape from Trinidad was my only hope. My husband beat me on a regular basis, sometimes several times per month. He generally used his fists, beating me so ferociously that I often could not see through the swelling in my face... He had begun using weapons and I felt that it was only a matter of time before he killed me. ('Lee', Court statement quoted in *Toronto Star*, 11-11-92).

Experiences of domestic violence can not be directly contrasted with more 'public' forms of persecution, as in Nada's case, but they do seem to have continued to encounter greater difficulty in refugee claims both before and after the Guidelines were instated. Thus the likelihood of such claimants going public was higher. As indicated earlier, even several of the fourteen claimants who collectively went public were later ordered deported, for a second time, provoking another phase of campaigning.

Public persecution involved, in Nada's case, public flogging upon return to Saudi Arabia. Another claimant (Miranda), whose persecution was the result of her previous husband's political actions explained: "my oldest child and I face great danger in Guatemala. The authorities could take me or my child in an effort to force my first husband out of hiding" (*Montreal Gazette* 11-02-93). Ines, from Peru, had already the evidence of authorities intent to persecute her for the actions of her relatives – her head was scarred from being doused with quicklime (Piriou, interview 1996).

B.2 Opportunities and Support

Willingness and need to 'go public' are not in themselves sufficient to foster collective identity and action. Surely the structure of support also further shaped asylum seekers' decisions and actions. Information and awareness, contacts, mobility, and politicization, along with a host of other mediating factors, may be important influences on whether, and how, asylum is actually sought through extra-institutional actions. Thus we would expect the structure of support that developed to inform or reaffirm asylum seekers' decisions to go public. Support takes many forms: moral, emotional and ideological (i.e. political framing processes about self, rights, and collective identity) support; material and human resources (i.e. organisational, human labour, political and legal knowledge, access to mass media). The various forms of support may work toward, and present asylum seekers with, strategies for achieving the primary aim, safety. It involves both offering advice and support, and means and tools for claimants to go public.

What we find from looking at the ways and extent to which the means and strategies offered by supporters actually shaped asylum seekers' decisions and actions, is also re-affirmation of the roles of the latter as political actors. Analysis reveals not only supporters' influence as providers of information, means, and moral support for going public. It shows that (a) they emphasised giving asylum seekers the final say and respecting asylum seekers' choices, and (b) asylum seekers made rational and strategic decisions when presented with options or strategies. Asylum seekers' decision to go public involved strategic considerations shaped by *and also shaping* the internal environment of supporters, as part of two-way structures of influence.

Unfamiliarity, lack of information, and desperation: impetus to seek out alternative sources of support

Undoubtedly, asylum seekers' decisions and actions were strongly influenced by their unfamiliarity with the external environment, and by supporters who could inform and support them. As well recognised, transnational migrants face language barriers as well as legal and administrative systems and social and political customs with which they are

unfamiliar and which constrain their abilities for action. These asylum seekers are no exception, although some had resided in Canada for several years. Simply making an independent refugee claim (before any negative decision on claims or decisions about going public can be made) can be difficult. This is may be enhanced for female asylum seekers, who face cultural barriers particular to their gender (Paul,1992). It is particularly amplified for those fleeing persecution not traditionally recognised. Both are less likely to receive spontaneous and pertinent information and advice through typical interaction with the immigration system, including government, nongovernment and legal counsel who themselves lack information or sensitivity concerning the particular group. Added to these constraints are the psychological traumas and fears that refugees often face, and which gender-related experiences of violence are particularly likely to foster (see Chapter 4).

Sponsored or dependent asylum seekers already in Canada face particular concerns. These asylum seekers fall into two categories: those currently in status determination processes, often lasting several years, and those already accepted through the claims of family members whose sponsorship agreement breaks down.

For those whose persecution occurred within the family, transnational migration of the whole family may appear as a panacea that is later proven illusory. Indeed, the pressures of status determination and integration may cause an escalation of violence (MacLeod and Shin 1990). Thérèse falls into the category of those engaged in status determination processes with a sponsor, when the need to make her own claim became apparent.

I came to Canada in September 1991 to join my husband, even though we had problems. I had pressure at home, and his political problems. I thought my marriage will work, because I left all the political and social problems back home. By coming here, things got worse, I realised I was wrong. (Thérèse, interview1995)

Others came to Canada with violent spouses because they had no option to separate or divorce according to social norms in their home countries. Repercussions could include not only escalation of violence, but social ostracisation, losing guardianship of children, inability to earn a living or find support due to gendered divisions between paid and unpaid work, and even legal punishment.

A common misconception among battered immigrant and refugee women is that they will automatically be deported if sponsorship is withdrawn, for example if separation or divorce is sought (MacLeod and Shin,1990). They lack information and support to make their own claims. But the greater problem for the asylum seekers studied was the lack of information and advice about the nature of their particular claims. Both those battered women whose husband's claims are being determined, and those already accepted as dependants, may be unaware that they have sufficient grounds to make their own claims, or

that their own stories of persecution are important. Although practice is now changing, standard immigration procedures at the time of the study did not inform, advise, or encourage women to make their own claims (Paul,1992).

Lack of information and fears raised by dependency on her husband's refugee claim had serious consequences for Thérèse and her children. Initially she did not make use of protection Canadian police could offer because she feared it would interfere with the status determination process, while she also was unaware that she could make a claim of her own:

... one day my boy called the police because [my husband] threw the telephone at me, and hit me. [My son] called and when he told me he called the police, I went to hide and I didn't want the police to see me. I didn't want really to get involved with the policemen because my mind said: You are here, immigration is a big deal for you; if you are starting to get involved with the police, you will not get a chance with immigration. This was in my mind! So I said to myself: You better keep quiet! (Thérèse, interview,1995).

Often increasing desperation forced asylum seekers to take action, regardless of lack of legal information about consequences or alternatives to deportation. The greatest providers of information were, in most cases, women's shelters and lawyers. But like women's shelters, other organisations helping asylum seekers who went public were often not traditional refugee organisations. They included churches, ethnic community groups, advocacy groups and front-line service groups. Nada sought help from NOIVMW (geared toward women already established in Canada) and the ICHRDD (not typically involved in domestic refugee claims). Thérèse and Tamarati contacted the CCR and ICHRDD through chance encounters on the street with individuals who referred them (Thérèse, interview1995; Bronson interview,1995).

Thérèse is a good illustration of the variety of contacts and influences informing her decision, and of their outcome. Two events convinced Thérèse to seek help: the escalation of her abuse, and finding out that her husband had been sexually abusing her children. Upon discovering the latter she sought advice from various sources and received different opinions about what to do. She contacted Youth Services and talked with a psychiatrist, who helped her understand the abuse of her children and suggested how she might prevent her husband from being alone with them. These professionals were unable to advise her on immigration problems when she enquired. The president of the Seychelles Association, in which she was a member, told her:

'Why did you have to come here? Why you didn't stay [in Seychelles]? This was your chance for breakup!' I said: 'I don't know, I followed my husband here, I didn't know what was happening with the family.' And [the president] told me: 'Keep quiet until you have everything with immigration, then I will help you.' (Thérèse, interview1995).

Thérèse did 'keep quiet', but her husband's abuse intensified when she confronted him about abusing the children. When she requested a separation, he threatened to kill her. He was arrested by Canadian authorities, and when he was released and his refugee claim was rejected, he continued to threaten her. He was deported in handcuffs due to his criminal behaviour. "He wanted me to pay for the rejection of his claim, even though I had nothing to do with it... Even when he was back home he still threatened to kill me because he was jailed here in Canada and rejected, so I had to pay." (Thérèse, interview 1995).

When Thérèse received her own deportation notice and explained her situation to immigration authorities, she was granted leave to re-apply on humanitarian and compassionate grounds. Knowing that there was no protection from domestic violence in the Seychelles Islands, she re-applied, but was rejected. Fearful of returning to her country, where her husband continued to issue death threats and police protection was unavailable, she then sought advice from a priest.

I told the priest what I want to do, and he said it's the wrong idea: 'Why don't I take my money and go back to my country?'... But I said to him 'I will do anything I have to do to save the lives of my children.' (Thérèse, interview 1995).

Ultimately the decision was hers to make. She opted to fight her case even if it entailed going public, which core supporters offered her the means to do. By chance a woman she met while waiting for a bus advised her to contact Janet Dench from the CCR. Dench put her in touch with a new lawyer and others in the advocacy network.

Supporters' views on going public: advising, respecting, supporting

Glynis Williams, who worked closely with Thérèse, expressed an often repeated attitude among core supporters regarding influencing claimants' decisions and actions:

I am reluctant [about claimants going public] until, first of all, you have a whole group that is agreed that this is the only option and that we have to go this route. I also think it is the person themselves who has to make that decision because I have been involved in some cases over the years, of people who got very dependent on you to make the decisions about what was the right thing to do – and that is a killer, emotionally. People have to determine their own lives, and if you don't push them to make some of their own decisions, because it is a hard decision, they live with it. Once they are in the media, that information will be sent back to their country; you can't hide people for too long; and there is simply a limit to what we can do. So that is something the people have to think about themselves. (Williams, RAM interview 1995)

Similarly, Bronson (ICHRDD) emphasised to Nada the consequences of going public (as discussed earlier), and also Nada's ultimate power of choice:

We had always said 'whenever you want to back out that is fine, but you are the one who will have to say it, because you are the one who will have to pay, you and your family, if things turn out badly against you, if you lose.' Because that was all I could say.

'Maybe we will win, this is my best bet, this is my educated guess on what will happen to you... And we will do whatever we can if they deport you and you are thrown in jail: we will write letters, we can make diplomatic representation. But we can't save your life.' (Bronson, ICHRDD, 1995)

Thérèse and Nada chose to go public like the others, weighing possible losses against the possibilities of success and the best available recourse of action. Bronson emphasised going public as a 'last resort' strategy presented to Nada.

It was fairly obvious to me, though I was quite naïve and ignorant of the immigration system and how it worked at that time, that if we got public attention on her case, she would win it. And that would be the *only* way she would win it. And that I knew in function of my background and my understanding of politics. (Ibid).

Augenfeld from the TCMR described media use in more negative terms, as a last resort strategy and one not suitable for most asylum seekers, despite powerful public impact:

It is not usually good to do case work through the media. You leave it to the end to use as a last resort because if you haven't exhausted the other avenues [government] will say 'You haven't given us a chance yet'. And the media is hard because you need a case that stands out, and the person in question and the family in question has to agree and has to be able to explain what is going on. And the media does not always pick up the points that you think are the important ones... Of course, people always respond to these individual stories... But you also have to think 'how many times can you actually do this through the media?' (Augenfeld, TCMR 1995).

Hesitancy to use the media indicates that NGOs are not likely to push asylum seekers to go public, for a variety of reasons. However, they do see the advantages and power of using media appropriately.

Lawyers also were firm on keeping media as a last resort strategy. Only after at least four separate requests/claims were rejected did Ginette's lawyer state: "I have good contacts in the immigration department, but I was told (yesterday) that the Montreal department won't change its mind. The only thing I can do is appeal to the public to try to help her." (Belanger. *Montreal Gazette* 6 December, 1994)

However, conflict did emerge among supporters when it came to claimants going into hiding. Many supported decisions to go into hiding, either to allow an opportunity to campaign, or upon the failure to overturn decisions through campaigning in particular cases. Belanger, a lawyer for several of the publicised cases, declared: "You must never give up. The secret: never give up. Even if it means saying to the woman, 'go into hiding'" (Belanger interview, 1995). However supporters were clearly aware that 'hiding' was no solution. Elisabeth Montecino from Women's Aid, which sheltered seven of the fourteen claimants who went public, commented: "We didn't say in any case that is the solution. I don't agree with it because I do not think that it is really life... Maybe, when there are women who don't

have a choice but to go underground while some decisions are being made; but we don't want again to do that in the future." (Montecino, Women's Aid, interview 1995).

Women's shelters that often supported such decisions and provided residence were adamant that if possible it should be a last resort, behind going public. They emphasised the conflict in strategy among supporters, which emerged in several cases regarding *when* a claimant should go public. Montecino felt strongly that contrary to lawyers' advice, claimants should not wait until they have already been ordered deported or they have gone into hiding once the deportation date has passed, to go public. They indicated less faith in government making acceptable decisions under only pressure from institutional channels.

Glynis Williams from RAM also emphasised that if possible, going underground should be avoided except in the failure of public pressure tactics or lack of opportunity to use public pressure tactics sooner.

I am always amazed because my experience of going underground is that you have no resources, no access to money, so who is paying? Is it a long-term strategy? ... As far as government is concerned you are not a drain on the public purse any more, and if you are not a danger they are probably happy if you get lost. But you have no status, you have no future, what do you do with health care, if you've got children either here – you have no way to protect them or put them in school – or if they are overseas they are never going to get here. It is a terrible limbo situation. Though maybe it works in the short term, I don't know. (Glynis Williams, RAM, interview 1995).

As both Montecino and Williams indicate, despite its negative sides, being in hiding before going public had its strategic advantages that were discussed using Nada's example. Williams explains, "It would work in the short term if you are working on something and yet they have determined to deport somebody. It seems to me you have got to have some card up your sleeve still... that you hope that time will help you deal with." (Williams, RAM 1995).

Public pressure, except when used only after claimants went into hiding, was a last resort tactic shaped by the two-way structure of influence between asylum seekers and core supporters. Asylum seekers' decisions to 'go public' were heavily influenced by external support and advice, and by the desperation of their situations. But neither need nor opportunities and support were in themselves sufficient to foster their action. It would be a gross oversimplification to say that asylum seekers take certain actions simply because they are forced to out of the desperation of their situations, or that supporters simply act/make decisions *for* them. Rather, asylum seekers are rational, strategic actors interacting with their structural environment of opportunities and constraints and exercising choices within it, often in an incremental or trial-and-error manner. Going public came to involve both personal and political factors in decision-making by asylum seekers, alongside strategic decision-making informed by the options supporters offered. Asylum seekers had to weigh

the possible risks of going public, including further endangering themselves and their families, against needs, alternatives, opportunities and beliefs about identity and rights.

We shall now explore how supporters became involved, revealing asylum seekers' roles in shaping the structure and nature of support they received, and presenting the outcome in terms of the internal political culture of the network that developed.

II. SHAPING THE STRUCTURE OF SUPPORT: MOBILISING SUPPORTERS' BELIEF SYSTEMS INTO ACTION

How did asylum seekers influence their environment of support, and with what consequences? This question can be explored by looking at why and how core supporters became involved with the issue of sex-persecution, public pressure activities and related policy reforms. This is based on qualitative analysis of supporters' explanations and descriptions of their involvement, in relation to the following factors: profession and organisational type, previous experience and pre-disposition toward the issue, core ideology, and how supporters linked ideology with particular asylum seekers with whom they came into contact.¹⁵

Several important themes emerge from analysis of the onset and development of core supporters' involvement. First, a clear link exists between the translation of supporters' 'deep core' ideology into participatory actions, and supporters coming into contact with particular asylum seekers at a time when either perceived potential or inter-organisational support for successful actions was high. Deep core values are defined as "the highest/broadest level" in a hierarchy or value set of beliefs. They include:

... basic ontological and normative beliefs, such as the perceived nature of humans or the relative valuation of individual freedom or social equality, which operate across virtually all policy domains; the familiar left/right scale operates at this level. (Sabatier 1994:180)

Second, supporters described the initial impetus and evolving nature of their involvement over time in terms of a two-fold perception of individual asylum seekers' (a) structural representations and (b) immediate individual needs.

All core supporters' deep core values were predisposed toward issues raised by asylum seekers' claims. But their profession, organisational type, and previous experience influenced the nature of their predisposition. Deep core values were reflected in two most commonly heard reasons for campaigning: (1) A particular case or set of cases was

¹⁵ The collective action literature describes factors such as ideological support (or predisposition), previous organisational support, and past participation or previous experiences (personal and work) contributing to the "mobilisation potential" of 'potential' actors. See Kriesi 1992. .

‘illustrative’ or ‘representative’ of a broader problem – violation of women’s rights as human rights violations, and lack of corresponding state responsibility – due to women’s structural inequality worldwide. This raises Canada’s responsibility under international human rights and refugee law. (2) A particular claimant’s experience was a type of persecution chronically ignored in the Canadian refugee system due to inherent structural inequality, placing that claimant in a dire situation requiring immediate outside support.

The analysis below sheds light on asylum seekers as a crucial link between core supporters’ deep core values, and actions finally taken based on those values. It also sheds light on why and how issue advocacy arose, considering that Canada had not previously been challenged on the matter, nor had these issues previously been the focus of Canadian research or education by government or NGOs.

UMBRELLA AND ADVOCACY ORGANISATIONS

As umbrella organisations, the TCMR, CCR, ICHRDD and NAC do not typically engage in front-line work with individuals and communities. They typically approach social issues with macro level aims of policy change, education, research and inter-organisational work. Among these groups, the exemplary nature of cases was crucial. Participation was based foremost on a case or set of cases considered representative of violations of women’s human rights, indicating Canada’s responsibility to provide protection under international law. The TCMR, involved particularly in later Consultation processes, explained:

Normally we do not take on individual cases, unless those cases are illustrative of an issue. Some cases carry a wider issue with it, so we get involved. Everybody needs help but as a coalition we can’t get involved in all cases and take them all on, so we tend to decide when we get involved based on what issue it represents. So with Nada for example it was the whole wider issue of gender persecution. (Augenfeld, TCMR interview 1995).

Describing the down-side of this, Augenfeld remarked: “unfortunately, it is always around some desperate case. It is unfortunate that there has to be somebody’s life on the line...”.

A small number of the asylum seekers – particularly Nada, Taramati, Dularie and Thérèse – provided the initial impetus for supporters, who in espousing the cause and developing policy aims and strategies for one asylum seeker later got involved with others. Advocacy for the *issue* was always linked to advocacy for particular cases.

Nada also provided the political impetus for the ICHRDD’s, which generally takes on neither individual cases nor domestic issues. Their involvement was precipitated by a chance encounter between Nada and Bronson (Media Relations Officer at the time), at what was described as a semi-political evening. Nada (whose claim had already been rejected) was

introduced to Bronson, who offered to look into the situation and “invest time and energy in it” upon approval by Broadbent, the President.

Nada came here, she told me her story. I thought that it merited our attention... because we saw it as an international human rights issue... I thought it was a brilliant illustration of how women’s rights are not considered to be human rights: that her rights were massively violated in Saudi Arabia was not enough for the Canadian Immigration and Refugee Board to determine that she was a refugee. It did not matter that her rights as a woman were denied to her. (Bronson, ICHRDD, interview 1995).

Nada’s experience illustrated both lack of state protection (in sending and receiving-countries) and women’s human rights violations. It also illustrated a particular form of female-specific persecution contributing to the ICHRDD’s strategic decision to support her and not others at the time. This is apparent in Bronson’s depiction of how, again through a chance encounter, she met Tamarati whose situation involved domestic violence. Meeting Taramati prompted Bronson to consider advocating for individuals fleeing more ‘private’ types of female-specific persecution, including not only Tamarati but also Dulerie whose case had recently been publicised without ICHRDD support:

I met Taramati on the street one day, completely by accident... she asked me where to find [a street]. I offered to walk her to the corner... And we got to talking. It turned out to be Taramati. She ended up telling me her story on the street corner – about how she had been threatened by her husband, how she had two children, how she was in hiding and she was going to a [women’s shelter]. I came into work that morning and I said I thought we should take on the three cases: Nada, Taramati and Dulerie. (Bronson, ICHRDD, interview 1995).

However, strategic considerations hinging on the different forms of persecution the women faced prompted the ICHRDD to pursue the cases separately. The ICHRDD became involved with Nada, but decided not to *simultaneously* advocate for Taramati and Dulerie.

I wanted us to take on Duleri from Bangladesh as well, whose case I saw as just appalling... and Tamarati from Trinidad, again a case of domestic violence... But Mr. Broadbent’s political judgement was: No, let’s go with Nada... because it’s the easiest thing for them to swallow. The Canadian government can not go against an argument of equality. They can still argue that domestic violence is a private issue, a cultural tradition, whatever they want... At that time [domestic violence as a human rights violation] wasn’t at all clear either in Mr. Broadbent’s head or in the government’s head or among Human Rights groups. (Bronson, ICHRDD, interview 1995).

The ICHRDD did later advocate for claimants facing domestic violence. The point here is that the combination of contact with asylum seekers, the Centre’s pre-established ideological commitment to women’s human rights, and strategic considerations prompted their participation. Dulerie was the earliest of the three to publicise her case (July 1992), she did so through women’s shelters and was the only one not in direct contact with the ICHRDD. For the ICHRDD, not accustomed to front-line service work and lacking

experience with the particular asylum seekers, contact with asylum seekers appears to have been crucial to participation. However the Centre first pursued the case with the strongest legal arguments – the public nature and non-discrimination argument of Nada’s claim.

NAC is another powerful organisation dealing generally with macro level issues, and lacking experience with female-specific persecution. Nevertheless NAC initially became involved through Tamarati. Contact occurred through overlapping membership on NAC’s Executive Board and Women’s Aid, the shelter where Tamarati was residing. Following Taramati’s deportation notice in February 1992 (scheduled for October of that year) NAC formed a special committee to address the issue of gender persecution. As head of the violence against women unit in the Executive Committee of NAC, Flora Fernandez explained that Tamarati’s deportation was delayed with the support of NAC, “and after, in the Executive Committee of NAC, we spoke about that [case] and we understood that big problems would arrive, and we started to prepare” (Fernandez, interview1995).

NAC’s involvement grew after making statements to the media, as refugee claimants began arriving at its Toronto office. NAC’s inability to cope with the situation was overridden by the structural nature of the problem and the deep emotional and ideological affinity for these women’s situation. Fernandez explained that as an umbrella group NAC would not typically advocate for individuals, but that these women “came in a group”:

When we go to the media... the women who understand that, who see this problem and who have this problem, go to the Toronto office of NAC. The people arrive and arrive! They cry, and it is a very emotional time for us, for NAC and for me too. We feel very big responsibility. But NAC is a lobby group, usually we work on very big issues. We don’t have the infrastructure for work on the personal problems, the individual’s problems; we can’t give [front-line] service too. But we saw that problem is like a group of problems... those women come in a group. So for that [reason] I took the decision to take the cases. I had about forty cases. Of those I arrived at fourteen... (Fernandez, interview 1995).

The fourteen cases publicised as a group in February 1993, out all those NAC considered representing, arrived through a combination of shelters with such cases at the time, and women presenting themselves directly to NAC.

From the onset, NAC was a strong supporter of women fleeing all forms of female-specific persecution, from more to less ‘public’, recognising the structural representative nature of all forms and also individual asylum seekers’ paramount need for immediate safety. NAC had been committed to ending violence against women since the 1970s (Vickers,1993). However, asked about the influence of the campaigning process upon NAC’s mandate, Fernandez expressed a clear sense of achievement and benefit for NAC internally as it expanded its scope.

We are very proud about that. We worked so much – it was crazy. We don't have the resources, we don't have the money, and we have too many people who wait with only hope, about what we can do. It was not in our 'mission'... We didn't have any [extra funding for it]. We had only the solidarity with the women. Only that. It was hard to go with all that pressure, all on a deadline. In another way, we learned the importance of the media. (Fernandez, NAC, interview 1995).

NAC's broadened mandate became a source of pride for the significance of the task itself, their achievements under difficult circumstances, and the effectiveness of some of the strategies learned to galvanise public support. Like many core supporters NAC lacked sufficient financial resources for additional (new) activities, relying instead on human and non-material resources. NAC's pre-existence and pre-disposition toward the issues were fundamental products of rising opportunities and resources (chapter 6), but taking on the new policy issue was not a result of new resources or particular expertise. As for other organisations, the expansion of organisational mandate occurred before new resources and expertise were available. Augenfeld from the TCMR described the importance of links between women's and refugee groups for the technical information the latter could provide, but still observed that NAC's involvement developed before its expertise:

When some of the cases went public, the network of women's organisations really got involved. And when NAC got involved, they got a lot of exposure. NAC got involved with a commitment to shepherd those cases that they adopted. But they had to learn about the in's and out's of immigration: how things work, the nitty-gritty. They had to learn about that because it is not as simple as it seems at first glance. (Augenfeld, TCMR, interview 1995).

Expanded mandates typically occurred through heavy reliance on extra volunteer labour or 'over-time'. Individuals contributed personal time and energy, alongside offering free services to the asylum seekers (even private lawyers, as we shall see, often offered free services). According to explanations provided by core supporters, emotional and ideological affinity for the issue alongside the urgency of individual asylum seekers' situations were paramount, motivating supporters to transcend resource limitations.

FRONT-LINE ORGANISATIONS

Whereas larger organisations tended to take hold of particular cases precisely because they were exemplary and because supporters had not previously come into contact with cases of a similar nature and urgency, experiences of front-line service organisations were often the opposite. Women's shelters, organisations working directly with immigrants and refugees, and at times family/civil law or refugee law practitioners (discussed later) all worked with the target population on a daily basis and saw these asylum seekers in terms of their individual needs first and foremost. They tended to equate particular cases with the general problem but saw each case as one of many as result of regular contact with refugees and/or battered

women, often including previous experience with women fleeing sex persecution. Thus rather than a unique opportunity to pursue a newly recognised issue area, the exemplary nature of cases was *newly considered a means* of arguing for a policy solution to current and future individuals' situations. Their changing approach to dealing with these cases was influenced by external factors including (a) changing conditions or opportunities for women asylum seekers within the refugee system, which *increased* the contact and nature of interactions with shelter workers (described in chapter six); and (b) new opportunities for front-line workers to engage in policy advocacy of the particular kind. For front-line service groups the latter entailed the political support, legal-know-how, and a legal-ideological framework which the larger organisations could provide. These factors will be discussed alongside actors' conceptualisation of links between ideology and action, and consequences for policy advocacy.

As basis for participation some supporters emphasised the Canada's refugee system's failure to satisfy these women's needs, rather than the existence and nature of the violence the women revealed. The latter was taken for granted or continuous in these supporters' experience; whereas the former involved changing conditions and needs that brought more of these kinds of asylum seekers to them, and new ways of challenging the system.

As expected, women's shelters became involved specifically through and because of women fleeing domestic violence, for whom front-line services were provided. Their involvement was significant particularly because some other organisations, such as the ICHRDD, were less strategically inclined to represent domestic violence cases, at least early on. As indicated earlier, refugee claims involving domestic violence continued to encounter the greatest difficulties attaining refugee status. Of the twelve cases involving familial violence, at least seven had been or were residing at women's shelters. These shelters tended to be strong public supporters, and usually through them asylum seekers came into contact with NAC, which helped publicise claims collectively.

What was the difference between these cases and previous ones encountered by the shelters? With fifteen years experience at Women's Aid, Flora Fernandez argued that the problem of gender persecution was recognised long before campaigns began in 1992/93. She explains Women's Aid's use of public pressure tactics at that time as a factor of increased need for immigration and refugee policy change following the Conservative government's increasingly restrictive stance on migration in the late 1980s. Deportation of women fleeing domestic violence, she contends,

... was not a problem until after the Conservative party arrived, and for sure with Immigration Minister Bouchard. He made very machiavellian moves against refugees... and very big manipulation in the media. After that the problem for women who leave

conjugal violence was like the maximum result [of that negative climate]. (Fernandez, interview 1995).

Earlier, while formal rules guiding entry did not exist, relaxed criteria may have been applied in cases involving immigrant or refugee women whose sponsors became abusive, and for whom return to their country of origin posed a serious threat. As increasingly restrictive legislation and Conservative Immigration Ministers reduced alternatives, women residing at the shelter could only avoid deportation by taking public action. Supporters at other shelters also noted significant effects of the rising backlog of asylum seekers awaiting decisions on claims. During the 1980s and early 1990s backlogs contributed to an increasing proportion of immigrant women residing in the shelters studied and a rise in the average duration of their stay.¹⁶ This increased contact with women fleeing female-specific persecution.

Comparing women's shelters' previous and later experiences, we can see how the emphasis on state responsibility changed. Earlier public tactics involved different policy goals and substantially different inter-organisational support. At Flora Tristan, public sensitisation work (educating the public) and pressure activities in 1991 were argued primarily in terms of sponsorship abuse. New frameworks for advocacy, including both ideological and institutional support, emerged around the later cases; while often still involving some form of sponsorship abuse, domestic violence was contextualised within human rights discourses and discrimination toward women in the refugee system. Earlier cases also enjoyed little external support aside from lawyers. Cases publicised after 1992 under the broader issue of female-specific persecution enjoyed the interest of larger organisations and umbrella groups, as well as many supporters among the public at large.

But asked why they campaigned in 1992 and 1993, Montecino explained succinctly: "We were involved because we had such cases at that time... they were residents here" (interview, 1995). These cases were publicised not because they were new to the shelter but because they had the opportunity to be presented within the broader context of claims being made and through the supporting network. Montecino emphasised refugee women's acute need for support due to the inadequacy of Canada's refugee system, rather than the exemplary nature of the domestic violence as human rights violations, or sex persecution:

... there are different factors that help these women. If the woman is alone, without resources, she doesn't have a chance to be accepted by the government. If the woman is helped by groups, a shelter or other kinds of community groups, she has a greater chance to resolve the problem. (Montecino, Flora Tristan, interview 1995).

Montecino also expressed overlap between refugee claimants' needs and structural representation motivating factors for participation, where system failure and needs stand out:

¹⁶ 1996 Questionnaire: Nellies Hostel; Harmony House; Maison d'Amite (5% yearly increase, 1993 to 1995).

I imagine what can happen with a woman that doesn't have any good lawyer, doesn't have the help of any organisation, and doesn't have any other resource. She can be deported very easily. That is why I say it is very good initiative in Canada as the first country that has talked about gender persecution, because before they were thinking that it is only the men that are persecuted, not that women *because* they are women also suffer persecution in different countries, and also that domestic violence can be a factor. (Montecino, Flora Tristan, interview 1995).

In both previous and later advocacy, safety from violence and deportation, in particular cases, was the short-term goal while policy change the long-term goal. To address sponsorship abuse, women must be enabled to make independent claims, and sponsored women need a guarantee that they will not be deported for leaving abusive sponsors. For female-specific persecution, whether or not involving sponsorship abuse, the law must account for women's structural experiences.

[As the problem] is going to repeat it is going to... create other social problems. We can't save energy, money or anything without letting the problem get poor. So, I think that the immigration structure has to be revised with the times. What happened was that laws were made so long ago, they are "middle age" laws. But now the times don't correspond, reality doesn't correspond with the law. So these laws are going to create other problems, per application, with the people here. If we want to avoid social problems, we have to revise that. (Montecino, Flora Tristan, interview 1995).

Montecino emphasises structural elements in the Canadian refugee system and the need for violence against women to be addressed through immigration and refugee law reform, in order to get at both structural causes and outcomes of the problem.

Campaigning was also pursued because public pressure seemed the last chance for these women to remain in Canada. Policy advocacy was a means to argue these cases, and later became an end in itself. Flora Tristan's continuing sensitisation work (informing the public and advocating for and with asylum seekers and immigrants) was considered important for both means and ends. Between April 1993 and March 1994 the shelter gave 26 interviews with the media, participated in 21 conferences, 26 meetings and 11 meetings with students, and worked with other asylum seekers whose cases were publicised (Flora Tristan, annual report 1994/95).

RAM, a front-line organisation working with refugees in entry and settlement processes, also became a core supporter through cases involving domestic violence. But unlike women's shelters RAM did not have previous experience with such cases. It had knowledge of the immigration system and an ideological pre-disposition toward work with women refugees. Emphasis on advocacy work increased when its board was restructured in 1992. Contact with particular asylum seekers in 1993 precipitated its participation, first peripherally (in Nada's case) and then directly (in Thérèse's case). Glynis Williams (co-ordinator) explained that the core advocacy network developed through Nada: "Some people

knew one another [previously], but the rest of us got pulled in... the push really came more from the individual cases." She also described public support arising from "people like Nada, coming forward from out of the blue, on her own initiative... She was articulate enough, though she didn't get accepted at first, but she knew that women's issues are at a very different stage in our country than they are in Saudi Arabia" (Williams, RAM interview 1995).

In this sense RAM was more like the larger umbrella groups without previous experience. But it was like women's shelters in seeing advocacy arise due to increased opportunities, and focusing foremost on the acuteness of individual asylum seekers' situations and the immediacy of their needs.

We noticed that when other issues around refugees were not being picked up or people were just getting in a 'compassion fatigue', that around Nada's case when that finally broke and was quite successful... we had a broad range of groups that had an interest in the subject, that were not just refugee organisations. Whereas, I think it is fair to say that on other kinds of cases there has not been the kind of broad spectrum of organisations that were affected by the issue, that were involved, as there were in this case: women's groups, women's shelters, groups that are increasingly seeing immigrant or refugee women seeking their support. That was a whole new network of people that got involved and took up the refugee cause. (Williams, RAM interview 1995).

Here Williams describes increased opportunities for action, from the point of view of a refugee and humanitarian organisations, as arising from the interest of women's groups, rather than the other way around. Umbrella groups similarly expressed the significance of support by women's groups, as indicated earlier, however for achieving outcomes rather than precipitating their own involvement due to strategic potential for success.

LAWYERS

Like RAM, lawyers occupied an interesting position between groups and asylum seekers, non-service and service (front-line) oriented groups. This was reflected in their combined emphasis on immediate needs of clients, and the exemplary nature of their cases.

One of the most vocal and active lawyers in gender-related cases at the time of the campaigning, Nada's lawyer, was in a special position to describe several types of previous experiences within the immigration system. Cote's previous experience was in several capacities: as immigration officer (border official), RHO (Refugee Hearing Officer, who presides as a neutral party during the oral hearing of the refugee claim), an adjudicator making decisions on claims, and finally a lawyer in private practice. This provides a well-rounded perspective on the immigration system and the particular types of claims in it. As an adjudicator between 1989 and 1992, she explains:

I had been expecting to see these cases, it has been my interest for a long time, so as an adjudicator I was just waiting for those cases to appear. One did appear one day, a very clear gender case. It was a woman, 'Caroline'... and she was claiming that she was

afraid of going back because her husband had been abusing her, and she was saying that her country would not protect her. This, back then although it is not long ago, seemed to be like: 'how can you *ever* expect that this would be accepted!' (Cote, interview 1994).

Clearly, she was on the look out for an exemplary case. However, she recognised that the challenges faced and posed by such claims within the immigration system were fundamental to the *invisibility* of such cases within the system. Earlier, as an immigration officer at the border, her experience was common: male refugees tended to do the talking, women tended to be silent and not make their own claims. As a RHO and later an adjudicator, she observed:

some lawyers would *dare* to present the case going along a gender-based claim, but they would not say it like that necessarily. More often than not it would be presented... under the 'social group' category, which as one of the five grounds of the Convention is fine. But when a case was presented, it was received with a lot of scepticism. (Cote, interview 1994).

The atmosphere she describes among adjudicators was predominant apoliticism.

We were civil servants first and foremost... there was no criteria to assess your genuine interest in immigration-refugee problematics. So my colleagues were people who just did not have political ways of seeing things. None were clearly feminist, that was evident also. (Cote, interview 1994).

Cote finally became involved with a claimant who was clearly political and had sought help: "Diana [Bronson, ICHRDD] had told me about this case in the very beginning. I thought it was interesting but I didn't get into it until Nada phoned me." She offered her services free to Nada and became a core supporter in the network that developed. She represented approximately forty gender-related cases in the next three years.

Other lawyers had extensive previous experience through dual work in immigration and civil law specialising in domestic violence. They tended to work on cases of sponsorship breakdown before 1993, and later on gender-related persecution (under the Guidelines) which may or may not involve sponsorship complications. Among lawyers interviewed, women's shelters most often referred such cases.

One major advocate in refugee law, with 13 years experience with domestic violence cases and extensive involvement with refugees who went public, likened the lawyer's role to that of an orchestra conductor: able to direct people as to how to use the law, but not being the primary power behind change. As she described it, her role was in the legal battle, getting media attention for particular cases, and providing individuals and interested organisations with information on how to proceed: "on writing letters and press releases, what journalists to talk to, how the law works, how different procedures work... and who else can be of help" (Belanger, interview 1995). She emphasised solving individual women's cases, more than policy goals or the exemplary nature of the cases. Belanger's most strongly emphasised

point was that the number of cases of this type seen by lawyers is no indicator of the numbers or proportion of such women in Canada, which are much greater.

Rather than looking out for exemplary cases, Belanger made increasing use of emerging opportunities to assist such women, in particular the increase in social resources and women's increasing use of them: "Things have changed because of women's groups, and because immigrants themselves started to get organised." She particularly described advocacy arising from immigrant and refugee women victims of violence making greater use of lawyers' services. "The greatest trend: women are leaving clandestinity."

Women victims of violence now have more social services and phone contacts. There are more refugees in women's shelters. Women's shelters phone me. [Refugee women] more often leave their homes than in 1983, 1984 1985. I had one or two per year, back then. Over the years ten has been the most [per year]. That is because they are more aware of resources that exist. They go to the resources, and the resources put them in my path. (Belanger, interview 1995).

III. CONCLUSION: ASYLUM SEEKERS AND THE INTERNAL POLITICAL CULTURE OF THE ADVOCACY NETWORK

We have seen some differences and many commonalities in the ways supporters became involved with public pressure tactics, and some of the factors involved in how asylum seekers made decisions about going public. Several important conclusions may be drawn from this.

First, asylum seekers were politically conscious actors making decisions and advocating for themselves and as representatives of the persecuted group. This was revealed particularly in how they choose to use extra-institutional strategies to challenge negative decisions on their refugee claims. The desperate need for asylum and the options supporters could provide were mediated by asylum seekers' personal and political considerations. These included how they viewed themselves in relation to the world and to a collective identity, their rights and politicisation, and risks they were willing to take.

Being asylum seekers does not preclude abilities and desires to shape or influence policy in order to be accepted in the receiving-country. Although these asylum seekers did rely on opportunities and support to challenge the receiving-country refugee system, and their need was the greatest motivating factor, they were neither simply 'forced' out of desperation to make such challenges nor 'illegitimate' refugees abusing the system. Rather, these asylum seekers made rational and strategic choices around a legitimate political debate regarding identity and state responsibilities. It involved identity politics, which is both symbolic and strategic. It involved thinking about self in relation to society, states, rights and responsibilities. It involves taking into account the risks, options, information and means

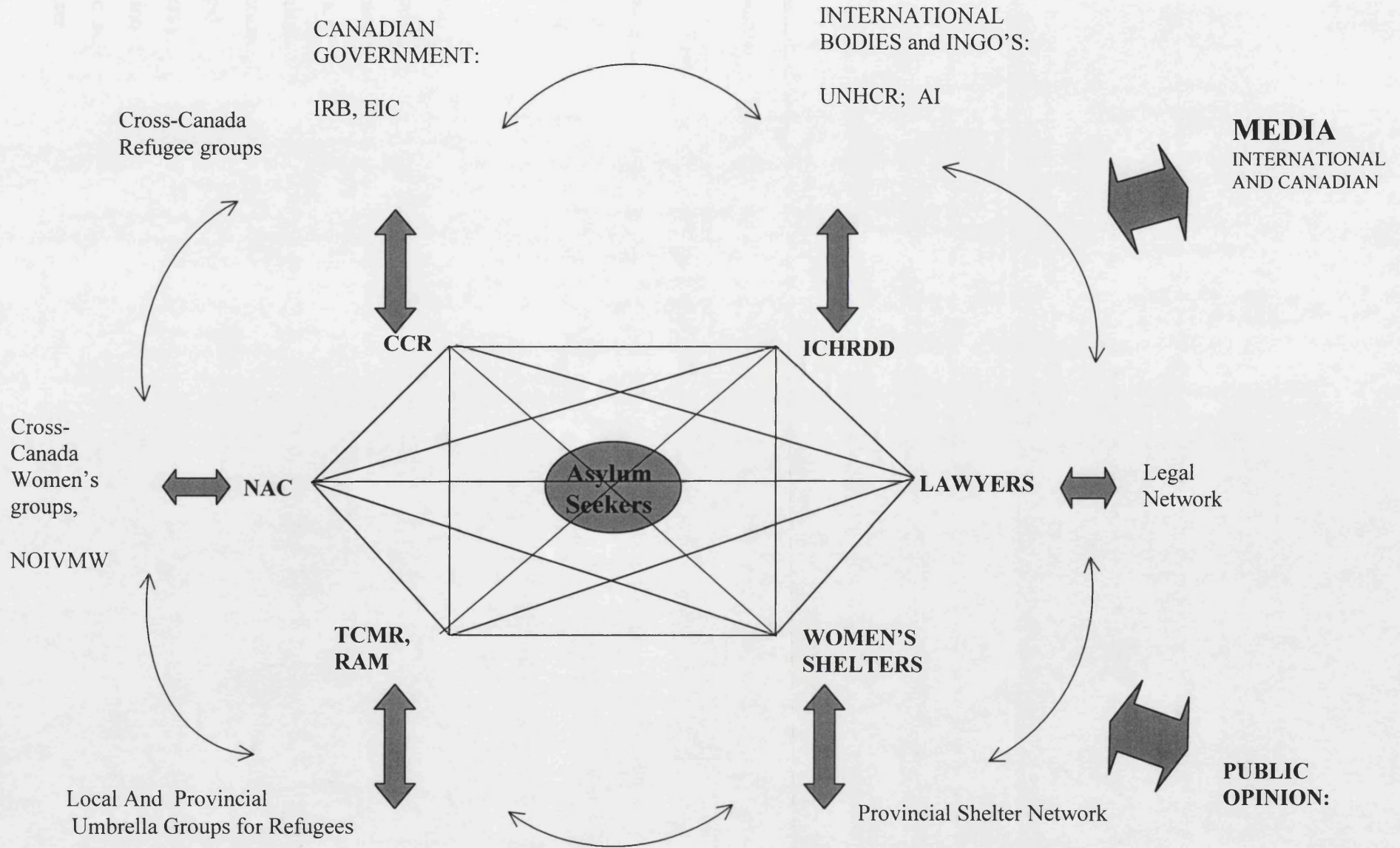
supporters could provide. And, although neither citizens nor permanent residents, they had access to a range of resources. They thus had the means to become strong symbolic and political identity images, or instruments of persuasion, through mass media. Asylum seekers were deeply embedded within what needs to be recognised as a structural, political process, rather than a one-way processes externally forced or imposed (as upon beneficiaries) upon them, or co-opted by them for personal benefit without political legitimacy.

Second, asylum seekers were not only conscious political actors in their own and other cases, but also mobilising and binding agents among supporters. Their willingness and determination to seek support and take extra-institutional actions was crucial for mobilising the support of permanent Canadian residents and binding them together in a common cause. In looking at how core supporters conceptualised the relation between belief systems and participatory action, asylum seekers' symbolic and strategic roles emerged. Together supporters and asylum seekers may be described as an advocacy network. Unlike coalitions, the term network allows for relationships may exist among individuals (not members of an organisation) and organisations (see Hines and Gerlach 1970) rather than solely between organisations. It is also more fluid, or less organisationally formal. Figure 7.1 portrays the advocacy network schematically.

The schema also depicts some important characteristics of the advocacy network's internal political culture. Its 'clique' structure depicts the centrality of asylum seekers, the density of linkages among supporters, the diversity of supporters, and their links to secondary actors. In all instances core supporters became involved through contact with asylum seekers willing to go public. Asylum seekers' needs and structural representation mediated between supporters' ideology and deep core policy values, their opportunities and means for strategic action, and actions actually being taken. The violence and lack of protection asylum seekers had experienced represented the broader problem of women's structural inequality as citizens around the world, raising Canada's responsibility under international human rights and refugee law. The structural inequality they experienced in Canada's refugee system increased the urgency of their need for outside support as deportation orders were issued.

Emphasis upon one of these two stated reasons for participation tended to correlate with organisational type, previous and current experience and with their approaches to advocacy. Supporters who took up the issue because a particular cases were 'representative' tended not to have had direct experience with actual women in these situations. Some may have been well aware and 'on the look out' for these types of cases, but compared to front-lines service organisations and to some extent to lawyers, awareness and involvement was

7.1 Core Advocacy Network depicting links to metanetwork and external environment



quite new among the larger umbrella and advocacy groups. Their interest was sparked primarily by particular claimants whose exemplary cases provided an opportunity to pursue an important ideological and political issue.

In contrast, women's shelters and other front-line organisations perceived new opportunities to advocate for exemplary cases of which they were already aware or had previous experience. For front-line workers, individual life histories of the women they worked with may have been representative of the issue generally, but many individuals, in their own experience, were representative. What moved ideology or belief systems into action was the immediacy of particular women's situations and their willingness to try various strategies to attain entry, coinciding with perceived possibilities for new kinds of advocacy through other groups or due to perceived potential for success in the current political climate. Lawyers fell into both groupings, and overlap occurred among some front-line and larger advocacy groups as the former increasingly took on policy advocacy roles and goals in their work generally and through the latter.

Asylum seekers were also important links between supporters, who were in regular contact with each other on the issue. Some cross-membership existed and many individuals worked in a variety of capacities within their organisation and served bridging roles between issues. Asylum seekers only occasionally worked directly with other asylum seekers, although most of the cases went public within the same six months, many at the same time. The constituency of the network was also diverse (umbrella, advocacy and service, both within and across issue niches, and with various specialities within issue niches) and controlled a wide and strategic mix of resources and capabilities across local, national and international levels. Details of organisation characteristics are presented in Appendix C.

The core group was associated with many of the cases at different times, and played a disproportionate role mobilising secondary actors and the public. Secondary actors comprise those who gave public support in various ways but were not involved at the planning and organising level around particular asylum seekers, or who worked through core actors rather than directly with asylum seekers who went public. They included member organisations of NAC (over 500 women's groups), the CCR (over 150 international migration groups) and the TCMR (Montreal's ethnic, community, international migration groups). Other networks of secondary supporters spun off local organisations like women's shelters that could tap into the shelter network and other women's groups. Lawyers provided links into formal and informal legal networks. Schools, communities, and politicians also lent public support through (for example) petitions, faxing and writing to the Immigration Minister's office and attending press conferences. National organisations also provided links

to international organisations such as the UNHCR and Amnesty International, as well as the Canadian government.

In the process of deciding to campaign and forming the advocacy network we can see that asylum seeking occurs within a structural context of reciprocal or mutually shaping relationships between asylum seekers, their structure of support, and the ideological and strategic frameworks where they ultimately act or become influential. The advocacy network itself illustrates another important dimension: changing relationships between citizens or permanent residents and non-citizens/non-permanent residents. These relationships can not be territorially defined or exclusive, nor can they be simplified as advocacy 'for' non-citizens. Through the advocacy network's resources, capabilities and tools, we can now see how asylum seekers might gain significant political leverage and influence in policy-making processes. The campaign process and asylum seekers' roles in it are explored in the following chapter.

8. WORKING TOGETHER: ASYLUM SEEKERS' AND SUPPORTERS' INFLUENCE ON POLICY REFORM

Emerging rights, resources and collective interests provided important opportunities and building blocks for asylum seekers and supporters in the period leading up to campaigns, while relations between asylum seekers who 'went public' and their supporters shaped actor participation and the core advocacy network's internal political culture as a whole. We now need to enquire into campaigning processes to consider how the network of supporters and asylum seekers together influenced the external environment, and to what extent. The following explores the evolution and nature of the campaigns and key strategic elements of their success, illustrating various ways asylum seekers were integral to both.

Underlying the analysis is McAdam's concept of 'strategic framing processes' or 'signifying acts' (1996). Framing processes typically constitute "the conscious, strategic efforts of movement groups to fashion meaningful accounts of themselves and the issues at hand in order to motivate and legitimate their efforts" (McAdam,1996:39; Snow and Benford 1988,1992; Melucci,1989; Touraine,1981). Thus it describes ideology and identity as movement resources. McAdam's expanded concept of 'signifying acts' observes that *theways* ideologies and demands are developed and articulated by actors *constitute important actions and tactics in themselves*, both in influencing and responding to the external environment. Signifying work reflects movement-environment relations that shape one another over time, serving at least four broad purposes: attracting media attention, particularly of a favourable nature; mobilising public support; constraining the social control options of the environment it wishes to influence; and influencing public policy and state action (McAdam,1996:353).

Section I lays out campaign priorities, goals and tactics, and the strategic combinations of these dimensions in relation to likely state responses. This typology of basic strategies provides a framework for analysing campaigning processes and impact.

Section II explores the evolution and implementation of activists' strategic interaction with the state and public between 1991 and 1996. Campaign processes are analysed using interviews with primary actors, institutional documents including correspondence, and documentary evidence from mass media. This account is descriptively important, as the campaigns have not previously been documented or described in detail. It is analytically important in that it reveals how strategies and their impact evolved both around asylum seekers' participation and government responses as campaigns unfolded.

Section III concludes on asylum seekers' participation and how, why and to what extent the campaigns were effective. Specifically, it suggests how asylum seekers'

participation influenced campaign structure, aims and tactics, strategic choices that were made over time, and pressure that was brought to bear.

I. ELEMENTS OF THE ADVOCACY NETWORK'S STRATEGIC FRAMING PROCESSES

A. POLICY VALUES AND GOALS: BALANCING ASYLUM SEEKERS' SAFETY, TIME AND REPRESENTATION

As shown previously, core supporters' involvement in the campaigns stemmed from a combination of factors including contact with asylum seekers, previous personal and professional experience, and new opportunities for action perceived to be constructive. Underlying these factors were deep core values which, upon contact with asylum seekers, resulted in two fundamental reasons why supporters' chose to get involved: individuals' needs for immediate safe asylum, and individuals as representative of a structural issue and entire persecuted group. Asylum seekers also stressed both their needs as individuals, and their rights as part of a group, as reasons for going public.

Reflecting these two basic motivating factors, campaign *goals* were to respond *both* to the immediate safety needs of individual asylum seekers, and to their structural representation or the long-term needs of future asylum seekers. But what was the priority assigned to each? Different policy demands could be made which satisfy either immediate needs or their structural representation, or both, depending on their priority and the perceived potential for attainment.

With immediate safety of participating asylum seekers as an over-riding priority, we would expect ends to be more important than means. Appropriate policy may be a *means* for securing asylum, however a number of alternatives may exist for this purpose. Using existing legislation, asylum may be sought on a case by case basis, using whatever means available and without regard for their consistent application to other cases. Or, promoting incremental policy change, the importance of ends and means may merge in the short-term in the ways particular cases are argued and become precedent-setting. While not immediately changing the law, jurisprudence sets frameworks for consistent status determination processes. Finally, particular policy goals may be ends in themselves, or important *long-term* goals toward securing safety for future asylum seekers. In the long-term, ends and means may merge in appropriate refugee policy because it addresses immediate needs consistently over time.

A crucial dilemma facing actors was how to resolve the conflict between shorter and longer term goals as interaction with the state evolved. An immediate goal was to secure safety for the particular asylum seekers making claims public and others who were not making their claims public. To this effect, actions evolved around the *immediate individual needs*

of asylum seekers, on a case by case basis, and safe asylum could be sought through any means. Another goal was to achieve fundamental policy change in keeping with core ideology about why these women were persecuted and what kind of responsibility states hold. This expressed the *structural representation* of individual claimants who went public; it was the legal argument for state responsibility as well as an argument with moral force.

How or to what extent could structural representation be sought without compromising immediate individual needs if the external environment was resistant to radical legislative change in the short term, but willing to consider it in the long-term? Smith and Sabatier (1994) suggest that policy advocates are united by common “deep core” ideology or “basic ontological and normative beliefs... which operate across virtually all policy domains”, and from which a hierarchy of policy values and aims stem. Policy aims may shift over time as a strategy for, rather than a threat to, policy advocates’ unity or influence. Underlying deep core values serve to bridge “near core” and “secondary” policy aims and enable policy actors to shift strategically from emphasis on near core to secondary values. This occurs due to the emergence of ‘policy learning’: new technical information or beliefs regarding the substance, means or possibilities of policy change.

Table 8.1 presents the advocacy network’s policy value hierarchy and corresponding policy demands. This hierarchy is *ideal* in the sense that the highest policy aim most closely reflects underlying ‘deep core’ values. ‘Near core’ policy value describes “basic normative commitments and causal perceptions across an entire policy domain or subsystem...” (Smith & Sabatier, 1994:180). Their ‘near-core’ policy value was to weigh equally asylum seekers’ immediate individual needs, and the aims embodied in their structural representation. Legislative change invoking structural roots of female-specific persecution would respond to the greatest range of asylum seekers, as soon as possible (Immediate Needs -X- Structural Representation). All core actors expressed such legislative change as the ideal outcome.

Smith and Sabatier (1994:181) describe “secondary aspects” of the belief system as existing within a specific policy domain comprising a large set of narrower beliefs concerning the seriousness of the problem or the relative importance of various causal factors in specific locales, policy preferences regarding desirable regulations or budgetary allocations, the design of specific institutions, and the evaluations of various actors’ performance.

Actors’ secondary aspects of the policy core aimed to secure safe asylum for the greatest possible range of persecuted women (versus the *ideal* range) within a given time frame, or as soon as possible. None of the activists made this their initial demand or fought for it exclusively at any time before the Guidelines were instated. But many supported this ‘pragmatic’ option at some point, attempted to improve upon it, ensure its instatement and proper implementation. At this level, time demands remain constant, but policy content

demands change. This suggests asylum seekers' immediate safety was a priority above structural representation, creating a degree of openness toward policy strategies. It enabled advocates to shift policy values and tactics.

A third hierarchy level can also be presented: the existing legislative and administrative system, whereby challenges are made case by case and change may be incremental, but decisions on them inconsistent. None of the core actors were supportive of this option exclusively because change had thus far been slow and inconsistent, whereas current asylum seekers faced immediate life threatening situations.

Table 8.1 Hierarchy Of Ideal Policy Values And Policy Demands Of Core Advocacy Network

Ideal policy values	Corresponding policy demands
NEAR CORE: safe asylum for all persecuted females, as soon as possible	Legislative change: add "sex" or "gender" to the definition of persecution
SECONDARY CORE: safe asylum for as many persecuted females as possible as soon as possible	Interpretative/Administrative change: read gender into existing law
EXISTING POLICY (no change): safe asylum on a case by case basis existing interpretation of the law	No change: Judicial or Ministerial discretion

We know that the outcome of the campaigns was the secondary core, entailing interpretative change of existing legislation through the instatement of new administrative Guidelines. It brought an immediate though more incremental solution to a structural problem, providing current asylum seekers with institutional options. We shall now lay out how near core and secondary core policy goals were communicated and the kinds of tactics used to influence the public and the state. In this we shall see possible state responses, the roles asylum seekers played in different types of actions, and an overarching picture of the strategic possibilities of the campaigns.

B. TYPES OF GOALS AND TACTICS

As indicated above, a number of goals were emphasised in the campaigns, and through various policy demands. Both goals and strategic demands, or tactics, were intended to appeal to the sympathies of various publics and thus mobilise support for particular aspects of the campaigns, and the campaigns as a whole. Policy values and demands may be described in terms of the challenge they pose to existing systems and subsequently the degree of resistance they encounter. Policy values were 'framed' both by radical (legislative) and reform (interpretative) policy goals, and through extra-institutional and institutional tactics.

Demands for legislative change corresponding to near-core policy values recognising structural causes of female-specific persecution were *radical* in nature (chapter 4 discussed why such change is considered 'radical' to traditional interpretations of state responsibility). The desired change was the addition of 'sex' or 'gender' as a grounds of persecution in the UN Convention refugee definition as applied in Canadian refugee policy. This was the highest policy aim in the hierarchy presented earlier. *Reform goals*, described second in the hierarchy, aimed to introduce administrative guidelines that re-interpret existing legislation.

It should be borne in mind that the ideological basis and intended effect of 'reform' goals still presented a radical challenge to institutionalised ways of thinking about persecution, violence against women, and state responsibility. They are 'reform' in the sense that by not changing the actual law, they are not binding in the same way, their application is less consistent and more incremental. Reform goals in these campaigns thus describe strategies for institutionalising, to a certain degree, government commitment to a fundamentally radical way of perceiving state responsibility under international law. As such, reform goals and any strategic shift away from radical goals may be regarded as part of a negotiated achievement, even if not 'the end of the road' in many actors minds.

The campaigns also involved both institutional and noninstitutional tactics. *Institutional tactics* consisted of several dimensions. (1) Throughout the campaigns and after, institutional actions in refugee status determination processes were used to make untraditional refugee claims and challenge the application of refugee policy. These have been described in previous chapters. Figure 6.1 (chapter 6) depicted multiple pathways in refugee determination processes, and at multiple levels of government. All claimants using public pressure tactics went through typical claims processes and received negative institutional decisions. Most were issued deportation orders. At least one of those given leave to Appeal had IRB decisions overturned by the Federal Court. Institutional processes were essential before and after instatement of the Guidelines, both by claimants who went public and those who did not, and often involved core supporters in important ways (having a lawyer, getting referrals to other helpful organisations and individuals, getting moral and practical support). Making claims also contributed to a growing awareness within the IRB and inspired activities by its internal Working Group on Refugee Women. (2) Institutional tactics also involved participation in public Consultations between government, NGOs and accepted refugees. These were held after the Guidelines were instated to help shape their implementation and future revision. Two sets of consultations were called, the first arranged by NGOs and second by government.

Non-institutional, or *extra-institutional tactics* involved using public pressure tactics to challenge IRB and court decisions on claims, to defy deportation orders, to demand positive

decisions on individual claims, and to demand policy change reflecting and supporting those decisions. Actions included calling press conferences and using mass media (radio, television, journalism) extensively; threatening to hold public demonstrations; petitioning and lobbying politicians for support. Claimants going public and those “in hiding” from immigration authorities to avoid deportation were clearly acting outside normative institutional channels for influencing refugee status determination processes (in particular cases) and policy change processes (for collective claims). The idea was that publicising the challenge would generate political leverage not available for claims processes in closed hearings, casting the legitimacy or aptness of court decisions into question, heightening the debate and generating mass public support.

C. STRATEGY: GOALS AND TACTICS IN RELATION TO INSTITUTIONAL RESPONSES

Campaigns evolve in relation to the responses of the external environment. McAdam explains that a movement’s stated goals and the tactics chosen to convey both goals and ability to disrupt the public order in order to achieve them, are instrument and effect of various publics’ reactions. He describes signifying work and its influence according to the types and possible *combinations* of goals and tactics that actors pursue. Figure 8.1 presents a matrix of expected institutional responses to non-institutional and institutional tactics and radical and reform goals, specifically within a democratic context (McAdam,1996).¹⁷

	<u>Tactics:</u>	
	institutional	non-institutional
Radical Goals	Repression	Indifference/ surveillance and harassment
Reform Goals	Heightened public attention/ polarised conflict	Indifference/minimal opposition and/or support

Figure 8.1 Expected environmental responses to various combinations of movement goals and tactics (McAdam 1996:342).

¹⁷ McAdam observes that “the emphasis... on a *democratic context*, cannot be understated. Give the very different legitimating philosophy that underlies nondemocratic systems, the interaction between movements and other sets of actors is expected to conform to very different dynamics than those evident within ostensibly democratic systems” (1996:341).

Each combination has different effects with various advantages and drawbacks for the attainment of goals. Radical goals pursued through non-institutional tactics tend to provoke repression. This may have various effects, such as increasing public sympathy, and reducing movement ability to operate in some ways. On the other hand, if pursued through institutional tactics, radical goals tend to provoke only institutional indifference or surveillance and harassment. This may provide, for example, greater room to manoeuvre without opposition but also without mobilising support.

Reform goals pursued through non-institutional tactics tend to produce heightened public attention and polarised conflict. This may generate both support and opposition. But pursued through institutional tactics, reform goals tend to evoke indifference, minimal opposition and/or support. Yet it may proceed incrementally, unhindered.

This matrix demonstrates how a movement or policy advocacy coalition's aims may be strategically chosen within a given environment, and pursued with various tactics. It adds to Smith and Sabatier's (1994) concept of policy hierarchies which while explaining why shifting policy aims are possible in relation to changes in the external environment (such as the emergence of new technical information or the prognosis for success), lacks insight into why and how coalitions strategically chose and combine aims with various tactics for achieving them at a particular time, and thus why they may or may not be successful.

However, McAdam's depiction of movement-environment relations lacks insight into whether a movement can have various combinations of goals and tactics, or change its combination over time. McAdam assumes that a particular blend of goals and tactics comprises the overarching strategy pursued by a homogeneous body of actors at all times. He does not consider that different types of tactics may occur simultaneously, as may different policy aims. In other words, a number of strategic framing processes may coexist either *at different times in the same campaign* or by *different movement actors simultaneously*. In fact, the campaigns studied used each combination of goals and tactics described, sometimes simultaneously. Government responses conformed closely to the above matrix with the exception that 'repression' was minimal and non-violent. At the lowest degree on a scale of possible forms of repression, it entailed efforts to silence dissidence by taking a radical position of opposition, rejecting claimants and policy demands. This response was repetitive but always short-lived.

Diversity of goals and tactics may be instrument or effect of different dimensions of the same movement or network of actors. It may be explained partly by the fact that concurrent to all goals is a desired time frame for achieving them. The time-factor may shift

actors' focus from one to another goal and/or tactic, depending upon responses elicited and the priority actors assign to the time-factor. Thus it helps describe why different policy aims and different blends of goals and tactics may develop or change. Shifting or simultaneous blends may also be explained by different access to information, perceptions about the possibilities for success or risks that may be involved in pursuing particular strategies, and degrees of political access that actors may enjoy from the start or over time. The strategic influence of changing or simultaneous combinations may be to reduce or increase strategic diversity and influence.

Having considered the advocacy network's policy value hierarchy and described its basic goals and tactics in relation to possible state responses, we can now observe the strategic evolution of the campaigning processes itself, the roles of asylum seekers in campaigns and their evolution, and outcomes as a whole. How did tactics and goals evolve in relation to the government and publics they wanted to influence over time? How did they attract media attention, mobilise public support, constrain the state's options and get a favourable response?

II. INFLUENCING INTER-STATE RESPONSIBILITY

Campaigns were organised around a series of individual claimants and groups of claimants 'going public' between 1991 and 1996. Within this time, policy advocacy and public pressure tactics occurred in roughly two phases, each of which may be broken down into periods of generation, peak activism, and decline of extra-institutional activities. The second phase was significantly more limited in extra-institutional actions and support. Institutional actions continued throughout both phases, and expanded in the period of decline to regeneration between them due to the institutionalisation of the Guidelines and a series of national Consultations on Gender and Refugee Issues. As we shall see, the nature and intensity of activism in each period both provoked and responded strategically to government statements and reactions, and to the changing political climate of the country.

A. GENERATION: OPENING THE DIALOGUE, ATTRACTING INTEREST, DEVELOPING THE DEBATE

In the generative period, aims for policy reform using institutional tactics were gradually supplemented by increasingly radical demands and extrainstitutional tactics. Institutional tactics remained important throughout campaigning even at the height of radical-extraintitutional demands and actions. By using institutional tactics as far as possible, actors

not only made use of every possible resource but also protected their legitimacy in the eyes of government and the public. In the reform-institutional blend, refugee claims were made through institutional status determination processes, in particular using the 1985 UN Recommendation that the 'social group' category may describe some forms of female-specific persecution. Acceptances could set precedents for future claimants without changing the law, but slowly reforming its interpretation and application. The evolution of case law has been discussed in previous chapters, and its outcomes after instatement of the Guidelines will be analysed in Chapter 9. For the generative period, what remains to be considered is the emergence of alternative tactics when institutional methods fail, and how they complement one another.

Rejected refugee claims have value both inside and outside status determination processes. Inside, they may heighten awareness among IRB members, whether of a positive or negative nature. Outside, they may heighten public awareness (again both positive and negative). In the cases examined this first occurred with policy reform goals in mind. Between approximately May 1991 when the first press conferences were held with claimants facing deportation, and August 1992 just before a series of claimants began going public, the media was used occasionally and without generating great public support. What was generated during that period was: (1) the interest of many "core" supporters who began working together through particular claimants (2) a dialogue with government (3) the strategic evolution of actors' framing tactics, that is, the radicalisation of their demands, discourses and tactics. These dimensions will be discussed as they developed around five claimants during that time.

Core supporters' participation was explained in the previous chapter in relation to previous experience, ideology and contact with asylum seekers. Looking now at the external environment, we see that interest emerged as free trade and constitutional debates (NAFTA and Charlottown Accord) were drawing toward conclusion. Many core organisations, such as NAC and the CCR, were pre-occupied with these issues, thus their activity in the newly emerging refugee issues was more limited in the generative period. Nevertheless the first steps were taken to get supporters' attention, which entailed bridging women's groups and immigrant and refugee advocates. At the same time dialogue with government was initiated and demands were developed. Both were sparked in May 1991 when press conferences were called by Flora Tristan Shelter for Immigrant Women, shelter residents Ana and Sandy from Germany and Mexico (facing imminent deportation) and their lawyers (*Journal de Montreal* 2/5/91). They argued government was insensitive to the problem of 'sponsorship abuse' because the immigration and refugee status determination system was gender-biased. They declared that deporting women for breaking a sponsorship contract with an abusive sponsor

is discriminatory and unjust. Invited to the conference panel was the Quebec Minister of Immigration and Culture and a representative of a federal sub-commission on violence against women within Health and Welfare Canada (see Maison Flora Tristan, May,1991). This well-rounded and strategically chosen panel of claimants, NGO's, lawyers and government representatives sympathetic to the issue, solicited positive media attention.

Participants made recommendations based on the experiences of women residing at Flora Tristan and on reports by the National Organisation of Immigrant and Visible Minority Women of Canada and by the Social Planning Council Co-ordinating Committee on Wife Assault. NOIVMW had previously approached the federal sub-commission on violence against women, recommending that immigrant women's dependency be broken by lessening work restrictions, using Minister's Permits in cases of sponsorship breakdown, and broadening the refugee definition to include sex persecution (Ibid,18). These recommendations were upheld at the conference.

While the question of changing the refugee definition was peripheral to the main issue of sponsorship abuse that conference raised, it got reactions from other NGOs and the government. Appeals to the public were simple. These asylum seekers were fleeing domestic violence – something Canadian women could understand in their own country. Randy Gordon, the Assistant to the Immigration Minister, responded in a statement to the press by saying that EIC does not consider gender within the refugee definition and that accepting women such as those being publicised 'would be opening a whole can of worms' (NOW, December 1992). Dench from the CCR explained: "What he was saying had to do with violence against women and 'floodgates': that there is just far too much violence against women and therefore we can not accept everybody who comes [on that basis]..." (Dench,1995). His statement provoked women's groups, was criticised in NOW magazine and prompted the CCR to adopt an internal Resolution supporting gender inclusive refugee policy and to write a letter to Gordon.

Gordon was impelled to clarify the government's policy position and moral position in a letter responding to President Matas of the CCR. Gordon emphasised that Canadian refugee policy is based on the refugee definition provided by the UNHCR, in which 'gender' does not appear as a grounds of persecution. Second, he disassociated the powers and duties of the EIC and Immigration Minister from those of the IRB:

... decisions on refugee claims are made by independent, quasi-judicial, decision-makers. Neither the Minister, nor any member of his staff, can determine whether a claimant is a Convention refugee. Nor... can the Minister fetter the discretion of officers of Employment and Immigration Canada who exercise delegated authority with respect to humanitarian and compassionate review. (8 July 1992, Randy Gordon, letter to CCR President David Matas)

Divorcing executive and administrative from judicial branches of government, Gordan ignored their shared responsibility in refugee policy development. He also ignored the Immigration Minister's special powers to issue Permits on Humanitarian and Compassionate grounds in individual cases, although the individual cases provoking the dialogue to begin with had appealed for such Permits. This power enables the Minister to override both IRB and EIC decisions and grant acceptance under a special status. While not granting Convention Refugee status, making such exceptions *publicly* could place the refugee determination system and the law in question. The Immigration Minister avoided this possibility.

Third, after claiming the irrelevance of the position of the Immigration Minister and administrative branch of government, Gordon stated the Immigration Minister's moral opinion:

... the position of the government with respect to the persecution of women is irrelevant to the refugee status determination process. Nonetheless, let me assure you that the Minister does not condone discrimination against, or persecution of, women.

Despite efforts to avoid responsibility, when confronted with a politically charged question in a country with a strong humanitarian and women's rights reputation Gordan was impelled to assert the government's moral conviction against the persecution of women. At the same time he appeared unaware of recent government research on the problems of sponsorship.¹⁸ Thus he was unable to steer the debate toward an administrative solution either specifically for sponsorship or generally for the application of refugee policy. Rather, he gave further reason for refugee policy itself to be fundamentally questioned.

These correspondences and press statements elevated the issue from a question of administrative ineptness and gender insensitivity to one of structural persecution and subsequent state responsibilities. This marked an important evolution in framing tactics. Sponsorship was no longer the trigger issue. Subsequent cases were publicised with an emphasis on state responsibility for upholding gender inclusive human rights principles by amending refugee policy. A wider range of types of female-specific violence was publicised as persecution. In the next three cases, both traditionally 'public' and 'private' forms of violence against women were publicised as persecutory. Those forms previously considered an outcome of administrative problems concerning either sponsorship (typically domestic violence cases) or inconsistent application of the 'social group' category (as recommended by the UN) both turned to question the basis of policy itself.

13. Particularly the IRB Working Group on Refugee Women. The CACSW and the QCCI (Provincial immigration) had also been producing reports on the problems of sponsorship since the late 1980s.

Between December and August 1992 campaigns began with Taramati, Dulerie and Nada. Each made claims based specifically on female forms of persecution and each faced deportation. Their cases raised a range of issues: whether female-specific forms of violence may ever amount to persecution or whether they are culturally relative; whether the Canadian government considered women's rights as understood in Canada to be human rights; whether some forms of violence against women may be considered persecution, and not others; whether the validity of a refugee claim is dependent upon the location of the primary perpetrator in the country of origin; and whether secondary perpetrators such as in-laws and the community should be taken into account for persecution occurring in the 'private' sphere.

Taramati, Dulerie and Nada's claims differed from the those of Ana and Sandy by introducing the risk they faced in their country of origin if deported, due to the lack of resources or willingness of their own states to protect them. Both Nada and Dulerie had independently fled their countries of origin due to the violence they faced there. Taramati and her husband came to Canada together, she as his dependent. After two years in Canada she applied for refugee status on her own grounds, and her husband was deported.

Dulerie and Taramati's cases involved domestic violence, a powerful image of human rights violations and persecution against women with which Canadians could more perhaps readily identify than other more culturally-specific forms. Statistics Canada reported in 1993 that one-quarter of women in Canada experience violence by current or past marital or common-law partners. Government had made clear commitments in its 1988 Initiative on Family Violence, 1990 Declaration on Family Violence, and 1993 National Action Plan on Family Violence. Taramati and Dulerie, whose situations were described in the previous chapter, had resided in Canada with children since 1988, and both had fled to women's shelters. Both were in the final stages of the refugee status determination process between December and October 1992 after two years awaiting and appealing decisions.

Dulerie's claim was processed through all the standard refugee status determination reviews, and in July 1992 she was ordered deported "because she fled to Canada to escape domestic violence instead of political oppression." Immigration department official Roger White defended his decision by citing a new family violence act passed in Trinidad in 1991 allowing abused women to lay charges and obtain protection orders. Dulerie's lawyers argued that the recent law was not being implemented: "You can have a written law, but the effect of it is a different thing altogether. If someone refuses to enforce the law, then what is one supposed to do? And that in effect is what the police [in Trinidad] are doing" (*Toronto Star* 17 Sept 1992). Dulerie was ordered deported in July, at which time she appealed to the immigration minister and was refused. In Taramati's case, the IRB had found that domestic abuse was not a basis for a refugee claim although her husband had been deported back to

their home country and was issuing death threats. Taramati applied for leave to remain in Canada on H&C grounds after her refugee claim was rejected in January 1992 and a deportation order was issued. In August she was still awaiting a decision.

Nada's case involved 'public' forms of violence against women. She made a refugee claim in 1991 based her experience of female-specific forms persecution due to political opinion, namely refusing to comply with discriminatory laws against women, with severe punishment for infractions. Considering that precedents had already been set in similarly based cases, the rejection of her claim highlighted the IRB's general unreceptivity to female claimants, the inconsistency of its use of the 1985 UN Recommendation on women as a social group, and gender biases in applications of the other four categories of persecution. After failing to win an Appeal by the Federal court, she was issued a deportation order. Defying it, she went into hiding and sought NGO support. In August 1992 she appealed to the Immigration Minister and was refused.

Between December and August 1992 these three claimants exhausted almost all institutional avenues. Their remaining option was to appeal *publicly* to the Immigration Minister. They did not begin making use of mass media until September 1992, but until then attracted the support of women's shelters and traditional refugee and humanitarian groups. Bronson (ICHRDD) describes some of the strengths of the core advocacy network that started meeting on a by-weekly basis:

Each of us was basically powerless as individuals, but each of us had organisations that could carry a lot of weight. The CCR is a coalition of 150 refugee groups across the country, NAC is some 500 women's groups, I am from an institution created by Parliament with a president who has a powerful public voice, and [Nada's lawyer] could connect with all the lawyers. (Bronson, ICHRDD interview 1995).

She described their strategies as two-fold: "one, we would try to draw media attention to this problem, and two we would have a Consultation that would bring together NGOs, government and women's groups and so on, to talk about it" (Bronson interview 1995).

Publicity was limited throughout the summer while groups concentrated on writing letters to the Immigration Minister and potential supporters, and introducing more radical demands by developing a human rights approach to arguing the cases. On August 19 the ICHRDD urged the immigration minister to intervene, concluding:

If [Nada] is forced to return to her country, Canada will be sending out a signal that it will not act to oppose the systematic violation of women's human rights, nor will it accord asylum to those who are victims of such violations. This would be most unfortunate, given the important initiatives that Canada has taken on behalf of gender equality and human rights in the Francophonie, the Commonwealth and the Organisation of American States. A failure to act decisively on the side of justice in this

case would be most damaging, both domestically and internationally. (Broadbent, letter to the Immigration Minister 10-08-92)

As demonstrated above, the ICHRDD's involvement with Nada raised human rights issues and Canadian responsibilities both at home and abroad. This was particularly important for the campaign as a whole, which began making human rights principles the turn-stone of its arguments. It also demonstrated the weight of domestic concern for the issue, and domestic repercussions. Bronson explains: "The ICHRDD was able to situate the debate in the context of women's rights and human rights, which sadly get a good deal more respect than do refugee rights." Adopting the slogan "women's rights are human rights", the ICHRDD made clear the connection between Canadian women's rights and human rights of persecuted peoples of other nationalities:

The challenge for women is to use the language and mechanisms of international human rights law in a way that makes it relevant to their experiences. *The challenge for the human rights movement is to start taking the violations of women's rights as seriously as the violations of men's rights.* Women must use the paradigm that exists already and begin to forge a new one for the realities that the old language of human rights still cannot address. (Bronson, ICHRDD presentation for the CCR 12 May 1993)

In August the IRB Working Group on Refugee Women responded by circulating a draft version of the Guidelines among the UNHCR (Canadian Division), CCR, ICHRDD and other NGOs, and lawyers. Although the Guidelines received positive responses, they were reform in nature, initially excluded domestic violence as a possible form of persecution women may face, and had no timeline for instatement. This combined with government's split sympathies on the issue, the imminent deportation current claimants faced and their accumulation of support, ushered in the peak period of activism between September 1992 and March 1993.

B. PEAK ACTIVISM: POLARISING THE DEBATE AND MOBILISING PUBLIC SUPPORT

The shift into the peak period was expressed through a dramatic increase in use of the mass media, conferences, petitioning, and correspondence to the Immigration Minister. Reflecting the human rights framework, *publicised* policy demands in this period were considerably different. Radical legislative demands dominated and the debate took on rhetorical tones with newspaper headlines such as "Are women's rights human rights?". A dialogue between government and nongovernment actors took place in which government responses continually provoked and further mobilised the immigration and refugee community, women's groups, and public support.

Thus the period began with a combination of extraintitutional tactics (namely public pressure tactics), and demands for court decisions to be reversed for those claimants going

public, and for radical legislative change for future claimants. Demands for legislative change increased both through the public examples being made and by emphasising Canada's international role. Not only Canadian legislation was at stake. The question was raised as to whether the UN Convention Relating to the Status of Refugees should be reopened to consider adding sex as a grounds of persecution. Broadbent, (President ICHRDD) stated: "We want a recognition by Canada, to lead internationally, that women are persecuted as women and that they should be recognised as part of the refugee process." (*Montreal Gazette* 30/1/93). Supporters wanted the government to make recommendations to the UN.

The three concurrent cases discussed above were sequentially joined by others, both as individuals and in groups. Media use was at its highest, including newspapers, journals and in-depth radio and television broadcasts. Between September 1992 and March 1993 at least 17 claimants told their stories to the press, and many others made private appeals to the immigration minister. Public appeals were made primarily through press conferences attended by claimants and called by lawyers, national and local women's, immigrant and refugee organisations working with participating asylum seekers. One asylum seeker wrote a newspaper editorial and several spoke at conferences, including one organised by the IRB on International Women's Day. Influential heads of organisations wrote editorials.

With this activism the women's human rights issue exploded on the Canadian scene around particular claimants making their claims public, all facing deportation and many defying deportation orders. Many had gathered core supporters during the previous year, as described. They and others also gained increasing attention due to their timeliness. In the autumn of 1992 Canada was rocked by international reports of mass rape (an estimated 50,000 Bosnian women) as a strategy of ethnic cleansing in the former Yugoslavia. Domestically, Canada was shifting its focus considerably. It is perhaps no surprise that peak activism was ushered in not even a month after NAFTA was signed and as Canadians saw the Charlottetown Accord rejected (26 October 1992). Canadians were 'fed up' with long-lasting debates on national unity and were free from years of international trade debates.

This not only provided a public space for other important issues, but coincided with the onset of Federal elections. As the issue gained public sympathy, politicians found themselves having to state policy positions, and women refugees were on the agenda for the first time. Liberal MP's lent their support for a number of individual refugee claimants who went public, and in January 1993 the liberal government began making promises. Deputy Prime Minister of the Liberal party, Sheila Copps, promised that if the liberals were elected a moratorium would be held on deportations of women claiming gender-persecution so that their cases could be reviewed under a fair determination system.

Meanwhile the Conservative government began making moves to change party political leaders in an attempt to win back Canadian trust. During this period other immigration issues and problems were mounting. The last Backlog clearance program came to an end and the unpopular new immigration Bill C-86 was poised to come into effect by February 1993, making Conservatives particularly vulnerable to public dissent on immigration matters. The campaign for gender-sensitive refugee policy hit its peak at this time, with overwhelming public and Liberal government support. Between September and December 1992 Dulerie, Taramati and Nada went public. At the same time the favourable result of another claimant's appeal to the Federal Court was publicised.

Dulerie went public after Immigration Minister Bernard Valcourt's refusal to intervene in her deportation. On 17 September, the *Toronto Star* published an article about Ottawa's refusal to protect Dulerie. The article, "Trinidad can protect woman, Ottawa insists", raised the first wave of protest by human rights, refugee and women's groups across the country. Bronson (ICHRDD) observed that the Immigration Minister's office was 'flooded with faxes and calls' criticising his non-intervention. Less than one week later Valcourt reversed his decision. Headlines ran: "Abused woman allowed to stay here" (*Toronto Star*, 23 September).

However, Valcourt's decision did not give Dulerie the right to stay based on H&C grounds, the status usually bestowed by Ministers. It skirted any question of human rights violations or persecution that might suggest a chronic structural problem within Canada's refugee system, and whether claims like Dulerie's should in future be awarded H&C status or even refugee status. But it was a direct response to public pressure. Dulerie's case was to be handled through a legal loop-hole: she would be "shuffled". That is, she would be deported, admitting no fault by the IRB, but instead of being returned to her country she would be sent to the United States where after a two-week period she would be allowed to apply for immigrant status, with guaranteed acceptance in Canada.

While recognising a fundamental short-coming of the refugee determination system this solution offered no structural corrective. Dulerie's lawyer Bhardwaj explained: "it doesn't show any insight on the government's part as far as compassionate or humanitarian grounds" (*Toronto Star* 23Sept1992), referring to its application to claims involving female-specific persecution. However the decision did demonstrate the government's vulnerability to the weight of moral responsibility brought to bear by public support.

In early September Nada also went public, giving her first interview. Bronson (ICHRDD) commented on forms of publicity which were sought and the significance of sympathetic and committed journalists, as well as the networking which began with lawyers handling similar cases.

The first article Nada did was for the *Ottawa Citizen*, a detailed article by Jack Miller, a very good journalist, very committed to this issue. Then we helped Carol Offe from CBC radio do a series of radio reports on it, for five nights in a row on *The World At Six*: different cases of women who had been refused refugee status. We had begun to get information from lawyers in Toronto who were facing similar problems... [such as] Dulerie's case. (Bronson, ICHRDD interview 1995).

Nada's case specifically demanded that Convention refugee status should apply to women facing female-specific forms of persecution. Still in hiding, Nada did not receive a direct response from the Immigration Minister until December.

As public pressure mounted, Taramati's H&C application was rejected and in October she and her three children were ordered deported for a second time. After press conferences were held, the Immigration Minister agreed to delay deportation in order to review the case and determine whether H&C grounds could be determined. This would not grant her Convention refugee status, but would mark a step in that direction by recognising the abuse she suffered as amounting to persecution, although falling outside the Convention definition. The decision on her case remained pending.

A further gain was made after another Trinidadian woman won an appeal to the Federal Court in November. The claimant fled to Canada with her five children in 1986 after fifteen years of abuse by her husband in Trinidad. She reported that Trinidadian police typically took several hours to respond to her calls and sided with her husband. In 1988 she applied for refugee status. In January 1991 an IRB Appeals Tribunal found a 'credible basis' to her refugee claim, "based on years of violent assaults, rapes and kidnappings at the hands of her estranged husband." However the Justice Department had then appealed the tribunal's decision, arguing the claimant was not fleeing state persecution but domestic violence, and that fear of assault by husband is not fear of persecution. Such women are not a 'social group'. On 11 November 1992 the Federal Court of Appeal overturned the Justice Department's decision, saying the tribunal that heard her case was responsible for determining not those issues but only whether a 'credible basis' to her claim exists, giving her the right to apply for Convention refugee status.

This ruling did not automatically give the claimant refugee status nor did it determine whether women fleeing domestic violence meet the legal criteria for becoming refugees. Tenenhouse, her lawyer, explained: "They did not decide the broader issue of whether she is a member of a social group fearing persecution" (*Montreal Gazette* 11-11-92). However, the decision paved the way for her acceptance on H&C grounds and bolstered the legitimacy of the campaign as a whole. The *Montreal Gazette's* headlines ran: "Victim of spousal abuse can stay: Trinidadian woman's refugee claim 'credible'" (11-11-92). The *Toronto Star* also emphasised that that an 'abused woman' has grounds to apply for refugee status.

Following these examples, other claimants began appealing to the Immigration Minister, typically with the support of women's shelters where they were residing. After becoming involved through Nada and Taramati, NAC propelled the national debate with the slogan: "Make Canada a haven for abused women" (*Montreal Gazette* 30-11-92). The image of Canada as a safe haven for abused women drew upon inroads already made toward understanding domestic violence and the fundamental role of women's shelters in Canada. NAC called upon the government to declare commitment toward abused women in refugee policy by December 6, the third anniversary of the death of 14 women in an anti-feminist attack known as The Montreal Massacre.

By December Nada's story was receiving sympathetic national coverage and support. Advocates were calling explicitly for refugee policy to include sex persecution. Nada's rejection by the IRB, the Appeals court and the Immigration Minister, appeared more outrageous after exceptions had just been made for abused women. In particular the less radical 'public' nature of the persecution Nada claimed she faced, and the well documented treatment of women in Saudi Arabia, made her rejection appear increasingly unacceptable to the public.

Nada was getting prime time news, she was doing radio stations, the Toronto Star and other papers [were picking it up], there were various editorials about it, Michelle Lansburg got on it, the human rights people from the editorialists across the country, all kinds of people, were just outraged that Nada had be refused [refugee status]. (Bronson, ICHRDD interview 1995).

Nada's advocacy network included individuals with organisational backing of extensive influence and a variety of skills described in previous chapters. They negotiated their tasks effectively:

This was something I always found myself explaining at our meetings... "let us do what we are good at. We are not good at some things, and we are very good at other things. You are good at mobilising women's groups; you do that. We are good at writing letters to the Minister; we'll do that. And each compliments the other. I think that is what was so interesting about the way the group of us approached the problem. Everybody did what they were good at and we were all very clear about what it was we were good at. (Bronson, ICHRDD interview 1995).

Lawyers played important mobilising and organising roles. Nada's lawyer explained:

To win a case like that you have to pull strings, to push; anyone who knows anyone calls the person and so you need a network. You hopefully know someone who knows a reporter. You really need all those contacts and as an individual lawyer you can't do that, you just can't, and you have to work in a team. You have to work with human rights groups, women's groups, grassroots organisations. You *have* to do it that way. Which is something I suspected but in that case it revealed itself very clearly. (Cote, interview 1995).

In late December President Broadbent if the ICHRDD wrote an editorial for the *Globe and Mail* and *La Press*. Its impact, as Bronson explains, was profound: “It embarrassed the hell out of the government, they did not know what to respond to it. It was very good.” In a statement to the press Immigration Minister Valcourt responded by justifying the government’s decision in Nada’s case on the grounds of cultural relativism: “I don’t think Canada should unilaterally try to impose its values on the rest of the world. Canada cannot go it alone, we just cannot” (*London Free Press*, 16 January 1993). Accepting Nada would imply condemnation of the laws of Saudi Arabia regarding culturally accepted roles and behaviours of women. Valourt declared:

The laws of general application in countries of the world are not necessarily laws that we in this country would want to promote because of our values but will Canada act as an imperialist country and impose its values on other countries around the world? (*The House*, CBC Radio, 16 January 1993)

Apparently the rhetorical swing which the debate had taken caught the state unprepared. It’s responses were described as repressive, ignorant, and lazy, and ultimately helped mobilise mass public support. Dench from the CCR felt that the radicalisation of policy demands to include sex as a grounds of persecution in the refugee definition may have served “a useful rhetorical purpose”:

Calls for including sex as one of the grounds on which refugee status could be claimed have undoubtedly served a useful rhetorical purpose. It is an easily communicated hook on which to hang demands for reform, demands which if fully spelt out would certainly not fit a newspaper headline or excite an uninitiated public. (Dench, Speech to BC Law School 1994)

As a national umbrella group for immigrant and refugee organisations, the CCR has privileged insight into the activities and political culture of the advocacy community. Dench attributed the surge of interest to individuals within the community having a particular interest in the issue, claimants whose cases were of particular interest to the public, and the widespread perception that government was particularly vulnerable on this issue.

I think certainly in the beginning of 1993 it was clear that this was an issue on which we were winning, under the old Conservative regime of Valcourt. This is something where we were getting a lot of favourable media attention. So if you were in the refugee advocacy community, this was a good vehicle to jump on. And the community that we have is said to be very open... The scope of interest is quite broad. (Dench, CCR interview 1995)

The view that Immigration Minister Bernard Valcourt contributed directly, though “unwittingly” to support for women’s human rights, was widely held among activists. They pointed out over and over again particular instances that were crucial to the movement’s ability to attract favourable media coverage, generate anti-government support, and by

embarrassing the government, constrain its social control options. Public Relations Officer of the ICHRDD, Bronson, explained:

Bernard Valcourt, the Immigration Minister at the time, at one point made a real mistake. He told the *Globe and Mail* and a group of reporters that it would be culturally imperialist for Canada to accept Nada. He said something about Canada not being able to pass judgement on "other countries' cultures". And saying also that Canada would be "flooded" with women refugees. (Bronson, ICHRDD interview 1995).

That the Conservative government was threatened by increasing Canadian malaise, scepticism and cynicism, while national identity was fragile, made the Immigration Minister's potentially racist and sexist responses to questions regarding women's human rights indeed dire. Not only did his comments mobilise women's and immigrant and refugee groups, but also provoked overwhelming public response. Would he stain a great source of Canadian identity and pride, its progressive humanitarian reputation? Would he ignore the rights and recognition won by Canada's feminist movement? Describing the significance of the latter and the profound impact of Valcourt's comments, Dench explained:

It is widely understood [in Canada] that women have rights that are traditionally trampled upon, that violence against women is a problem we have never taken seriously enough, that attitudes need to change. In this context, it is more difficult to get away with patent insensitivity toward the oppression of women... Into this trap fell the Minister of the day, Bernard Valcourt... He contributed immeasurably and no doubt entirely against his will, to the cause of women refugees, by some ill-conceived public remarks... The Minister was taken to task for suggesting that the rights of women are no more than a matter of cultural choice and that we should keep the door open for men, but slam it shut for women, lest too many come. (Dench, Speech to BC Law School 23 March 1994).

Groups responded immediately to Valcourt's statements, several more claimants were in the public eye, and the debate between universal and culturally relative human rights of women was increasingly polarised.

We put out a press release two days later saying that it was "bizarre" that [the government] would say such a thing... And two weeks later Nada was accepted. The heat was just too much... I was told that Bernard Valcourt's fax machine was just running off the hook, women really got angry across the country and started faxing him. (Bronson, ICHRDD interview 1995).

Press releases were also issued by the CCR. Media attention was clearly favourable; the *Globe and Mail* reported: "No plan to accept victims of sex bias" (16 January 1993), and the *Montreal Gazette* wrote: "Consider gender: persecuted women should have refugee status" (25 January 1993). Conceding to public pressure, Valcourt retracted his statements, granted Nada a stay of deportation on H&C grounds, promised to develop policy guidelines to deal with similar cases, to consider whether changing Canada's Immigration Act to include

gender or sex persecution would be an appropriate course of action, and to hold national consultations on women refugee issues for this purpose.

In his press statement Valcourt underscored the influence of Broadbent's editorial advice: "In reaching my decision I took into consideration the comments made by the Honourable Edward Broadbent, President of the International Centre for Human Rights and Democratic Development". Dench (CCR) interpreted public support and the government's reversal in part as one based on the strength of individual cases presented as exceptions to the rule rather than structural representatives: "I guess no one needs to feel that the world as we know it is too seriously threatened when two powerful guys agree to let one faceless, nameless woman remain in Canada" (Speech to BC Law School, 23 March 1994):

In a sense, then, the issue was an uncontroversial one. It piqued the public's interest; it provided a new angle on the popular theme of the incompetence and heartlessness of the reigning government. There was little to threaten the fabric of [Canadian's lives]: it seemed like big government against a small number of largely defenceless harmless women who simply wanted to be allowed to live in Canada...

However, the pattern of provocation, government response, heightened activity and media attention continued even after government reversed its position and promised certain concessions. Activists wanted government not only to make concessions on particular claimants' cases, but to follow through with statements of longer-term intent, namely structural and administrative changes that would affect whole groups of claimants. The media continued to push provocative headlines such as "Is sexual equality a universal value?" (*Montreal Gazette* 15-02-93). Both radical legislative change and the immediate interpretative reform promised by the government, were demanded. NAC president Judy Rebik explained to the press: "When they know it's going to go public and the heat goes on, they stay the deportation, but what about the cases that don't go public?" (*Montreal Gazette* 15-02-93). President Matas of the CCR commented on the inadequacy of the proposed policy guidelines, saying: "All the guidelines in the world won't mean a thing if they are left in the hands of ignorant, sexist, politicised board members who can still do what they like... Sexual equality isn't a Canadian value, it is a universal value. The Minister is dragging his heels over something over which there is no need to drag his heels" (*Montreal Gazette* 15-02-93). Several claimants went public in February and were accepted by the Immigration Minister. And in early March a group of 14 claimants collectively publicised their claims at press conferences in Toronto and Montreal. NAC demanded a moratorium on all pending deportations of gender-persecution claimants until an appropriate determination system could be instated.

In response, government announced a moratorium on deportation of the 14 women, its continued commitment to national Consultations on the issue of including sex

persecution in refugee policy, and the instatement, that month, of policy Guidelines on Women Refugees Fleeing Gender-Related Persecution.

As indicated by the instatement of the Guidelines, it appears that the shift to reform goals combined with extrainsitutional tactics and backed up by radical demands as a bargaining point, described above, was quite effective. Other research has found non-institutional tactics combined with reform goals to be particularly powerful. McAdam's research on the American civil rights movement suggested that this powerful combination hinges on the ability of groups "to master the art of simultaneously playing to a variety of publics, threatening opponents, and pressuring the state, all the while appearing non-threatening and sympathetic to the media and other publics" (1996:344). These were strong characteristics that the network studied indeed portrayed. While pushing radical demands until the final moment, they concurrently pressured the state into immediately implementing the Guidelines and took a strong hand in their subsequent application and revision during the National Consultations that followed.

C. DECLINE AND REGENERATION: MEDIATING BETWEEN IMMEDIATE NEEDS AND LONG-TERM GOALS

What were the considerations behind this shift toward co-operation with government regarding reform rather than radical policy, and to what degree were the Guidelines accepted by supporters as a policy solution? Here we must look at the nature of the Guidelines, to whom it appealed and to what degree.

The Guidelines cut a compromise between radical liberal and conservative perspectives. They were developed in lieu of reopening the 1951 Convention or Canadian Immigration Act to include "gender" or "sex" persecution. Instead, gender as a type of persecution may be "related" to any of the five traditional grounds (rather than just 'social group') through Guidelines that educate and aid decision-makers to provide "gender-inclusive" hearings and evaluations of claims, rather than subsuming refugee experiences under the traditional male model (Turley,1994).

Immigration and Refugee Board "guidelines" were given statutory basis in Canada when amendments to the *Immigration Act* came into force on 1 February 1993. IRB Chairperson Mawani's immediate use board guidelines as a way of addressing female-specific persecution and problems in the hearing room was considered a brilliant strategy by many. It negotiated between competing perspectives on need for, and shape of, policy change. It also made gender-related refugees legitimate in the face of continuing controversy over a relatively brief period of time. The Guidelines' form and principles provided a way of avoiding, to some extent, philosophical issues of cultural relativism and "the condemnation

of wayward states" in determining which women's rights (in which country) are "human rights". They strategically avoid criticism by cultural relativists by not directly condemning sending-countries. Instead, they (a) use the human rights approach in refugee law and determination processes, which is readily extendible to female-specific persecution due to the gender neutral language of the Declaration of Human Rights, and (b) recognise that some states may not have sufficient resources to provide internal protection. The non-obligatory and non-binding nature of the Guidelines also protects Canada's sovereignty. However, adjudicators are obliged to take the Guidelines into account and give well-founded reasons for their decisions, and the Guidelines may be expanded and refined over time.

Agreeing that floodgate theory and cultural relativism are irrelevant, this pragmatic perspective maintains by accepting gender-related refugees Canada acknowledges and exposes the maltreatment of women in many countries, and makes an international statement that women's rights are human rights rather than sexually, culturally, or racially determined.

The Guidelines enjoyed the support of core network constituents, although to differing degrees and with different ideas about their long-term usefulness. In all cases, the fact that supporters worked with individual asylum seekers facing deportation weighed heavily upon strategy choice. Weighing the potential for success corresponding to responses of the external environment (public support, elite sympathy, government position) over time, in conjunction with these policy values, forces a shift in priorities and produces the hierarchy of policy demands represented in Table 8.2. Secondary aspects of the policy core become primary *demands*. 'Near core' aims take on a different time frame and subsequently become second priority. This hierarchy of 'pragmatic' policy values represents values and aims *in order of the emphasis* actors gave them during a particular period of negotiation with government.

Table 8.2 Hierarchy of Pragmatic Policy Values and Policy Demands Of Core Advocacy Network

Pragmatic policy values (shifted emphasis with time factor)	Corresponding policy aims
NEAR CORE with time factor: safe asylum for as many persecuted females as possible as soon as possible	Interpretative/Administrative change: reading gender into existing law
SECONDARY CORE with time factor: safe asylum for all persecuted females, in the medium to long-term	Legislative change: "sex" or "gender" added to the definition of persecution
EXISTING POLICY (no change): safe asylum on a case by case basis existing interpretation of the law	No change: Judicial or Ministerial discretion

What has changed here are essentially expectations about institutional responses within specified time periods, although some activists expressed some scepticism as to whether legislative change would really ever be attainable, or even desirable given a workable

alternative. In all cases, supporters were not willing to sacrifice the priority of asylum seekers' immediate needs for safety under strict time pressure. Actual contact between asylum seekers and supporters helped create a willingness to strategically shift policy goals in relation to the conditions and responses of the external environment. The suggested solution offered immediate implementation for waiting claimants. Shifting from long-term goals (legislative change) to short-term needs (entailing interpretative change), produced policy aims geared toward guaranteeing asylum to the greatest possible range of asylum seekers (types or forms of female-specific persecution) in the shortest possible time.

There were different degrees of support for the Guidelines among advocates. Some accepted the compromise as a short-term solution, and others later abandoned long-term policy aims. In both cases the shift was defended as both strategic and realistic given various goals and constraints. Constraints included time as well as technical and political limitations. The second most important reason for supporting the Guidelines was related to political access and information relating to refugee law. This was indicated by the fact that the strongest support evolved particularly among individuals and groups in a position of knowledge about and access to refugee law, excluding in particular smaller feminist organisations with more service than advocacy orientation.

Main adherents of the Guidelines as a long-term solution included the CCR, ICHRDD, and RAM. They sought to formally harness the law to the needs of women refugees without reopening the 1951 Convention to introduce 'sex persecution', yet transcending the social group category and 'public' forms of persecution. They explained that long-term policy change (re-opening the 1951 Convention) looked highly unlikely, in part because it may endanger other aspects of the refugee definition which would also be open to re-interpretation, with the possibility that established protection mechanisms might be destabilised.¹⁹ Moreover, legally acknowledging sex persecution would challenge receiving-countries to unilaterally accept that violence against women which is 'domestic' in nature is a structural condition and a public issue that is neither culturally relevant nor a question of moral interpretation. These issues could not be resolved in a short period of time. Instead, attention was turned to questions concerning states' basic roles and rights in cases involving recognised characteristics of human rights violations (see Chapter 4). They accepted the Guidelines as sufficient if implemented quickly and appropriately. Williams (RAM) explained:

From a pragmatic point of view, the fact is that the numbers of women and children who are refugees keep increasing every single day, that what would be most helpful would have to be that we will have to find other avenues. And in the meanwhile, one of

¹⁹ Interview with Bronson, ICHRDD; speeches by IRB Chairperson, Mawani,, 1993 and 1994.

them is to use the existing definition as it is, and use it in an enlightened way. (Williams, RAM interview 1995).

Similarly Bronson from the ICHRDD explained:

I think we have been persuaded by everybody, from [the CCR] to [IRB Chairperson] Mawani to the UNHCR that politically it is not a viable option because if you open up the Convention then you will never get another one signed, because of a very general climate of closing down borders and so on. I would certainly be for it but I... can live with "women as a social group" as long as we can have adequate implementation. (Bronson, ICHRDD interview 1995).

Also stressing appropriate implementation, Nada's lawyer observed that the instated Guidelines might make the existing refugee definition work by changing attitudes and understanding: "This reinforces the statement that you did not need to change the law because you could have accepted women before; it was just a way of perceiving reality.» (Cote, interview 1995). Supporters particularly emphasised getting the Guidelines implemented at overseas refugee offices, as for inland status determination.

Advocates who did *not* adopt the same long-term shift in emphasis described the same combination of goals with only *one* major constraint: time. Women's shelters, which typically enjoy less political access and also had less previous knowledge of refugee law, tended to agree on this point. Fernandez, from Women's Aid and NAC commented:

We think the directives of Madame Mawani are very nice, good progress in the world. But to have the real solution we must put another point in the definition of refugee. Within the five points we must add 'gender persecution'... to give power, or rights. To have a law to protect women from gender persecution, so they can [name the] problem and get help. (Fernandez, Women's Aid, NAC, interview 1995).

Groups of this opinion did not believe progressive interpretation and application of the Guidelines would be enough. Interestingly, they tended also to be organisations doing front-line work rather than primarily advocacy work, and which dealt with the particular kinds of refugee women on a day to day basis. They might witness whether the Guidelines were really applied consistently or in a progressive manner by the women with whom they work on a daily basis. Yet women's shelters, and also NAC, also stopped pressuring for radical policy change, as did other secondary supporters, for reasons described in the section below on the second phase of campaigning.

The range of degrees of support for the Guidelines was underlined by a primary commitment to implementing the Guidelines as far as possible, whether in the short or long term. The instatement of the Guidelines was followed by a decline of public actions and an increase in government-nongovernment co-operation. National Gender Consultations also took place, in which each sector was represented. These were arranged between June 1993 and December 1995, first by nongovernment actors and later by government, and involved

asylum seekers, non-governmental advocates and government. They aimed to promote greater "gender inclusivity" (Hathaway,1993) in the refugee determination system.

Co-operation was a goal of the first Consultation organisers, consisting primarily of advocacy network members and represented by the TCMR. Williams from RAM described:

The Consultations were incredible. It was bilingual... [and] set it up in a way that wasn't meant to be confrontational. It was meant to be exploratory. We had people who had lived the experience already, we had advocates, and then we had government people. We all knew what everybody's position was, we didn't want to get in that position where everybody is just defending what they were doing. It was really hoped that people would, through exposure to other views, become more conscience of the issues. (Williams,RAM interview 1995).

The participation of refugees was frequently commented upon as both novel and powerful. Their testimonies were also identified as one of the only real sources of controversy:

Liliana was quite emotional about her experiences at the Board and how bad it had been. Her testimony] was quite long. It was good, it was important, and she needed to do that. But the response was... a sort of rather defensive outburst; it was too bad. But it doesn't surprise me; it is the setting... where it is the NGO community putting [government] on the defensive, criticising the system that is in place, and [where some individuals are] part of that system. And I'm sure [they feel] at times caught because... I'm sure they cared about the issue but these are things that people [in their institution] up until the Guidelines happily didn't think about... (Williams,RAM, interview 1995.)

This controversy describes IRB members "caught" between personal interest and support for the particular claimants, and constraints imposed by the institutions they represent. It also perhaps indicates the importance of 'elite supporters' within these institutions, who worked against institutional constraints and were instrumental in developing and getting support for instatement of the Guidelines. Core supporters repeatedly remarked upon the air of co-operation coming from government sector people. Dench from the CCR described:

... as it turned out a lot of the individuals who were sitting at that table were quite radical in their way, not necessarily taking the defence of government line. So you've got things like the representative of Quebec government putting forth all sorts of ideas and confident that she would not be attributed because what she was saying was not necessarily representing the Quebec government point of view.

Among issues discussed was need for more comprehensive and consistent decision-making through the Guidelines; gender-awareness training of immigration and refugee officers and adjudicators; administrative changes in the refugee hearing room to enable women claimants to be heard (i.e. not letting the husband represent both parties) and encouraging new interpretations of gender-related persecution by developing a body of case law from which lawyers can draw. But by the end of the Consultations no consensus had been reached as to whether the Convention refugee definition should be expanded to include

"gender" or "sex", although the view that "guidelines" were inadequate was prevalent (Turley,1995). Use of Guidelines would need to be monitored.

D. PEAK AND DECLINE OF THE SECOND PHASE: IMPLEMENTING AND EXPANDING THE GUIDELINES

Nearly a year after peak activity in 1993, extrainstitutional actions were sparked by the rejection of what advocates' considered strong refugee claims, and in several cases the repeated rejection of claimants from the first phase who had gone public, were given stays of deportations and promised reviews. The three most publicised cases involved Tamarati, Thérèse (both among the 14 women who had collectively received stay of deportation a year earlier) and Ginette.

These cases brought into question the initial hesitation the proposed policy change had raised: do the Guidelines go far enough? During Consultations between June 1993 and March 1995, neither in depth follow-up or monitoring of cases and court decisions occurred. It was not apparent whether the Guidelines were being applied consistently, whether they could ever be applied to the kind of range of cases that advocates had hoped for, and whether they were sufficient in the depth of their analysis of the structural basis of 'gender-related' claims. After the Final Report from the Consultations (1994) was issued, government stopped calling Steering Group meetings on Gender and Refugee Issues generally.

The peak period in the second phase of activism was markedly different from the first. It corresponded with the perceived breakdown or inadequacy of the Guidelines for its target population or for segments of the population it failed to target. But while returning to non-institutional tactics, campaigns did not return to radical policy demands. The most powerful framing tactics emerged in Taramati's case.

Tamarati's claim was rejected because while awaiting a decision, her previous husband returned to Canada by marrying a Canadian. The woman's shelter where Tamarati resided appealed to Quebec Immigration Minister Lucienne Robillard, saying: "The delay of 7 years [in processing her refugee claim] has been long enough for the ex-husband to apply for refugee status, have a seventh child, be deported back to Trinidad, remarry a Canadian citizen, reapply to Canada and finally be accepted as a permanent resident in our country" (Secours aux Femmes, letter to the Immigration Minister). They compared the rights of persecutors and the persecuted:

To maintain this deportation order would raise the indignation of the Canadian people as they learn that our government gives exile to wife abusers and deports the victims. We are unable to give any credibility to the report from the Immigration services and the population will not be able to give him any credibility. The only message that Canada would hear from coast to coast is that Canada colludes with violent spouses at the detriment of the victims... (Letter to the Immigration Minister, February 1995)

Canada's international responsibility was also questioned: "It would be very embarrassing for our representatives at [the Beijing] conference to be criticized about an unfavorable decision. How will they be able to explain that Canada favors wife abusers? We are convinced that this is not in the best interests of Canada." (Ibid).

However, no demand for radical policy change was made, simply demand for appropriate implementation of the Guidelines. Similarly, Thérèse and Ginette's cases relied primarily on arguing that domestic violence may amount to persecution, in other words attempting to secure consistent application of the Guidelines and expand them across complicated case scenarios.

The absence of radical demands for legislative change may be explained by several factors, most importantly the co-operative stance that government had adopted and which it insisted it still maintained. This helped reduce conflict and controversy. It was accompanied by a new government strategy of conflict avoidance in particular cases, both those that went public during this period and those that made private appeals. By the second phase, the new Liberal government had learned to make neither private responses to particular claimants nor public statements to public demands in the cases studied, until the latest possible moment before deportation. This strategy, seen under the new Immigration Minister Sergio Marchi, reduced conflict by avoiding the media and reducing activists' opportunities to make use of it. Thérèse's lawyer explained:

We went to the press, and the Minister promised to look into the case again, personally. So that looked good. But he waited until the day before her planned departure to tell us «No». So we had remained kind of silent because we (reasoned) we have to collaborate, we have to give him a chance. And he fooled us. He waited until the very last minute so that we would not make too much noise. (Cote, interview 1994).

Thérèse's case ultimately won through public pressure when she re-entered Canada after being detained and rejected at a third country option she had chosen to avoid her country of origin. However the example her case provides of changed government tactics explains some of the heightened disagreement among supporters concerning the use of extrainstitutional tactics, particularly between lawyers and women's shelter workers when cases were lost. Several shelter workers charged that lawyers had waited too long to go public, having too much faith in the state and institutional approaches, and thus lost cases due to lack of public pressure. One lawyer who handled many of the cases, explained: "It was often a process of explaining what you have done, then getting the impression that they don't understand what the work involves, that they doubt me, my competence, thinking that I don't do good work" (Belanger, interview 1995). Nada's lawyer similarly observed:

Nada had a lawyer before [me], a good lawyer who does good work. But sometimes when you lose a case, the client can say it was the lawyer's fault and will want to change. Nada wanted to change lawyers, and she did. (Cote, interview 1995)

It also became apparent by those cases that did go public during this period, that the *effectiveness* of the media strategy was declining, a second change. Only one out of three claimants receiving major publicity during that time had court decisions on their cases overturned by the Immigration Minister. This had been a major concern among many activists: that either media interest would wane, or the public responses and influence upon government would degenerate. Williams from RAM commented she was "concerned that as a strategy for the future it is already suffering from overwork". Media interest did not decrease, as the spate of coverage of Thérèse, Taramati and Ginette's cases indicated, but the nature of its interest and impact changed. This was perhaps an off-shoot of government's new stance and the existence of the Guidelines. Provocative headlines that grabbed public attention in 1993 could no longer be used because further refugee policy change was not being demanded. There was a return to the kinds of headlines seen early on in Dulerie's case, and a refocusing of emphasis on implementation of existing policy rather than a call for policy change.

Other factors may also have been involved in declining influence. In particular, several of the largest and most influential supporting organisations, the ICHRDD, CCR and NAC, were decreasing their involvement. The assistance they continued to offer was primarily information and advice to potential or current activists on how to campaign, although the CCR continued to work more directly in Thérèse's case. Thus, despite significant media attention and the involvement of a large number of previous and new supporting organisations, Ginette ultimately went into hiding to avoid deportation and Tamarati was deported. Only Thérèse was accepted. Perhaps not surprisingly, Thérèse's acceptance occurred just after a major scandal within the ranks of Canada's peace keeping force in Somalia. Canada's humanitarian policies and actions were under intense scrutiny.

Although these cases did not effect further policy change they exert pressure on the IRB to implement, broaden, and revise the Guidelines. But perhaps the greatest pressure for continuing policy reform stemmed from the growth of jurisprudence under the Guidelines, which the following chapter examines.

III. CONCLUSION: THE CENTRALITY OF ASYLUM SEEKERS

We have explored the evolution and implementation of strategies and the context in which they operated, the dynamics between them, and changing relations to the external

environment over the course of the campaigns. In this the integral role of asylum seekers has also emerged. Core to asylum seekers' participation and influence was their presence as both actors in institutional and extra-institutional events, and signifiers of campaign ideals. The latter, most fundamentally entailed aligning human rights with the citizenship rights of women in Canada regarding safety from female-specific violence. Interestingly, both substantive human rights *and citizenship rights* (despite non-citizen status) asylum seekers already enjoyed in Canada supported their capacity to take actions and push out the boundaries of both ideal and substantive rights they *wished* to enjoy. In this the basic messages and tactics of persuasion conveyed through asylum seekers' participation, as actors and signifiers, were crucial to campaign success. Citizenship and human rights of both theoretical and substantive kinds were played off one another to become mutually enhancing.

The aims of campaigners were expressed and achieved both through policy demands and the policy change process itself. They prioritised both asylum seekers' immediate need for safety and their structural representation. When near-core policy aims seemed unlikely to be attained, secondary-core policy aims prioritised immediate need for safety. The shifting strategies advocates used responded to and provoked the external environment. Framing processes *combined* in the campaigns were each provocative and timely in their own way. They responded to and elicited government responses, fuelled anti-government public support, and encouraged speedy instatement of the Guidelines as a short term solution. Near-core demands were an important bargaining tool, but campaigns evolved around a series of individual asylum seekers whose immediate needs were paramount. When government dismissed or repressed demands, advocates polarised the debate further and thus heightened public attention and mobilised anti-government supporters, urging government to take moderate demands more seriously. The co-existence and changing combinations of goals and tactics were both proactive and reactive; they were important strategies in themselves, as the evolving dialogue of conflict and negotiation between the advocacy network and the environment indicates.

STRUCTURE AND SIGNIFIERS

Activists' goals were presented through two simultaneous discursive and ideological frames. The primary vehicles for their expression were a series of at least nineteen claimants 'going public' between 1991 and 1996. This brought many opportunities and needs for public pressure, creating a staggered effect of numerous concentrated actions over a period of time. Each case was fought individually and also referred to a group. Asylum seekers were advocates in their own cases and representatives of the persecuted group. As cases were publicised one after another, pressure mounted.

Asylum seekers appeared both as 'symbols' and 'exceptions', mobilising broad public support. As *symbols*, these asylum seekers represented a structurally persecuted group, thus calling upon Canada's international human rights obligations, drawing attention to structural failures of Canada's refugee regime, and polarising the debate. Arriving from Latin America and South America, the Caribbean, Russia, the Middle East, Eastern Europe, Africa and South-East Asia, they represented a range of forms of structural violence experienced by women around the world. These asylum seekers had exhausted all appropriate institutional channels. They raised the question of whether human rights are universal or culturally relative and put into question Canada's responsibility for upholding human rights dear to Canadians (and subsequently upholding its humanitarian reputation), as well as their corresponding citizenship rights.

On the other hand the public was also mobilised through the reverse tactic. As *exceptions*, these asylum seekers were individuals who against all odds sought asylum in Canada. Thus the acceptance of one or a few was non-threatening (it will not provoke a 'flood' of claimants). This strategy emphasises their individual humanity, drawing upon Canadians' sympathy and upon Canada's beneficent humanitarian reputation and privileged position as an advanced democratic country with ample resources. It is not Canada's obligation to accept them, but its moral conscience.

The campaign kept the issue extremely local and visible by constantly referring to individuals, and to Canada's failure rather than sending-country or sending-culture failures. Making appeals for *individual needs* sometimes entailed framing individual cases as somewhat isolated occurrences in Canada. It played down long-term implications for refugee policy and for future asylum seekers, making humanitarian acceptance of individual cases as non-threatening to Canadians as possible. As Dench (1994) describes: "it seemed like big government against a small number of largely defenceless harmless women who simply wanted to be allowed to live in Canada." Crucial to this approach was the argument that women around the world tend not to have the means or opportunities to seek asylum: no 'floodgates' would be opened either by making exceptions for a few cases, or altering refugee policy or its administration to accommodate their needs. By contrasting the powerful state against the harmlessness of a few women, the campaigns played on Canadians' concurrent anti-government sentiments, "provid[ing] a new angle on the popular theme of the incompetence and heartlessness of the reigning government" (Dench, 1994).

Focusing on individuals gave names, faces and individual stories to the abstract concepts, legal issues and moral dilemmas they represented. It elicited public sympathy *both* on structural grounds and as exceptions to the rule. It appealed to Canadian's who took as basic (a) Canada's humanitarian identity (b) the right of women resident in Canada to be

protected from violence, public or private, with whom these asylum seekers could be equated. Canadian women were invited to compare their own positions, privileges, expectations and fears of violence and their rights to protection, with that of a few stateless women from other cultures who were being denied the same help in Canada. One of the most powerful sources of anti-state sentiment arose as implications for *Canadian* women were emphasised: Canadian women may have rights in Canada, but even they did not have privilege to human rights in the abstract sense. If the right to safety from the kinds of torture and degradation which (for example) battered women experience is not a human right, it is a right at risk in a global society. The sympathy elicited was overwhelming, including not only refugee advocates but women's organisations, politicians, and residents.

These moral and legal arguments represent a fusion of feminism, citizenship and human rights. The combined threats and pressures they evoked were two-fold: domestic public pressure outweighing perceived foreign risks of imperialism as well as Canada's national security (opening floodgates).

SIGNIFYING ACTS: TACTICS AND THEIR EXPRESSION

Having already made claims and been rejected, asylum seekers who went public clearly were worked outside the institutional system, pressuring for inclusion into a system that would need to be radically changed to accommodate them.

Asylum seekers' institutionalised rights to status determination processes and oral hearing were upheld through the Canadian Charter of Rights and Freedoms, and their human rights upheld in refugee policy guidelines status determinations. Institutional tactics supported in different ways by the substantive citizenship and human rights asylum seekers could access, provided building blocks for extra-institutional tactics and demands for policy change involving an inherent equation of ideal citizenship with ideal human rights. This developed the legitimacy of demands and mobilised a wide range of public interest and positive media coverage, creating sufficient domestic pressure to outweigh the risks of policy reform perceived by the state.

Asylum seekers' extra-institutional actions affected by-stander publics. By 'going public' they gave human faces as well as the evidence of their testimonies and strength of their convictions, to the body of claimants they represented. This was crucial for attracting media attention, primarily of a positive kind, polarising the debate, gaining public support and embarrassing government, and constraining social control options of the latter.

OUTCOMES: EXTENT AND CONTEXT

While radical policy change did not result, the policy reform that occurred through institutionalised policy guidelines achieved many of the basic policy aims and ‘policy values’ campaigners began with. Furthermore the ideological change they achieved in the underlying interpretation and application of human rights law in refugee policy was fundamentally radical. It dramatically expanded state responsibilities for human rights protections by blurring traditional notions of the ‘public’ and ‘private’ spheres where persecution occurs. Strategically, demands for radical policy change when supported by the public made acceptance of more moderate policy reform easier for the state to swallow. As one core supporter observed, it was a useful “rhetorical hook” upon which to hang demands for reform. Mediation between radical and reform goals, institutional and extra-institutional actions, played an important role in the nature and extent of influence that asylum seekers and advocates were able to achieve. Not all supporters were equally satisfied with results, but undoubtedly achieved progressive policy change.

The Guidelines cut a compromise between the two key values in the belief system hierarchy: immediate safety for asylum seekers, and policy change reflecting deep core values. The advocacy network tolerated political compromise in accepting shorter-term solutions proposed through the Guidelines, while continuing to challenge and expand the Guidelines.

The Guidelines may thus be better understood through the conflicting forces and grassroots actions shaping them, including the important roles of asylum seekers and the weighting of value priorities when compromises had to be made. In light of these compromises, we may question the extent to which the Guidelines either adequately represent or pave the way for institutional recognition of the particular refugees. Broader implications for *processes* of policy development are suggested in the concluding chapter. The following chapter looks at how the Guidelines have been used by examining gender-related claims and court decisions between 1993 and 1997.

9. SEEING 'SEX PERSECUTION' THROUGH ASYLUM SEEKERS CLAIMS: USE OF THE GUIDELINES, 1993 - 1997

The first battle was over words and it has almost been won.... But if we make the mistake of being satisfied with words that are ultimately not respected, or phantom programs that are not really functional, we will really be no closer to our objective. We must not be satisfied with declarations, we must look at implementation. We must not be satisfied with the Guidelines, we must monitor their impact and be prepared to adjust if need be.
(Bronson, ICHRDD 1994)

With the Guidelines in place, important new channels opened for asylum seekers to shape interpretations of the kinds of persecution females experience. The dual aim of this chapter is to illuminate who is using the Guidelines and to what effect. It assesses how the Guidelines have fared in addressing a range of types of 'gender-related' persecution and complications characteristic of these types of claims; where claims have continued to push out their boundaries; and whether further policy change is warranted. It demonstrates both the use and possible policy implications of institutional claim-making by 'gender-related' asylum seekers, neither of these which have been previously addressed in the literature.

In section I the approach taken in the Guidelines is reviewed and its advantages and drawbacks are considered. A framework is offered through which actual claims and use of the Guidelines may be explored. This framework aims to disclose and elaborate a comprehensive range of case scenarios looking at significant common dimensions of these claims. Section II analyses and uncovers a range of forms and causes of female-specific persecution and factors complicating such cases, drawing upon the case synopses and court decisions on 147 notable "gender-related" refugee claims across Canada between 1993 and 1997.²⁰ This reveals both a typology of actual claims being made, trends in the interpretation and application of the Guidelines, continuing challenges and possible implications. Elaboration of the typology concentrates particularly on the more problematic and complicated aspects of gender-related claims.

Section III concludes with a qualitative assessment of what has been considered one of the main advantages of the Guidelines, its flexible, non-binding nature, against a two-fold criticism of this very characteristic: that it precludes ensuring full and proper implementation, and that it skirts the question of universality - the structural basis of female-specific persecution. The debate comes down to the question of whether it is possible or even sufficient to enumerate over time and through the growth of case law, the multitudinous forms and conditions of female-specific persecution occurring on the basis of race, religion, nationality, political opinion and social group, without the sex-specific category demanded by

²⁰ RefLex (legal database) searched for gender-related claims; See Chapter 2.

campaigners. The use of the social group category as a catch-all for female-specific claims that do not fit the other categories is in question. The effect of claimants' use of the Guidelines in continually challenging ways, as illustrated by the range of types of claims elaborated in Section II, is indicated alongside possible directions for future policy change which claim-making continues to suggest – namely along the same lines campaigners were suggesting before the Guidelines were instated.

I. CANADA'S GUIDELINES FOR WOMEN REFUGEES FEARING GENDER-RELATED PERSECUTION:

A. THE NATURE OF BOARD GUIDELINES

Young (Library of Parliament, research branch) observes that IRB “policy guidelines” are intended to “foster consistency in what is a very decentralised system.” (1994:10, *supra*27). However, they are by nature non-binding and flexible, and as such, both enabling and disillusioning.

As outlined in the IRB Chairpersons memorandum, "Procedures for the Guideline-Making Process --s.65(3) and (4) of the *Immigration Act*", guidelines are enforceable to the extent that: (1) Refugee, Immigration Appeal and Adjudication Divisions Members are expected to "follow the Guidelines unless there are compelling or exceptional reasons for adopting a different analysis"; and (2) "individuals have a right to expect that the Guidelines will be followed unless compelling or exceptional reasons exist for departure from them"; *but* (3) guidelines are *not* binding, "in the sense that Members and Adjudicators may use their discretion in individual cases to follow a different approach where warranted, as long as the reasons for the departure are set out in their reasons for decision."

The *Guidelines for Women Refugees Fearing Gender Related Persecution* adopted under section 65(3) and (4) of the *Immigration Act* thus provide a forum and framework for suggested interpretations of female-specific persecution, and from which adjudicators may depart only for “compelling reasons”. They may also act as *vehicle* through which interpretations and procedural processes regarding gender-related claims are expanded over time. They encourage the accumulation of case law and documentation, and by their flexible nature are easier to amend than legislation, which must pass the approval of Parliament. Thus they remain open to future revisions and may expand in scope and application beyond their original purpose. At the same time, their non-binding nature makes application by refugee hearing officers less predictable and possibly inconsistent. They require the

interpretation of adjudicators who use them, many of whom may not be "gender sensitive", and they require monitoring.

B. CONTENT OF THE GENDER GUIDELINES

Consistent applications of board guidelines is also related to their *content*, which adjudicators may be more or less partial to. Arguments for and against the *Guidelines for Women Refugees Fearing Gender Related Persecution* were presented in chapters 1 and 8. The following elaborates where the Guidelines transcend traditional refugee law as well as relevant proposals for change described in chapter 5.

Under the Guidelines adjudicators are advised to view claims and the Convention refugee definition through a gender-lens. Through them, females whose persecution is tied to the gender-culture of the society in which they live may be recognised as Convention refugees for reasons "related" to their gender. That is, persecution occurring on Convention grounds occurs for reasons related to, or through forms related to, a persons gender. It does not occur *because* a person is female or male, but because of their status and expected *gender-roles* in society, either as related to their race, nationality, political opinion, religion or social group. The question is, how is this 'relatedness' determined?

To answer this question the Guidelines identify broad four categories of persecution women may experience, any of which may be 'related' to the grounds of persecution recognised in the 1951 Convention (race, religion, nationality, political opinion or social group). The four categories below build upon DeNeef's (1984) work and reflect elements of various international level recommendations (presented in Chapter 5). But the Guidelines also take pains to qualify and elaborate the application of these categories in order to encompass 'private' forms of violence. Specifically, they identify nonstate actors as perpetrators, and acts of omission by the state (failing to protect) alongside more traditionally recognised 'acts of commission' (persecution by the state or state actors). Attention is also drawn to 'evidentiary issues' and 'problems in the hearing room', which make evidence and clear information on both the objective and subjective elements of claims problematic for adjudicators to evaluate. Strong emphasis is placed on the need to recognise the general lack of appropriate available documentation on violence against women (rather than using it against claimants) and to make use of historical evidence about trends in both implementation and non-implementation of relevant laws, policies and customs in countries of origin. The four categories of female persecution are:

(1) *Women who fear persecution on the same Convention grounds, and in similar circumstances, as men*: in such cases, "the risk factor is not their sexual status, per se... although the nature of the harm feared and procedural issues at the hearing may vary as a function of the claimant's

gender”. Persecution may take forms related specifically to woman's roles in society, it may take the form of sexual violence, and it may raise difficulties in the hearing room which male refugees do not commonly face. (2) *Women who fear persecution for reasons solely pertaining to kinship*: in such cases “persecution of kin” may occur to pressure women for information about the activities of family members, or because political opinions of their family members have been imputed to them. (3) *Women who fear persecution resulting from certain circumstances of severe discrimination on grounds of gender, or acts of violence either by public authorities or at the hands of private citizens from whose actions the state is unwilling or unable to adequately protect the concerned persons*. In such cases discrimination must be of a “substantially prejudicial nature” and must be imposed “on account of any one, or combination, of the statutory grounds for persecution” (i.e. race, religion, nationality, political opinion, social group). Females may be the target of discriminatory and sometimes persecutory policies and social customs; such policies and customs themselves may amount to persecution to which women are expected to conform. (4) *Women who fear persecution as the consequence for failing to conform to, or for transgressing, certain gender-discriminating religious or customary laws and practices in their own country or origin. Such laws and practices, by singling out women and placing them in a more vulnerable position than men, may create conditions precedent to a gender defined social group*. Here policies and customs may not be persecutory in themselves, only discriminatory, but failure to conform to them brings punishment disproportionate to the crime and amounting to persecution (i.e., decapitation of women accused of adultery in systems where women are not given the means to dispute the accusation, and moreover the punishment for male adulterers is not death).

The 1996 *Update* to the Guidelines emphasises several important elements. First, the aim of the Guidelines is made explicit: to provide a framework for recognising *forms* of gender-related persecution corresponding with Convention categories of persecution, rather than for identifying gender itself as structural *cause* of persecution. Second, greater explanation of the legitimacy of domestic violence and other forms of ‘private’ violence amounting to persecution is provided, relying particularly on the social group category. More broadly, the *Update* addresses change of circumstances in sending-countries, and how cultural, economic and religious factors may affect claimants’ internal flight alternatives (see Mawani,1997). And significantly, it strengthens the use of the social group category as well as positions on state protection for gender-related claims, by drawing on non-gender-related jurisprudence (namely the case of *Canada vs. Ward* 1993; see).

We will examine some of this jurisprudence in order to consider how far the Guidelines’ categorisation of types and causes of female-specific persecution go, in practice, (a) to cover a range of forms of violence against women that *may* amount to persecution, and

(b) to identify structural causes of persecution in a consistent manner, particularly the social group. To do this we will need a basic framework for examining cases.

C. THE SOCIAL STRUCTURE OF FEMALE-SPECIFIC PERSECUTION: FRAMEWORK FOR ANALYSIS OF CLAIMS

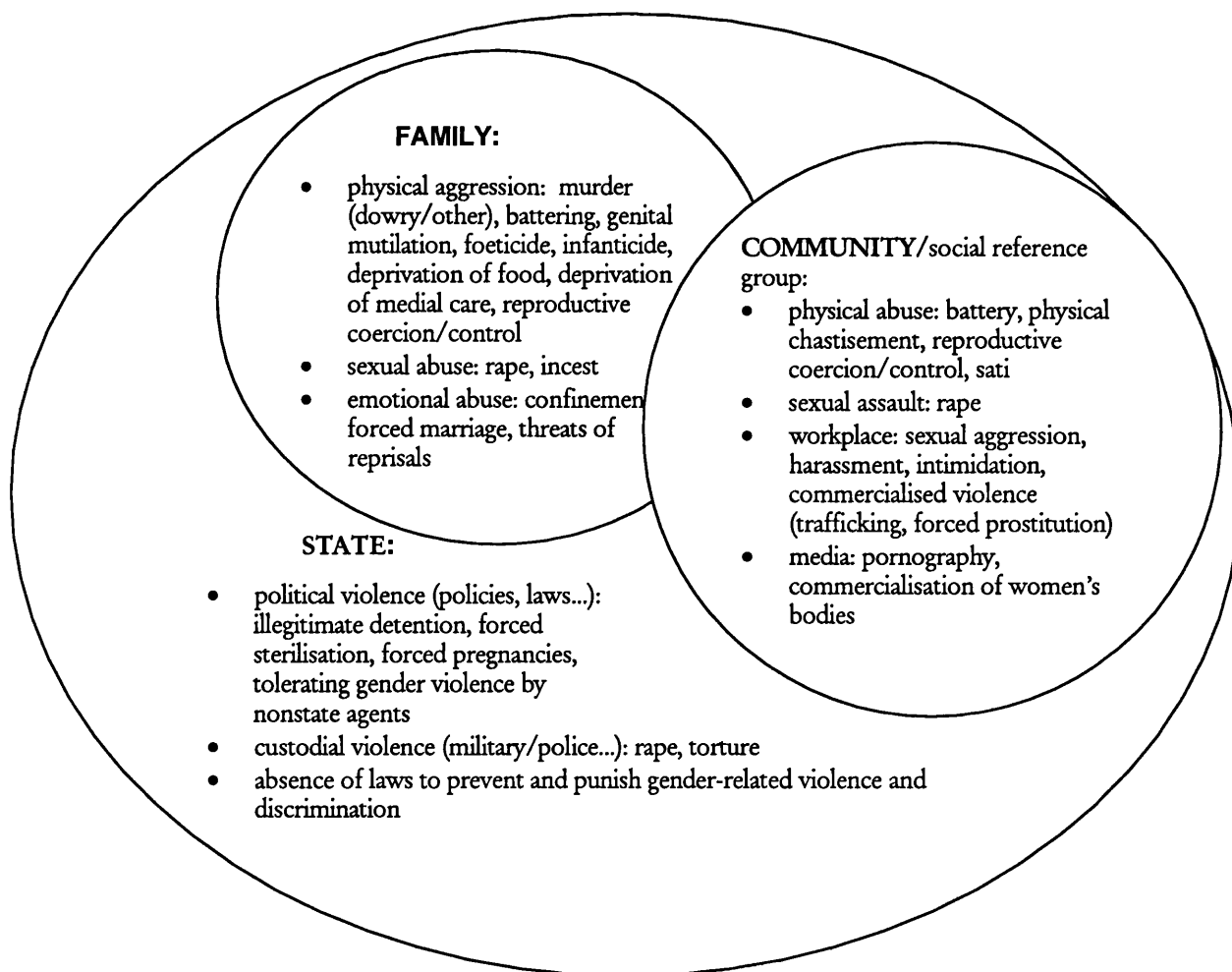
Strangely enough, claims and use of the Guidelines have not been monitored in a detailed manner. We shall now turn to a framework for examining claims in order to determine the nature and range of use of the Guidelines. This framework is informed by the Guidelines and checked against basic criteria of the Convention refugee definition described in Chapter 4: (1) Convention grounds/universality of persecution (2) well-founded fear indicating the individual basis of the persecution (3) absence of internal flight alternatives. The framework was also influenced by details of case scenarios emerging in interviews with specialists and the histories of asylum seekers who engaged in collective actions. These sources helped illuminate why refugees of female-specific persecution may remain 'invisible', and thus enabled the creation of a more realistic framework. Specifically, four inter-related factors may be explored to draw out the range of kinds of claims being made. These are:

(1) *The locale in which the persecution occurs and its manifestation or form.* Contrary to most of the relevant human rights and refugee literature, I do not focus on the distinction between 'public' and 'private' locales and forms of violence against women in order to *overcome* the divide. Rather, I draw from Schuler's helpful categorisation of violence against women which operates by linking three types of 'locus and manifestations' of violence (1992:10). I slightly revise the typology to demonstrate not only the forms of violence against women according to the locales in which they occur, but also the inter-relatedness of these locales. This actually links 'public' and 'private' spheres and forms of violence, as well as linking the state with non-state actors, across all the locales. It presents a broader picture of the social structure of power in which the violence occurs. Figure 9.1 depicts the revised categories schematically.

Schuler explains that "at each point [or locus] key social institutions fulfil critical and interactive functions in defining, legitimating and maintaining the violence." These categories are: *The Family*, which socialises its members to accept hierarchical relations expressed in unequal division of labour between the sexes and power over the allocation of resources. *The Community* (social, economic, religious and cultural institutions), which provides the mechanisms for perpetuating male control over women's sexuality, mobility and labour. *The State*, which legitimises the proprietary rights of men over women and provides a legal basis to the family and the community to perpetuate these relations; the state may enact discriminatory laws and policies or apply laws and policies discriminatorily (Ibid,10).

These general categories are useful because, like the refugee definition, we can not possibly enumerate all *forms* of persecution. Instead they describe a range of kinds of violence against women. However two amendments to Schuler's categories appear in the Figure below. Within the category of "state", the *absence* of laws and policies designed to protect or uphold women's equality to men within society, is included. Regarding the overall framework, the categories are represented in overlapping spheres, rather than lists, with the family and community within the overarching state context, to show their interrelation. Relations between the state, the social sphere in which violence occurs, and the gendered nature of the violence are essential for purposes of locating accountability in refugee status determinations. Of course, as for all refugee claims, for violence of any kind to amount to persecution the fear of it actually occurring must still be well-founded, involving one of the five Convention categories of persecution, and absence of internal flight alternatives.

Figure 9.1 Interrelatedness of Locus and Agent in manifestations of Violence Against Women (Revised from Margaret Schuler, 1992)



(2) *The relation between persecutor and persecuted:* This is most easily depicted using the above locales where violence occurs to indicate relations between persecuted and persecutors

according to their status within and across the locales. For example, a husband may also be a public official with considerable authority to violate the law or prevent his wife from receiving protection, or he may use the laws of his country to justify his behaviour or prevent his wife from leaving (i.e. threatening to use paternal right to custody of their children). Thus various types of family, community, and state relations to the claimant bring with them status, and come to bear both upon manifestation and protection issues, both in the home country *and* in the receiving-country.

(3) *The claimant's role in the persecution against her*: I concentrate neither on the duality of active versus passive claimants, suggested by Heiss (1994) and others, nor that of 'transgression' versus 'conformity' which the Guidelines and previous international policies indicate. Rather, claimant roles in the onset of persecution are described on a scale from *adherence to defiance* of the mores of her society (formal/legal or informal). The middle ground on this scale is defying custom or law solely by seeking asylum and thus evading persecution arising either from adherence or defiance. This scale emphasises first that even adherence is an action; it supports the political norm. Second, it agrees, like other scales, that some social customs and laws targeting women are inherently discriminatory such that adhering to them may amount to persecution, while defying them evokes severe punishment amounting to persecution. Third, the scale highlights women's actions in a more neutral way. 'Transgression' and 'deviance' used in earlier proposals and the Guidelines emphasise the criminality of their actions, rather than the potential criminality of laws or customs being transgressed in a political manner or with political implications.

(4) *The role of the state in the persecution of the particular claimant*: Here I follow the approach taken in the Guidelines but make explicit a scale of relevant state actions, from commission to prevention of female-specific persecution, the middle being protection. This emphasises both direct and indirect state roles: in committing, condoning, turning a blind eye, or lacking the means to prevent or protect women from human rights violations.

(5) *The structural causes of the persecution*: Assessing causes of persecution, Schuler's categories are again useful because they depict the social structure of power relations within which violence occurs. Using the widely accepted definition of "gender violence" put forward by the Asia Pacific Forum on Women, Law and Development (APFWLD), we must consider whether forms of violence in each of the categories can be defined as "any act involving use of force or coercion *with an intent of perpetuating/promoting hierarchical gender relations*". If so, we must then ask if the norm of formal non-discrimination and the principle of gender-inclusivity, as applied by the Guidelines, are sufficient. Non-discrimination provides that females be treated the same as males in being given equal opportunities to make claims, present evidence, and be fairly evaluated in claims of persecution *occurring for the*

same reasons as men. Gender-inclusivity implies that both opportunities and instruments to make and evaluate claims of persecution must be applied to include female-specific experiences rather than using the general male model. Gender-inclusivity as used in the Guidelines does not include female-specific structural causes of persecution, only female-specific *forms* hinging on causes men also experience as outlined in the Convention (race, religion, etc.). In question is the Guidelines' use of the social group category in cases where persecution of men and women does not have an equivalent structural cause, or whether a *sex-specific* interpretation of persecution is warranted. The latter can only be founded upon recognition of the social power structure in which women are subordinated in emotional, physical, economic and sexual ways.

The above categories and their inter-relations will now frame an examination of gender-related claims and court decisions. A range of possible scenarios is elaborated regarding dynamic relations and actions linking claimants, perpetrators and states, indicating how and to what extent the Guidelines have actually been used and who is using them. Because determinations also rely on the perceived credibility of objective and subjective evidence, which as we know raises particular difficulties in gender-related cases, evidentiary and documentation matters are also kept in mind, as the Guidelines suggest.

II. LINKING HOME AND STATE: ANALYSIS OF CLAIMS MADE UNDER THE GUIDELINES

The following illuminates the range of case scenarios *accepted* under the Guidelines, according to the framework outlined above. Part A on Claimants and their Families situates the claimants between the claim-making context and the important relationships in their lives, showing how each informs the other in ways particular to refugees of female-specific persecution. Part B on Actions and Reactions looks at the range of case scenarios on a scale of claimant and state actions and reactions, which link occurrence of persecution to responsibility for its occurrence.

A. CLAIMANTS AND THEIR FAMILIES: RELATIONS AND CLAIM-MAKING

Analysis of cases and court decisions under the Guidelines in terms of the unique situations and issues arising from claimant-family relations in cases of female-specific persecution does two things. By drawing from accepted claims it reveals variables unique to female-specific persecution claims and the extent to which the Guidelines have in practice been applied to account for these unique variables; and it also provides a base for understanding the unique nature of female-specific persecution generally (whether involving family violence or other

forms of female-specific persecution), within the claim-making process, by setting claimants in the context of gendered social relations.

A.1. Claimants and families in types of claims applications: location and applicant status

Most broadly speaking, refugee claims may be made in two ways: from Overseas immigration posts, and from within Canada at Inland immigration posts. Within these two types a refugee must make a claim either as a “principal applicant” (who may or may not sponsor dependants) or as a spouse or “dependent”. The primary difference between PA’s in one category, and spouses and dependants in another, is that refugee claimants of the former kind tell their own story of persecution, and the latter do not. While Canadian practice in

9.1 Percentage distribution of refugees entering Canada as permanent residents, by sex, refugee status and principal versus sponsored applications, 1981 – 1991

	<u>All</u>	<u>Principal Applicant</u>	<u>Sponsored Applicants:</u>	
			<i>Spouse</i>	<i>Dependent</i>
<u>UN Convention refugees</u>				
Women	27%	46%	43%	11%
Men	48%	91%	2%	7%
<u>Designated groups (H&C)</u>				
Women	30%	40%	50%	9%
Men	47%	91%	2%	8%

Source: Boyd 1994

refugee hearings has been shifting in the past few years toward encouraging all asylum seekers to make independent claims if possible (a change which is particularly important for women)²¹, more men than women still tend to be PA’s and to be accepted as Convention refugees generally. Table 9.1 shows that between 1981 and 1991 only 46% of women who were recognised as Convention refugees in Canada were principal applicants, compared with 91% of men. Similarly, in the category of Designated Groups (refugees outside the Convention definition), only 40% of women were accepted as principal applicants compared to 91% of men. And of all refugees accepted into Canada, women formed only 27% of Convention refugees and 30% of designated groups, while their male counterparts comprised 48% and 47% respectively. This may be in large part due to traditional male bias in refugee hearings and interpretations of refugee law, discussed in Chapter four.

Consequently the first question with bearing upon the claimant’s applicancy type, whether inland or overseas, is her marital and family status (Box A.1.). Three scenarios may occur. As a single woman or only with children, she must make her own independent claim.

²¹ As discussed in Chapter 4, on problems in the hearing room. See for example Paul,1989 and Leibich,1989.

A.1. Nexus of family status and applicancy types

1. IN Canada
 - a) claimant arrives alone, as PA
 - b) claimant arrives with family
 - i) as Spouse or Dependent
 - ii) as Principal Applicant
 - c) claimant undergoes change of status after a period of residency
 - i) temporary or illegal, to Spouse or PA
 - ii) Spouse / Dependent to PA
2. OUT of Canada
 - a) independent claim, (PA)
 - b) with family
 - i) as Spouse or Dependent
 - ii) as Principal Applicant

As a married woman or relative of other adult claimants (particularly males), she may either make her own claim or apply as a spouse or dependent (the latter if she is under 18 years). A third scenario arises when the woman undergoes “change of status” from spouse/dependent to principal applicant after a period of residence in Canada.

At present Canada’s Guidelines are applied only to Inland refugee claimants, who are thus the focus here in terms of the nexus between family status and applicancy types. This nexus is important in cases of female-specific persecution, whose claim types and family relations are closely connected in

9.2 Percentage distribution of gender-related refugee claims as Principal Applicants, by time of claim and relation to family members, 1993-1997

<i>PA upon arrival:</i>		
ALL (with or without family)	_____	96.6%
Without adult male family members:	-----	89.8%
With spouse:	-----	6.8%
 <i>PA in change of status:</i>		
ALL (arrival as spouse, dependant, visitor or illegal)	---	4.1%

Source: Analysis of gender-related claims in RefLex

ways not traditionally considered relevant to refugee eligibility, thus raising particular types of issues and situations. Table 9.2 shows that female-specific persecution claims turn the usual relation between family status and applicancy type on its head.

Claimants were Principal Applicants upon arrival in Canada with or without family in 96.6% of cases, while only 4.1% arrived as spouse, dependant, temporary visitor, or illegal entrant and became PA’s in change of status after a period of residency in Canada. PA’s upon arrival without adult male family members comprised 89.8%, and PA’s who arrived with a spouse comprised 6.8%. Claimants may sponsor children and sometimes husbands, or may make joint claims with their husbands. In the latter case the strength of the woman’s female-specific claim may provide the basis for the male’s claim through his relation to her, either in his own independent claim or as a dependent. In all cases the significance of family relations is invoked, either by way of constituting a source of the persecution itself, a supporting structure for the persecution (by community or state), or a failed or unavailable source of traditional protection from the persecution.

Case scenarios may be further elaborated by looking closely at unique aspects of relations between those claiming gender-related persecution, their families, and their PA or sponsored status arising from the three situations described (single, with family, change of status). Such unique aspects include: status and protection issues related to children of

claimants; and status and location of perpetrator/s of the human rights violation against the claimant. The latter is quite unique to female-specific persecution claimants and directly affects the situation of the claimant as well as children, the types of claims they make, and some of the issues and conflicts arising in different case scenarios and the claim-making process, thus it will be addressed first.

A.2. Perpetrators and Claimants: relation, location, status

The relation of the perpetrator/s to the claimant, the location of the perpetrator at the time the claimant applies for refugee status, and the perpetrator's status in relation to public authorities and to non-state sources of protection in the claimant's country of origin, are all important variables raising particular problems in gender-related claims (Box A.2., items 1-3). This is because, first of all, in such cases human rights violators may be members of the claimant's family. Secondly, the status of women in many countries is such that their family and immediate community are their 'world'; their gender-specific roles within the family, community and culture precludes them from participation in many aspects of 'public' life (including paid labour and political participation) whilst removing themselves from family and/or immediate community could result in ostracism or further persecution. Such claimants are often highly dependent upon family and community for survival; if they are abused by the members of their immediate social world, or if they are 'cast out' or not supported for their attempts to remove themselves from proximity to those who abuse them, they may face grave difficulties establishing a new, safer, life.

Thus we must first divide perpetrators into two categories: members of the claimant's immediate 'social world' – family and community – who are thought to share common identity or membership traits; and perpetrators who are 'outside' that immediate world. The latter category includes the perpetrators common in traditional refugee claims, such as opposing ethnic or religious groups. But it also includes agents of the state who enforce legislation that is severely discriminatory against women. However it should be borne in mind that in cases of female-specific persecution by perpetrators from the 'outside' category, often protection traditionally depends upon male family members. Thus the social world of claimants is important in cases involving perpetrators 'outside' the family and community, and is also important in itself, as the location and source of the perpetrators and persecution. For present purposes, I shall focus on the first of the two categories of perpetrators, those 'within' the immediate social world of the claimant, which raises the most unusual difficulties. In all cases, what is at stake is the perceived relation (in evaluations of refugee claims) between perpetrators and state responsibility, which traditionally hinges on the distinction between 'nonstate' and 'state' actors as discussed chapter four. But here the

relation between perpetrators and state responsibility will be discussed in terms of the *location and status* of perpetrators 'within' the immediate social world of the claimant, focusing in all cases on how perpetrators are linked to the state, whether directly or indirectly.

A.2. Perpetrator/s: relation, location, status

1. Relation to claimant
 - a) member of immediate 'social world' of claimant
 - b) 'outside' or further removed from immediate social world of claimant
2. Location at time of claim
 - a) IN Canada (including change of status)
 - b) OUT of Canada
3. Status
 - a) public official (government, military, law or enforcement...)
 - b) kinship or close connection with public officials
 - c) state or religious sanctioned status and behaviour of males toward females generally
 - d) status and behaviour of males toward females generally is unofficially condoned in customary, state, or religious practice

Distinctions must be made within both location and status categories which are complicated in cases involving family or community members as perpetrators. Regarding perpetrators' 'location', personal relationships with the claimant may actually create situations in which perpetrators are in the receiving-country. This raises unique questions and posing

special difficulties in status determinations. Regarding status of perpetrators, both 'official' and 'unofficial' status type, and their inter-relations, need to be considered. They may have status and potential influence in the 'public' realm of state, government and law enforcement authorities either (a) through their own position or (b) connections with others in such positions. Such status can be used to prevent the claimant from receiving state protection in the country of origin. Or they may enjoy a certain status as a men generally, in a context which (c) officially condones or sanctions certain actions by men toward women, or (d) unofficially condones it. In both instances women lack certain rights and are prevented from receiving protection from family or community members (who may indeed ostracise, punish or further persecute her).

The inter-relations between these different aspects of location and status of the perpetrator, and relation to the claimant, are elaborated below taking into account whether the claimant is initially sponsored or is the Principal applicant.

The perpetrator and the female claimant may arrive in Canada *together*, making refugee claims on grounds unrelated to gender persecution, and where the female claimant is sponsored. Domestic violence may have started in the country of origin, where the female claimant had no internal flight alternatives or sources of protection from it, or it may start in the receiving-country, where the female is dependent upon her husband's status to remain in the country. If an independent claim is later made due to change of status (from sponsored to independent) which occurs if the marriage is dissolved, or because the husband withdraws sponsorship to 'punish' the wife he abuses, the female claimant must establish that were she

to return to the country of origin *while the husband remains in Canada*, she would be further persecuted by family, community and/or state. As indicated earlier, only 4.1% of the RefLex cases involved change of status applications. They are however possible and acceptable.

In similar cases in which the perpetrator is ultimately deported or returns to the country of origin, the claimant facing change of status must establish well-founded fear of persecution and lack of protection should she return with him. A good example of this type of situation was demonstrated in the case of a Bulgarian woman and her children, who arrived in Canada together with her husband, but were prevented by the latter from presenting evidence in their own cases. The female claimant was subsequently determined not to be a Convention refugee. When the male later returned to Bulgaria, the hearing was reopened based on the argument that “the claimants had been denied natural justice by being hampered from presenting their evidence by the male claimant.” The new evidence revealed a long history of battering, rapes and death threats by the husband, without recourse to protection “because of the Bulgarian societal attitude that the wife belonged at her husband’s side, no matter what.”²²

In another scenario, a female claimant may arrive with her spouse/family member, but immediately make an independent gender-related claim. In cases of domestic violence, relocation to another country may be used as an opportunity to separate when separating would be impossible or dangerous in the country of origin due for example to cultural expectations. This scenario is not common in the RefLex cases, perhaps because of the claimant’s hopes that the relationship will change and improve once she and her spouse start a ‘new life’ in the receiving-country, and because of the stronghold of cultural pressures upon the claimant to remain with her husband. It may also stem from lack of understanding that a separation could be made in this manner, that women’s rights and protection in the receiving-country are different from those in the home country, and assumptions by immigration officers that women will not make independent claims.

Finally, a female claimant may arrive in the receiving-country *without* her spouse or abusive family member, based on the intent to flee the abusive situation. In the RefLex cases this category was by far the largest. But in some cases the perpetrator actually followed the claimant to the receiving-country, making his own refugee claim or applying as an immigrant. As in any case, the female claimant must establish that persecution would continue in the country of origin through the perpetrator’s connections or because the claimant broke with custom in leaving her husband, and because protection is unavailable. However, in most cases if the claimant arrives alone, the perpetrator/s remain in the country of origin. There

²² T91-01497 and -01498

are abundant examples of this type of situation, with diverse variables in form of persecution and reasons protection is unavailable in the country of origin. Such cases raise questions about the violence being linked to state responsibility and about the availability and accessibility of internal protection or flight alternatives.

For example, one case involved a 60 year old woman who was beaten and harassed by her ex-son in law after he lost custody of his children and his wife left the country. Police in Moldova where the claimant lived failed to intervene, and the claimant was hospitalised as result of attacks. It was determined that protection and internal flight alternatives were not available, and the claimant was granted refugee status.²³ In another case, the claimant argued that she faced forced religious conversion, female genital mutilation, and forced marriage, all arranged by her father, with severe physical repercussions and social ostracisation if she did not comply. Adjudicators found that state and nonstate protection was not available to the claimant in Ghana.²⁴

A.3. Children and Mothers: custody, rights, evidence

Claimants with children may face three issues which complicate claims for both parties, and raise serious questions about rights and protection: 1. child status and protection issues in custody battles; 2. right to family verses right to nationality issues (both mother and child); and 3. conflict or support of evidence regarding persecution of the mother. The first two are particularly inter-related, and are discussed together.

Children of claimants may have been born either in the mothers' country of origin, or in the receiving-country, particularly as female-specific persecution cases sometimes involve delayed claims when domestic violence is involved, as indicated above in change of status situations. In both situations custody issues may arise which could endanger the safety of the children. Right to nationality verses family must be weighed in both situations.

Children *born in the country of origin* may face customary and religious laws concerning the right of paternal custody which may endanger them. This may prevent the mother from seeking internal flight alternatives, and also raise the question of the right of the child to have a mother, and the mother to have a family. For example, an Iranian claimant and her children, being sponsored in Canada by her husband, sought refugee status when he abused them and threatened to have them returned to Iran, where under law child custody would be awarded to his brother. He further threatened to tell Iranian authorities that she was an adulteress so that she would be stoned and flogged, according to the law. The female

²³ A95-00442, February 19, 1996.

²⁴ CRDD V95-00374 21 November 1996. ~33

claimant divorced her husband in Canada and was awarded custody of her children based on his abusive behaviour. Were she not to be allowed to remain in Canada without his sponsorship, “she would have no right to retain custody of her children nor would she have a right to dispute her former husband’s claim that she was an adulteress”. The children were considered to be refugees due to the ability of the father to “enforce his threats and violate their right to be with their mother”²⁵

Custody may be an issue even if not a matter of religious or customary law in the country of origin. Rejection of either the child’s or the mother’s claim may raise the custody issues upon the child’s return to the country of origin (with or without the mother). This was demonstrated in a case where the children’s claims were accepted on the basis of their relationship to their mother, as “the wife of an influential man in the powerful status security apparatus” of Argentina, who had used his position to overturn a custody order, prevented his wife from receiving police protection from death threats, and sent his own armed agents to sexually attack her when she sought a separation from him.²⁶

In cases where children *are born in the receiving-country*, the same custody issues may

- | |
|---|
| <p>A.3. Children and mothers</p> <ol style="list-style-type: none">1. Status and protection issues<ol style="list-style-type: none">a) Children born in country of origin<ol style="list-style-type: none">i) custody issues in country of origin under religious or customary lawii) custody issues due to father’s position of authority in country of originb) Children born in receiving-country<ol style="list-style-type: none">i) custody issues in country of origin (as above) which endanger children if deported with motherii) custody issues in receiving-country which may endanger children if mother is deported2. Rights issues<ol style="list-style-type: none">a) child’s right to nationality verses right to have a motherb) claimant’s right to motherhood and family3. Evidence in children’s case affecting mother’s claim<ol style="list-style-type: none">a) evidence of child abuseb) having children is an infraction of the law or social codec) responsibility for protection of children adds weight to the Principal Applicant’s claim |
|---|

arise if the mother’s claim is rejected and she is deported. On one hand, an abusive husband remaining in the receiving-country could endanger the remaining child. If the husband is in the country of origin, no parent would remain in the receiving-country. If the child accompanies the mother back to the country of origin, parental custody practices may prevail.

²⁵ CRDD T94-00001 to 00004.
²⁶ CRDD T93-12736 to 12738.

Regarding the third situation – conflict or support of evidence between children and mothers’ claims – several scenarios emerge. (a) The child may be traumatised and also abused, supporting the credibility of the mother’s claim of domestic violence (for example). Psychiatric evaluations done in refugee cases involving domestic violence may reinforce the credibility of the mother’s claim. However, in some cases adjudicators have decided that a child has not been sufficiently affected by the abuse of the mother by the father, therefore rejecting the child’s refugee claim. For example, one mother’s refugee claim was accepted on the basis that she had suffered severe abuse throughout her marriage and because her husband was an officer in the Jamaica Defence forces, thus preventing her from receiving police protection. But adjudicators decided that “the fact that the adult claimant had custody of the minor claimants was not a proper basis for determining the latter to be refugees”; a “lack of persecution” was determined in the minors’ cases. Furthermore, it was argued that “evidence did not establish a reasonable chance that, if the minor claimants were to live with the husband, they would be deprived of the adult claimant’s companionship, or suffer psychological harm. The fact that a Canadian custody order gave the husband only supervised access was not considered evidence that the husband would abuse the minor claimants or abscond with them.”²⁷

But interestingly, some case decisions involving claimants with children fleeing domestic violence do not invoke or emphasise custody arguments or the potential danger which the father poses to the children. Rather, some decisions appear to make the assumption that children of battered mothers will be negatively affected and endangered, without psychiatric evaluations or other forms of ‘objective evidence’.²⁸ Such decisions represent an inherently feminist analysis of domestic violence, which not all adjudicators apply. Until such analysis is more well-established in Canada, cases will often invoke child custody and safety issues as argument, or counter-argument, to refugee eligibility.

(b) In some cases, the existence of children may be part of the cause of persecution. Women having children out of wedlock are in some cultures ostracised, persecuted, or refused protection when persecuted for other reasons. In a case that combined all of these elements, an Indian woman was turned out by her family when she became pregnant in an extramarital relationship. She later married a police inspector from Nepal, and acquired Nepalese citizenship. When her husband began to abuse her, she was refused protection through his influence on the police force, as well as because of her status as a woman in Nepal with few rights, and because “women with out-of-wedlock children are regarded as

²⁷ CRDD T95-01010 to 01012.

²⁸ for example, CRDD M 92-09034 to 09036.

immoral and thus are particularly subject to harassment and abuse amounting to persecution.” Support by her own family had already been withdrawn, thus she lacked protection from any source.²⁹

Family planning policies have also been recognised as, potentially, a cause of severe discrimination resulting in persecution, taking the form of forced sterilisation, forced abortion, or severe penalties by both state and society for infractions of the policy. The ground-breaking case of *Cheung vs M.E.I.* in 1994 overturned the Refugee Division’s previous decision that China’s one-child policy was a law of general application which could not therefore constitute persecution in individual cases. The Federal court’s ruling concerned the case of a woman who after having one child, became pregnant three times and each time was forced to abort. On her fourth pregnancy, she went into hiding and gave birth. Subsequently, the Family Planning Bureau took the claimant away to be sterilised. She fled to her in-laws, became pregnant again, and underwent another abortion before coming to Canada, where it was determined that were she to return to China she would most certainly face forced sterilisation.³⁰

(c) The presence of a child may bring added weight to the principal applicant’s claim through the added responsibility of protecting a child. For example a Somali woman was found to be a Convention refugee “as a national of Somalia, a member of the Ogaden tribe and a single female responsible for the welfare of three young children”. She was subject to clan-directed violence in the context of a civil war, she was a woman without traditional male protection, at risk of rape by opposing clans as “an attack on the manhood of all the men in her clan”.³¹ In another case, a male applicant from Afghanistan was found to be a Convention refugee because “the potential suffering of the [claimant’s] wife and daughter, the very real threat of rape, is still very relevant to the separate issue of whether the [claimant] would undergo undue hardship in making his way north and availing himself of [an internal flight alternative]”³²

B. ACTIONS AND REACTIONS:

B.1. Claimant Activism: from defiance to adherence

The roles claimants themselves play in the occurrence of the persecution is circumscribed by manifestations of the sexual hierarchy in which she lives and the social expectations it

²⁹ CRDD M93-09655.

³⁰ *Cheung, Ting Ting and M.E.I.* (F.C.A, no. A-785-91).

³¹ CRDD V94-00024 to 00027.

³² FCTD, no. IMM-2331-96.

imposes upon her as a woman. This links persecution to different social spheres (private/family to public/state) through the claimants perceived degree of activism. In any of these spheres, a woman may *defy* or *adhere* to expected legal or social customs. The middle ground between defiance and adherence applies to women whose attempts or wishes to defy social political custom are thwarted by the *threat* of persecution – which may lead directly to asylum seeking. Another situation occurs when the actions or political opinions of political dissidents are imputed to the claimant because of familial relation, rather than opinions or actions of her own, or when a woman is targeted for persecution by nonstate actors simply for being female (i.e. rape as an act of ethnic cleansing). In all cases, seeking asylum is a further political act. Thus even in cases of ‘adherence’ the refugee makes a bold political statement, which indeed may provoke further persecution if her claim is rejected and she is returned to the country of origin.

Cases involving *defiance* are more clearly political according to traditional applications of refugee law (see chapter 4). Dress code infraction resulting in persecution was among the first type of political act particular to women to be recognised as such in Canada (*Inciyan, Zeyiye v. M.E.I.* 1987). In the RefLex database, for example, were two Pakistani claimants of different faiths were determined to be refugees based on threat of persecution in response to

- B.1. Claimant activism**
1. Defiance of cultural, religious, and/or state sanctioned norms regarding social roles and behaviours
 - persecuted by family, community, and /or state
 2. Adherence to cultural, religious and/or state sanctioned norms that are inherently discriminatory and persecutory. In some cases, claimants have been prevented, by threat of persecution, from defying cultural, religious and/or state sanctioned norms, or from receiving protection from inherently persecutory norms
 - persecuted by family, community, and /or state
 3. Familial relation to political activist, resulting in political opinions being imputed to the claimant
 - persecuted by family, community, and /or state

their marriage; a fatwah had been pronounced against them, which could only be retracted if the male claimant, a Catholic, converted to Islam within three months.³³ And in a more traditionally political case, a Bangladeshi woman was accepted as a refugee based on her career as an educator, an activist for women’s rights, and an opponent of fundamentalism. Because of her political views and actions, she was abused by her husband, refused protection by police, and denounced by the state by way of fatwa.³⁴

Some claimants see *adherence* to cultural, religious and/or state sanctioned norms as persecution; for example this may include forced marriages and customary forcible female

³³ U95-04967, U95-04968, U95-04967. June 11, 1997.

³⁴ M94-04037, February 28, 1995.

genital mutilation. One case involving both of these forms of persecution occurred when a woman from Ghana opposed an arranged marriage as well as the religious conversion and female circumcision which were to be undertaken before the wedding. Her father, who made the arrangements, beat her for refusing, while the police and government refused to intervene for her protection. The claimant fled to Canada, was married to another, and was granted refugee status under evidence that were she to return to Ghana her father would force her to proceed with the arrangements, “or injure or kill her if the intended groom called off the wedding”.³⁵

In cases of imputed political opinion, familial relations, whether the claimant is male or female, may incite persecution. In cases of females, however, persecution often assumes forms of sexual torture. One case involved a Chinese woman who, although not in breach of China’s one-child policy, was threatened with forced sterilisation as an indirect method of punishing her husband, who had gone into hiding when the Public Security Bureau began searching for him due to his involvement with the pro-democracy movement.³⁶

B.2. State role in persecution, from commission to prevention

State responsibility for persecution ranging from proactive commission, to failure to provide protection, to failure to prevent persecution, is well represented in cases studied. Both ‘public’ and ‘private’ (not traditionally linked to state responsibility) forms of persecution appear in the cases. In all cases the crux of the issue and weight of the claim lay less in who the perpetrator is or where persecution occurs but whether protection is available.

(1) Active government enforcement of legislation that severely discriminates against females and imposes severe sanctions for infringements of the law obviously precludes government protection. In such cases, evidence may be sought as to regional variations in enforcement of the law or conditions under which infractions of the law are permitted, for example under the permission of male family members.

B.2. State role in persecution: commission to prevention

1. active enforcement of government legislation which severely discriminates against females and imposes severe sanctions for transgressions of these laws
2. government legislation (as above) which is not actively or regularly enforced, or no legislation. In either case, however, unofficial cultural codes and enforcement of such codes by family and community may exist, alongside lack of state protection
3. state unwillingness or inability to enforce legislation banning social practices which severely discriminate against females, or prevent or protect females from such practices as upheld in society
4. palliative and pro-active or preventative government policy, to different extents, which are enforced or implemented to different extents.

³⁵ V95-00374. November 21, 1996 .

³⁶ U92-06664. August 9, 1994.

In the latter situation, judgement is deferred from state to male heads of households. However community members may still so disagree with behavioural transgression allowed by male relatives that normal life is made impossible for the female claimant, and potentially for her family as well. Claims in which violence is clearly sanctioned by the state have encountered the least resistance being recognised as 'political' and qualifying for refugee eligibility. For example, a claimant who had been sentenced to "20 lashes for not fully complying with the Iranian dress code", and again for meeting secretly with her boyfriend, finally fled her country when her father (a member of the Komiteh) ordered that her chastity be confirmed by a government examiner. The severe penalties imposed by the state for non-compliance with the Shariah law was determined to be "cruel and unusual punishment" amounting to persecution.³⁷

(2) Discriminatory government legislation may not be actively enforced or may not exist, but nevertheless discriminatory practices are upheld in society, and even condoned by the state. Cases of 'dowry abuse' fall into this category, where in India the dowry practices have been banned by the government but thrive in society. Cases where state involvement is more questionable, are more difficult to prove. For example, a claimant from Yeman who claimed persecution for infraction of the Islamic dress code was rejected because the court determined that "as the dress code was not imposed by law in Yemen, the female claimant would not have faced any legal sanctions for failing to observe it, and any harassment which she might have faced would not have amounted to persecution". If the claimant had shown that "harassment" by community and/or family would amount to persecution, against which the state would not provide protection, then positive decision may have been rendered.

(3) and (4). The existence of pro-active or preventative government policy against violence or discrimination against women must be weighed against its actual implementation, which may change over time, or evidence of which may change over time. For example, in October 1996 a negative decision was rendered in a case involving domestic violence against a woman from Ecuador who, it was determined, could make use of a recently instated "Law Concerning Violence Against Women and Families". The court stated that "while not perfect, the law was being implemented, and changed the position of abused women in Ecuador."³⁸ Before this law was instated, only a year earlier, Ecuadorians making similar claims were being accepted. In contrast, cases from Ghana established that a government ban on Female Genital Mutilation was not being enforced at the time claims were made.³⁹

³⁷ V94-01847, June 21, 1996.

³⁸ U95-04292, October 2, 1996.

³⁹ V95-00374, November 21, 1996.

III. FROM FORMS TO CAUSES: RANGE AND STRUCTURAL REPRESENTATION

We may now consider whether decision-makers use consistent reasoning in determining the structural basis of persecution. This concludes the chapter by considering the range of case scenarios already illuminated as an indicator of the Guidelines' flexibility and of *possible* types of claims that can be (and are being) made. We take a broader look at trends in claims regarding the underlying social structure of persecution in particularly problematic and numerous forms of persecution in the 'notable' cases analysed. This leads to an analysis of both positive and negative decisions on claims within the particularly controversial 'social group' category of structural causes used to explain particular forms of persecution. We are then able to indicate advantages and difficulties of the 'gender-related' approach, and suggest that other policy alternatives might still be warranted.

The range of case scenarios drawing on the Guidelines and receiving positive decisions, illuminated above, clearly crosses family, community, and state dimensions regarding locus, agent, and manifestation of *forms* of violence against women that may amount to persecution. In all instances, lack of protection by, and linkages between, the three *locus* dimensions are crucial to proving well-founded fear of persecution, individuality and universality of the persecution, and lack of internal flight alternatives (the broad requirements of refugee eligibility). The range of cases examined thus indicate that in the first four years since instatement, the Guidelines have proven flexible and have been broadly implemented to significantly and adequately encompass a range of forms of violence against women. The cases analysed were particularly useful for exposing such a range because they are drawn from a legal database of notable cases from different Provincial IRB branches across Canada. The RefLex cases analysed are not only notable cases generally, but also contained 20 claims made at Federal Trials and Federal Appeals levels. The RefLex cases are a particularly significant body of case-law, moreover comprising approximately 7% of all gender-related claims made in Canada during between 1993 and 1997. On this basis we can conclude that claims made have expanded the interpretation and application of the Guidelines along a number of dimensions not explicitly excluded from the Guidelines, but left to elaboration in practice.

On the other hand the above analysis can not indicate whether or not the Guidelines are being applied *consistently* across the kinds of case scenarios discussed above. Those described were based on positive decisions, indicating the range of *possible* types of claims that are being accepted in Canada. However each claim must be judged on its own merits, not according to fitting a particular 'type'; i.e., a claimant may still have low credibility, her information may not be adequately substantiated, or internal flight alternatives may actually be found. Although case precedents are important, lawyers will not always be aware of them

or be sufficiently able to draw upon them to argue a particular case. Thus in practice the case scenarios described *may* result in negative decisions. Moreover, it is difficult if not impossible to assess whether negative decisions are made on justified or unjustified grounds, in part because adjudicators always attempt to *justify* their reasons for decisions. We *can* however now look at both positive and negative decisions on cases involving particular *causes* of persecution into which particular *forms* tend to fall. This provides qualitative analysis of overarching trends in complications and difficulties that tend to arise and which may negatively affect consistent decision-making.

Based on the average numbers of positive and negative decisions made on gender-related claims in Canada yearly, there is not sufficient reason to strongly suspect that the Guidelines are not being implemented at least to a basic level, nor that they are being abused by claimants making bogus claims. The total number of gender-related claims finalised by the IRB in an average year altogether comprise less than 2% of all refugee claims in Canada (Mawani,1997), clearly not a 'flood' of claims as initially feared but also constituting a sizeable number of individuals seeking protection. Since the Guidelines' instatement approximately 1200 gender-related claims have been identified by the IRB up to 1997 (Mawani,1997). The acceptance rate for *all* gender-related claims in Canada has remained on par with average acceptances of refugees generally in Canada, that is, about 60% (Mawani,1997).

This however does not tell us whether the majority of claims being accepted are of particular kinds, while others tend to be rejected. Having looked at the range of forms that *may* be accepted among claims that are regarded as 'notable', one of the most striking trends is the enumeration of 'particular social group' categories to explain the causes of forms of persecution not traditionally recognised. This was reflected in the RefLex cases where 99 of the 147 cases, or about 67%, invoked the social group category as a cause of persecution. Of these, again approximately 60% were accepted. But additionally, through the use of the social group category we have seen perhaps the greatest area of expansion in interpretation and application of the Guidelines, namely recognition of cases involving forms of family violence. Indeed, the 1996 *Update* explicitly identified domestic violence as a type of persecution by 'private' or nonstate actors (*Update*, section I.3). Previously violence "at the hands of private citizens" was left open to interpretation.

IRB Chairperson Mawani explains that "the *Update* was necessitated by the volume of jurisprudence that has emerged in the field of gender-related claims and also by the experience we have gained with such claims since the issuance of the original *Guidelines*" (Mawani,1997). This appears to have been true in the case of family violence related claims, which in themselves constituted at least 33% of the RefLex cases and 54% of all RefLex cases invoking Social Group before the *Update* was enacted. The fact that these are 'notable'

cases suggests these types of claims and/or the decisions on them were considered to contain new elements (see Table 2.2, Chapter 2). Of these notable cases, approximately 56% were accepted, all invoking the social group category.

Complicating this analysis is the fact that, unlike the definition of family or 'domestic' violence typically accepted by Western cultures indicating spousal or partner abuse, the RefLex refugee claims involve violence by family members other than spouses (i.e. parents, in-laws and even brothers). Therefore violence is often linked to specific causes of persecution not always associated with domestic violence as commonly understood in Western cultures, for example family violence resulting from dowry customs associated with religious practices. Such a case therefore invokes both social group and religious persecution categories. Almost all family violence cases in the RefLex database commonly describe women *of a particular race, religion, or ethnicity* as comprising a 'particular social group'. Without these added dimensions, the social group category fails. This, in addition to elaborating the range of possible sending-countries (through evidence of persecution on a country-by-country basis) and further forging a link between gender-related persecution and nationality, race, ethnicity, religion or political opinion in particular countries (where politicised ideas about cultural relativism come into play for many adjudicators), is not only tedious but creates an incredibly diverse and complex range of possible types of 'social groups'. It also means that the percentage rate of domestic violence cases invoking social group (above) necessarily overlaps with the percentage rates of the other structural causes of persecution (race, religion, etc.).

The most common grounds for persecution associated with social group and family violence in the cases examined were nationality and race/ethnicity. Each case of family violence set a precedent *according to the country or culture from which claimants arrive*. While a similar method of setting precedents and applying them (i.e. by country) occurs in other (non-gender-related) types of claims as human rights violations are first discovered and documented, it may be more the case that some claims occur across a narrower range of sending-countries – for example Kurdish refugees, or even (in the case of gender-related claims) those involving defiance of the dress code limited to Islamic countries. In contrast, domestic violence is endemic to the majority of countries and cultures while the majority of states have not developed or adequately implemented programs or policies to curb it. This results in a huge range of possible scenarios for family violence amounting to persecution which need to set precedents on a country-by-country basis, and even then must be monitored to reflect changing conditions for women in different countries over time.

A few examples of the tremendous range and ambiguity of the social group category (including cases of family violence as well as those involving other forms) illustrate this point.

Looking only at social group cases receiving positive decisions (60 positive, 28 negative, excluding Federal court decisions), ‘social group’ has been described variously as: “unwed mothers in China who have two children” (in the case of a woman facing forced sterilisation for transgressing the one-child policy; CRDD V94-01287); “Westernized Tajik women in a society moving towards Islamic orthodoxy, with no male protection” (CRDD V T93-04176); “Ecuadorian women subject to wife abuse” (CRDD U92-08714); “Ghanian women subject to forced marriage” (CRDD V95-00374); and “Sikh women fearing police harassment who cannot obtain state protection” (CRDD U95-02138). Although rare, several cases do emerge in which the named social group is simply “women” (i.e. CRDD T91-01497; T94-00416). Most commonly, women form a social group based on a particularly nationality (i.e. “Syrian women”, CRDD T-93-11934).

An additional indicator of complexities arising from the social group category, and also through cases of domestic violence invoking the social group category, is the disproportionate number of these types of claims that reached Federal Trial and Federal Appeal levels, out of all possible types. Nine out of twenty involved domestic violence, and twelve out of twenty invoked the social group category.

The overarching implication of the social group system for classifying causes of persecution in female-specific forms is that women are *not* typically treated as a ‘social group’ in themselves – only relative to their particular location and structural identity other than gender or sex. Public and private persecution, where the state fails to protect, must occur on the grounds of one’s race, religion, nationality, political opinion, or membership in a particular social group. In these categories persecution may take female-specific forms reflecting the condition of women in society, often defined by their “gender-roles”, which states may condone, ignore or uphold. Sex persecution is therefore considered culturally relative as any *occurrence* of persecution is. But it is unlike, for example, the ahistorical vision which we understand of the other categories because it does not recognise causes of persecution resulting from the structural basis of women’s inequality as rooted in their sex and the gender-role conceptions *framed around sex*, in the same way that (for example) the structural basis of racial inequality and corresponding persecution is rooted in racial stereotypes framed around *race*.⁴⁰

This points toward the need for a different structural framework as basis for decision-making. An argument can be made for a more explicit category of persecution

⁴⁰ Another way of stating the obvious is that society does not impose feminine gender roles upon males or masculine gender role upon females; gender roles are assigned according to *sex*.

specific to sex, which will not skirt the question of universality, while maintaining the rigour of individuality in status determination processes. While undeniably useful, the social group category is remains problematic not only because of its ambiguity but because it perpetuates misconceptions about *some types* of female-specific persecution. It is the only one of the five Convention categories of persecution which applies to gender-specific structural *causes* of persecution, rather than forms. Its success stems from the fact that emphasis tends to be put on the question of protection mechanisms in the country of origin, rather than the nature of the persecution itself.

The social group category actually skirts the question of universality, and is in danger of becoming a catch-all category for all sorts of forms of female-specific persecution whose causes can not be adequately explained on other Convention grounds. It has served as a safety net for many *forms* of persecution to be recognised, particularly domestic violence, while obscuring the primary cause of the persecution in some of those cases. In this sense the Guidelines' 'gender-inclusive' approach is insufficient, because it operates within the confines of pre-established grounds (or causes) of persecution and thus is most helpful for recognising the *forms* rather than the *causes* of persecution particular to females.

The "gender related" guidelines reflect the conflict between culture and universality by failing to distinguish adequately between enumerated categories of persecution specific to females but occurring for the same reasons as male persecution (race, religion, nationality, political opinion, social group), and a sex-specific category of universal persecution unrelated to the other grounds of persecution men experience and can not be squeezed into the pre-existing "social group" category. This suggests that a two-tier framework may be in order.

Such a framework would recognise 'gender-related' forms of persecution linked to the five stated causes of persecution in the Convention definition, making the gender aspect a secondary aspect of the claim (it exacerbates vulnerability, danger or lack of protection, or is manifested in specific forms of persecution) as the Guidelines do presently. It would also be *sex-specific*, creating a sixth category of persecution to absorb those claims based *primarily* on sexual status in society. This second tier is based on structural inequalities imposed by society *because of sex*, whereas the first is more an expanded field of vision of state responsibility for 'private' forms of persecution and for failing to protect in many types of cases not *necessarily* involving gender defined social groups, but certainly encompassing them.

Like campaigners in this study, a number of international law specialists have advocated that 'sex' be included in the 1951 Convention definition of refugee (for example Shenke,1996). The sex specific approach suggested here differs from previous proposals in not trying to include all *forms* of female-specific persecution under one universal ground of persecution. Rather, its strength is in distinguishing between those forms which can be

adequately covered on the other Convention grounds, as the Guidelines suggest, and those which can not.

Such a distinction can clearly be made by examining the challenging new twists that have been emerging in claims made through the Guidelines, as this chapter has done. These have not been evaluated quantitatively but qualitatively, as it is not the numbers of persecuted individuals that should determine whether asylum is granted or on what basis, but more simply the existence of persecution and lack of protection in sending-countries. The institutionalised process of claim-making in refugee status determination systems offers a channel through which foreign-nationals and stateless persons can incrementally challenge and change how we think about *natural* rights and corresponding state and interstate responsibilities. This is one possible implication of national refugee systems and asylum seeking processes which has been long overlooked, despite the recognised significance of refugee case-law for generating and altering refugee membership criteria. Jurisprudence can be a driving force behind refugee policy development, as Chapter 4 indicated and the evidence in this chapter suggests, although to different extents in countries with different legal traditions. In Canada, as IRB Chairperson Mawani herself observed, gender-related refugee jurisprudence was key to the evolution of refugee policy and administration. Subsequently, not only can ideas and values corresponding to individual/group rights and state responsibilities be challenged through asylum seeking processes; as well, despite asylum seekers' noncitizen status, they can challenge refugee policy and its application.

We shall now consider, in the Concluding chapter, the overarching implications of the institutional and extra-institutional means, and the dual foundations of citizenship and human rights ideals and institutions, through which asylum seekers managed to challenge refugee policy and policy-making in Canada.

PART III.
CONCLUSION

**ASYLUM SEEKERS' CHALLENGE TO POLICY AND POLICY-MAKING:
HUMAN RIGHTS, CITIZENSHIP AND SOCIAL POLICY**

Asylum seekers' challenge to refugee policy and policy development in Canada reflects changing relationships between groups and states in a global system – where the parameters of citizenship and state sovereignty can no longer prevent or adequately control noncitizens making successful claims upon states for the benefits of membership. Instead, various forms of identity driven politics are increasingly finding opportunities and means to push out the boundaries of state responsibility, with implications for policy and policy-making.

The previous chapters unravelled the relationships between theory, opportunity and practice shaping interpretations of persecution and refugee status eligibility, and subsequently shaping state responsibilities for *female-specific* persecution. Dynamics of these relationships set structural barriers against female claimants, and also opportunities for overcoming them. The study illuminated the international and Canadian structural contexts and how asylum seekers in the study actually navigated and influenced the developing dynamic between them.

These asylum seekers had access to a range of rights, resources and political opportunities at national and international levels, enabling them to challenge Canadian policy through both institutional and extra-institutional means. The rights they drew upon included citizenship and human rights of formal and substantive kinds in an interesting dialectic between institutionalised norms, codes and practices that were at times conflictual and at times mutually supportive. These rights constituted the basis of policy advocates' strategic *framing tactics*, providing legal and moral legitimacy to their claims. They also provided claimants authorised and informal access to a variety of resources or *mobilising structures* necessary to push their claims forward. Among crucial resources they could access were those institutionalised in status determination processes, and those stemming from the extra-institutional interest and capacity of a range of influential individuals and organisations in Canada who formed a necessary structure of support. Rights and resources could be best put to use given favourable *political opportunities*. These included a refugee system with a strong humanitarian reputation that was nevertheless unable to efficiently manage claims, and a domestic political environment vulnerable to public dissent, particularly regarding the women's rights issues represented in these asylum seekers' claims. Canada was facing its own identity crisis, involving multicultural and global dimensions. These asylum seekers' claims cast Canada's humanitarian and women's rights reputation into conflict and threatened to undermine both if female-specific persecution was not recognised as a state responsibility.

We saw how women facing deportation exhausted institutional avenues and how they used extra-institutional tactics – going public – to mobilise public support for radical policy demands, namely to change Canada’s use of the internationally standard setting 1951 UN Convention definition of refugees. As negative decisions on their claims were institutionally overturned in what were first portrayed as exceptional cases, examples were set which raised expectations about decisions on similar cases, even before the law was changed to provide a framework for such decisions. When the *Guidelines for Women Refugees Fearing Gender-Related Persecution* came into effect, claim-making further tested their flexibility and application, sometimes resulting in further extra-institutional actions being taken and ultimately encouraging revision of the Guidelines in 1996. Examination of a legal database of gender-related claims and court decisions suggested further policy change explicitly recognising ‘sex persecution’ might be warranted.

The asylum seekers studied acted not solely upon need (as ‘forced migrants’) but as actors seeking alternatives, weighing the risks associated with political action in the receiving-country, and making decisions. They not only made use of political opportunities, but also helped shape them. They influenced the internal political culture of the core advocacy network by mobilising participants and affecting policy aims. They were integral to the success of public pressure tactics to influence government. Many engaged directly with the media; they acted as both ‘symbols’ of structural persecution and ‘exceptions’ to asylum seeking trends. They helped bridge the gap between the public understanding of women’s citizenship rights in Canada and human rights globally. They also shaped policy strategies, which shifted over time. The *Guidelines* were in fact a compromise, targeting the greatest range of asylum seekers possible within *the shortest time possible*, rather than ensuring coverage for all possible types of female-specific persecution. By helping to shape policy these asylum seekers helped shape the structural context of asylum seeking.

All these aspects illustrate that asylum seekers can play explicitly political roles in the policy change process. These asylum seekers helped shape their own eligibility criteria for membership in Canada and international rights to protection, demonstrating that *noncitizens* can help influence national policy. Moreover, the ways these noncitizens shaped access to rights invoked ‘rights to membership’ through residence and human rights, ultimately altering the nature and justification of state responsibilities for the welfare of citizens and non-citizens alike. At the time of the campaigns, significant expansions in state responsibilities for human rights were widely recognised in international law. But asylum seekers’ roles in policy-making processes and the ways they invoked not only human rights but also citizenship have been illuminated and explained for the first time in this study. This successful case challenges existing theory that excludes asylum seeking noncitizens from

policy processes, and further illuminates why and how these particular noncitizens were able to participate and influence policy.

It is apparent that these asylum seekers could not have 'done it alone'. Their participation and influence was enabled by previous international developments in relevant policies and human rights discourses, alongside the salience of women's rights ideologies and increasing opportunities to migrate and reside in host countries while seeking refugee status. It was also enabled by the unique Canadian context for asylum seeking and political dissent, and by Canadian residents explicit support. Globalisation affected all of these dimensions, increasing the interaction between national and international levels, culturally-specific and universal rights, and changing the dynamic between them regarding inter-state protection. It is also clear that the asylum seeking process and the unusually explicit challenge asylum seekers faced and posed was a grave matter. Asylum seekers were indeed 'desperate' and often traumatised by their experiences of persecution. But they were also politically active individuals who formed a structural group ultimately able to bring identity and rights together in a significant way. Some were highly articulate about their political consciousness. All were integral to the policy process.

Migration theory must increasingly come to terms with the nature of 'refugee' eligibility for national membership as a political and social construct. It is shaped not only by national interests and inter-state relations, but also by increasingly deterritorialised relations between groups and states in a global system, within which are asylum seekers themselves. Consequently, refugee policy-making is a fertile area for contests between culturally specific and more universally defined rights – both as ideals and as institutions circumscribing national membership. It is a fruitful terrain for citizenship and human rights to be negotiated and transformed within specific national contexts, in processes involving noncitizens. This being the case, social policy too must come to terms with global pressures to extend the scope and application of social citizenship rights it encourages and upholds.

Asylum seekers' engagement in the policy process and the particular *ways* they influenced policy point to some important implications for refugee policy and policy-making which Section I addresses explicitly. Three aspects of the relationship between asylum seeking and policy development are generalised from the case study, with significant consequences for the theoretical basis of social policy, which Section II considers. The traditional idea of citizenship as the underlying justification of social policy is reconsidered and possible alternatives are discussed in light of the case studied.

I. THREE ASPECTS OF THE RELATIONSHIP BETWEEN ASYLUM SEEKING AND POLICY DEVELOPMENT

A. *Asylum seeking and refugee policy development are bound together in an evolving international and national structural context in which claimants are both agents of policy development and creations or objects of policy.*

What we think of as 'legitimate refugees' is a product of our times despite the ahistorical structural nature of the persecution by which policy attempts to identify them (racial, religious, political, nationality and social group defined persecution). Policy that defines 'refugees' reflects historically specific biases that affect refugee selection processes and exclude many refugees who may have legitimate claims in modern terms. By the same token, the modern structural context also offers opportunities and constraints of various kinds that affect asylum seekers' abilities to make successful claims and alter the terms of their inclusion in host countries.

Refugee policy develops in both a radical and an incremental fashion. It reflects historically specific socio-political processes and the changing needs of refugees or their changing opportunities to make claims. An example of radical refugee policy change occurred when the Organisation of African Unity changed its refugee definition, like most was states based on the 1951 UN Convention definition, to include refugees of civil war. More commonly, refugee policy tends to develop incrementally through new interpretations and applications of the law. This is evidenced in the resilience of the 1951 Convention refugee definition in most national refugee policy. Where the Convention definition has been unable to accommodate new kinds of refugees, legislation has been *added* both by the UN and member states to recognise 'extra-Convention' refugees. The majority of refugees accepted in advanced industrialised countries now enter under extra-Convention categories. Slightly more radical (and less common) incremental change occurs through the reinterpretation of the Convention definition itself. Canada's *1993 Guidelines* reflect such policy change; they reinterpret the Convention definition to include gender-related persecution.

Nationally, one powerful tool for shaping the interpretation and application of the Convention definition is the growth of case-law arising from individual asylum seekers claiming refugee status and challenging standard eligibility criteria. This challenge may occur both in institutional and extra-institutional settings. While the significance of refugee jurisprudence (to different extents in different countries) is generally recognised, somewhat surprisingly asylum seekers' roles as policy actors are not. Policy actions by asylum seekers in extra-institutional circumstances, although even more striking, are a rarer occurrence and perhaps as consequence have received even less academic attention. Yet this study showed

how asylum seekers' participation in public pressure tactics alongside their full use of institutional means and processes influenced Canadian refugee policy.

As described in the case studied, whether through institutional or extra-institutional means, asylum seekers' agency in refugee policy development is in no small part a factor of strategic opportunities available to refugee claimants in receiving-countries. They may access an array of rights, resources and avenues for participation in host societies to challenge refugee policy through inland claims. These strategic opportunities are the product of factors such as the nature of international and national refugee regimes; the subsequent structure of status determination processes; and the strength or mobilisation potential of nationally located supporters. The nature and infrastructure of Canada's refugee regime, its common law tradition and pluralistic inclination toward policy-making were all important for asylum seekers' success in the case studied. Canada has a progressive humanitarian reputation with a relatively high rate of refugee acceptance. It is a country rich in resources and has an increasingly multicultural identity. It values jurisprudence and in politics tends to avoid conflicts, resulting in more consensual style policy-making. Asylum seekers' abilities to use these opportunities in the case studied is a significant demonstration that asylum seekers, rather than being simply pawns of history, are political actors who may shape policy and in so doing influence the structural context.

Strategic opportunities are also linked to the salience of particular ideas regarding responsibilities and rights of states, individuals, and groups of people or collective identities. Today these are increasingly transnational or global in nature. They are heavily influenced by national politics and citizenship rights, increasingly by international politics and supranational rights, principles and standards, and by the interaction between the two. While they may provide new legitimacy to individuals, thus enabling their claim-making, they also raise conflicts. At this interface collective identities – in this case individuals sharing similar structural status related to experiences of persecution forming the basis of their refugee claims – grapple with the task of juggling culturally relative and universal rights. The questions is, which rights will be accepted and safeguarded as 'universal' rights on specific issues? When should citizenship rights be considered universal? Which country's citizenship rights? And which citizenship rights in particular? This leads us to the second aspect of the relation between asylum seeking and policy development.

B. *Asylum seekers make use of and encourage the increasing complexity and overlap between citizenship and human rights, which may be applied to argue for the rights of particular collective identities*

Inland asylum seekers may extrapolate culturally relative rights of citizens in host countries to thicken the use of human rights principles in their cases. In practice, cultural relativism

underpins interpretations of the universal standards upon which refugee policy is based. Asylum seeking raises moral and political debates in receiving-countries regarding *which* culture, *which* country and *which* rights will ultimately be used as touchstones for interpretations and applications of human rights. And asylum seekers can help determine the outcome of such debates. One useful way of looking at the conflict between universalism and cultural relativism in moral debates over whether or not to grant asylum, is the right of individuals to choose which 'universal cultural morality' they believe in regarding specific issues. The right of a sovereign state to commit, condone or ignore what an individual member of that state considers to be human rights violations, can never be considered a culturally relative right in the international domain if that individual rejects it. Asylum seekers make an expressly political choice by seeking membership in a foreign country for particular reasons. One way of justifying rights to asylum is by appealing to internationally accepted human rights standards. Another way is by appealing to the 'universal' moral underpinnings of citizenship rights in receiving-countries.

In the case studied, fundamental rights enjoyed by women in Canada were considered citizenship rights in practice and theory, but not human rights. The Canadian government's judgement on the women's human rights in other countries corresponded with women's citizenship rights in other countries and cultures. The question raised was why such judgement should not be made according to Canada's own values. Why should some citizenship rights be considered human rights while others are not? The legal and moral force of asylum seekers' argument lay in their claim to Canadian citizenship rights pertaining to women's equality and elaborated regarding rights to safety from violence in particular, and their compatibility with abstract human rights principles. Standard Canadian and international applications of universal human rights could be merged with Canadian citizenship rights to challenge exclusive entry eligibility criteria, influence decisions on refugee claims and admit asylum seekers as formal members of Canada. Asylum seekers' claims thus drew upon a combination of citizenship and human rights – discourses, legal instruments, substantive resources and rights – whose traditional interpretations excluded them as a particular group, one on grounds of noncitizen status, the other for the gender basis of claims.

The rights extrapolated from Canadian experience protect women from violence such as domestic violence, rape, sexual assault and harassment. In Canada violence against women is considered not only physically and psychologically harmful to females, but also an obstacle to their full participation in society (both their rights and contributions) and thus a detriment to society as a whole and the equality of its members. Canada's commitment to ending violence against women is explicitly legitimated through citizenship discourses and

rights. In a report on violence against women the Federal government of Canada states: "These assaults on the person, dignity and rights of women as equal citizens undermine the values Canadians revere and upon which they are trying to build a tolerant, just and strong nation. It is the responsibility of every individual, institution and level of government to acknowledge the gravity of this problem and to work in partnership to prevent it and to improve society's response to the problem, when it occurs" (Status of Women Canada, 1991:1). Canada has evolved an elaborate network of social programs and legislation to prevent and eradicate violence against women, drawing on social, civil and political rights.

Inland asylum seekers requested the same protections from female-specific violence Canadian women are entitled to receive through the combined efforts of the voluntary sector and at least eight government departments. Rights to make claims were protected and facilitated by international human rights principles and Canadian refugee policy, as well as aliens' constitutional rights in Canada. Asylum seekers were also able to draw on both individual rights and structural rights as women, in different legal contexts.

By drawing upon citizenship rights in the host country asylum seekers expanded traditional interpretations and applications of human rights, which form a fundamental basis of international refugee law. The expanded human rights interpretation reshaped the administration of national refugee policy, providing asylum seekers authorised entry into Canada and the benefits of membership. From this example we can see how asylum seekers' use of citizenship and human rights discourses is a two-way relationship: they claimed citizenship rights by appealing to human rights, and they claimed human rights by drawing upon rights developed in a particular country's citizenship tradition.

This circular process indicates not only that notions of citizenship may expand beyond nation-states (being extended or replaced) as increasingly recognised today, but that interpretations and applications of human rights may expand *through* nation-states. Although in the past human rights instruments were at times criticised as being a creation of Western countries and thus not truly universal, they have been increasingly accepted. Thus the idea that human rights (what constitutes human rights, and to whom they apply) may still have room to expand through culturally specific rights tends to be overlooked as we cling to a false idea that human rights principles are 'universal', as if they exist a priori to our thinking and conceptualising them, or interpreting and applying them.

The rootedness of human rights in citizenship ("the right to have rights", as Arendt explained in 1973), before citizenship in human rights, emerges but need not be negative here. It allows new conceptions and practices of 'rights', rights issues and beneficiaries to develop by example in different countries. This national experimentation of course means they can also move in a more exclusive direction. But as citizenship rights are simultaneously

decoupled from national rights and subject to international standards, they may expand in application (to beneficiaries) and in substance, taking on more universal aspects.

The fact that *asylum seekers*, as noncitizens, were a driving force behind dynamics between citizenship and human rights observed in this study further emphasises the contestability of assignments made or upheld by states regarding who should enjoy what kind of human rights and in what places, justified by reference to different cultural and citizenship traditions. In an increasingly global society, it is unsurprising that some individuals and groups will question the inevitability of their social-political structural environment, even as others move more toward preserving it. It is also unsurprising that in an increasingly interconnected world, residents with nationally upheld citizenship rights would want to safeguard their rights as particular structural groups (i.e. women, ethnic minorities, the disabled, children) on a world scale. When citizen and noncitizen constituencies join forces a strong case can be made for internationalising state responsibilities.

Canada's progressive record on human rights, citizenship rights, *and* women's rights was no doubt crucial for this process. The process itself and asylum seekers' roles in it are a significant illustration increasing noncitizen capacities as an outcome of institutionalised cultural rules and structures of society taking on both international and national frameworks. Asylum seekers' roles in the case studied illustrate one way the human rights-citizenship dialectic may be used to shape state responsibilities toward more 'ideal' rights, a broader membership base, and wider justification for 'rights to rights'.

The study suggests that globalisation invites us to consider different conceptualisations of *both* citizenship and human rights, and may be providing new tools for them to be played off one another in a symbiotic rather than hierarchical relationship. The case studied has particular implications for women's expanding rights, a strong example of how cultural relativism underpins both citizenship *and* human rights in highly contestable ways but also how it *enables* some rights to develop further in increasingly transnational community formations. It also shows noncitizens can play a significant role in this developing relationship – leading us to a third significant implication of the relationship between asylum seeking and refugee policy development.

C. *National refugee policy development is prone to international influences that have previously been overlooked and which alter the ways we think about how national policy is made and what states' responsibilities are.*

As *noncitizens* making claims to rights offered through citizenship based on their rights to make human rights claims, asylum seekers' participation and ultimately significant leverage within the policy process is particularly important. It signals significant pressures arising from new noncitizen-state relationships. Canada's vulnerability to their claims suggests noncitizens

can no longer be assumed to be outside policy processes, and state responsibilities can not be assumed to be limited to 'citizens'.

This addresses a significant gap in the international migration literature, which leaves unexplored the relationship between the asylum seeking process and policy development. Increasingly recognised are global pressures undermining state sovereignty and control over international migration policy – particularly the world economy, international trade and labour agreements, and the international human rights regime which sets standards and legitimates the rights of noncitizens (see Sassen, 1988, 1996, 1998). In particular, theories of receiving-country responses tend to focus more on international politics such as sending and receiving country relations and foreign policy aims underlying policy outcomes, than actual policy struggles between domestic constituencies (see Baubock, 1998), while considerations of the latter are limited to citizens and established residents. Moreover, asylum seekers are still viewed primarily as 'forced' migrants, or at most as individuals claiming rights divorced from broader policy processes; they are not considered international actors.

This study revealed a case in which the weight of domestic politics was the determining factor for policy change and moreover involved asylum seekers themselves. While domestic pressure necessarily drew upon and was legitimated by international level rights of personhood, international rights also needed 'bottom up' mobilisation to change policy. Asylum seekers were not only well positioned within the international human rights regime and Canada in order to make claims and access resources, they were also *willing* (rather than 'forced') to use these opportunities and ultimately took *strategic* actions explicitly linked to policy advocacy and policy change. Significantly, asylum seekers drew on social rights associated with citizenship to argue their claims.

It is worthwhile therefore to give greater attention to domestic politics in refugee policy development; in light of the case studied, the study of international migration and social policy can be mutually expanding. Policy-making models used in academic social policy are better equipped to study domestic processes. However, the particular policy process studied highlights a fault in the study of social policy, where policy-making models typically focus on national influences (and self-interests) to the exclusion of noncitizens. It thus behoves domestic policy-making models to expand in some significant respects.

The expansion of policy-making models to include international influences is now occurring to account for some international *trends* (i.e. the global political economy, see Esping-Anderson, 1996) and to a lesser extent regarding international *organisations* (see Deacon, 1997; Mishra, 1999) as discussed in Chapter 1, but still stops short of *individuals* detached from citizenship (that of sending *and* receiving countries). However, it is not difficult to further this expansion. Many models only *imply* national limits; the exclusion of

international influences (trends, organisations and individuals) occurs in their application or interpretation. However, many models do explicitly refer to citizens and various levels of governmental policy-making apparatus limited to the national arena and do not consider international trends among what are commonly described as external or system variables; thus their inclusion needs to be made explicit.

In light of the case studied which we now understand in the context of migration systems, we can account for the possibility of international influences including international actors (noncitizens), taking one exemplary model. Smith and Sabatier's Advocacy Coalition Approach (1994) is a useful here. It is described as an attempt "to synthesize the best features of both 'top down' and 'bottom up' approaches". A number of its features corresponded well to the policy process in the case studied, and moreover, the ACF is amenable to international influences as it does not explicitly exclude them and provides parameters flexible enough to include them. International variables do not seem to conflict with the model. This is apparent in each of its four underlying principles (Ibid,178), drawing examples from international migration as a driving international force:

(1) "Understanding policy change processes requires a time perspective of a decade or more": This longer-term approach enables the influence of factors such as policy analysis and the cumulative effect of findings from studies and every day knowledge to be taken into account, and for at least one policy 'cycle' to be completed and its outcomes evaluated. Considering international migration trends, historical trends are significant, reflecting changing relationships between countries, the development of international law and the emergence of new social-political crisis in sending-countries. These international structural variables create pressures for national policy change over the long-term, including pressures of increasing migration by certain groups and the effects of past policies upon the formation of ethnic communities. As we saw in the case studied, international trends such as migration by women, the development of relevant policy discourses, and the salience of human rights discourses were developing throughout the 1980s if not earlier. These long-term trends were as important for policy campaigns in the 1990s as were developments in the Canadian domestic political climate throughout the 1980s, such as the failure of Canada's refugee regime to deal with mounting claims in an equitable way during a period of Canadian identity crisis, resulting in years of policy debates, controversy and alternative avenues for claimants.

(2) "The most useful way to think about policy change over such a time span is through a focus on policy subsystems, the interaction of actors from different institutions who follow, and seek to influence, governmental decisions in a policy area": This second principle underscores that "policy change in modern industrial societies is not a specific governmental institution", nor do policy subsystems conform to "traditional notions of iron

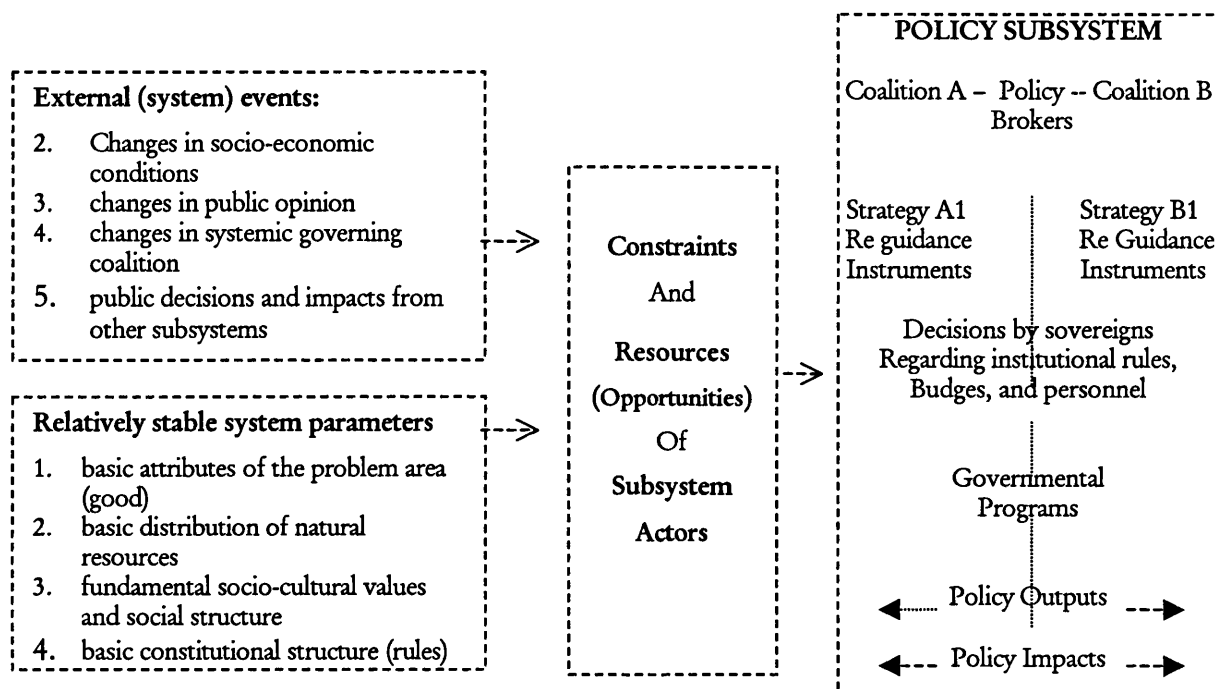
triangles limited to administrative agencies, legislative committees, and interests groups at a single level of government” (Ibid,179). Rather, it includes various government levels, as well as journalists, researchers and policy analysts, as studies of policy networks and policy communities have observed. In the case studied we saw that international migration involves international institutions and regulations, status-seeking migrants themselves, their nongovernment supporters in host countries, government supporters *and* opponents, and the administration where policy is confronted, including the judicial setting of refugee claims.

(3) “Subsystems must include an intergovernmental dimension, at least for domestic policy”: Policy actors and policy innovations are found at *all* levels of government. For example, “innovations may occur first at a subnational level and then expand into nationwide programs.” And officials at the sub-national level have been shown to demonstrate wide discretion in how policy gets translated and implemented in local situations (see Smith and Sabatier 1994:179). This third principle can be clarified by noting that subsystems may include supranational, international and regional governmental levels. This is important in the case of international migration, which is a matter of both domestic and foreign policy. It draws on international and regional Conventions, Declarations and Treaties to support migrant rights in host countries, as well as national legislation and its development and implementation at subnational levels (i.e. through judicial and administrative bodies). It is precisely the intersection between international and national/sub-national levels which enables refugee claimants. It is important to also specify that ‘interest groups’ (both voluntary and private organisations) in the policy subsystem may also organise and interact (among themselves and with government) at different governmental levels, including global.

(4) “Public policies or programs can be conceptualised in the same manner as belief systems”: This principle is based on the premise “that public policies/programs incorporate implicit theories about how to achieve their objectives (Pressman and Wildavsky,1973; Majone,1980)” (Ibid,179). Like belief systems these theories involve value priorities, perceptions of important causal relationships and of the state of the world, and perceptions of the efficacy of policy instruments. It is evident that international migration evokes values and beliefs and often intense controversy about issues such as multiculturalism, human rights and state responsibilities, and particular issue areas. (i.e. the causes of political conflict in particular countries; the nature of particular kinds of structural persecution, and the identity and rights of structural groups defined at a transnational level). Belief systems legitimated in institutional norms nationally and internationally facilitate policy actors. Policy actors’ belief systems inform how they collectively frame policy aims and strategies, as we saw in the case studied. Asylum seekers’ participation further influenced policy aims and strategies in this respect, and by going public they signified the principles and values in question.

Figure 10.1 depicts the Advocacy Coalition Framework. It consists of relatively stable system parameters and more dynamic system events, both affecting subsystem actors' constraints and opportunities. These actors operate within a policy subsystem that may be "aggregated into a number of advocacy coalitions composed of people from various governmental and private organisations who share a set of normative and causal beliefs and who often act in concert" (Ibid,180).

FIGURE 10.1 DIAGRAM OF THE ADVOCACY COALITION FRAMEWORK



Source: Smith and Sabatier (1994:181)

'Belief systems', which are transformed into policy aims, are organised hierarchically, those at the 'bottom' being most readily adjustable to new data, experience, or changing strategic considerations (Ibid,182). Strategies adopted by different advocacy coalitions to influence policy decisions may be mediated by 'policy brokers', "whose principal concern is to find some reasonable compromise which will reduce intense conflict" (Ibid,1994:182). Resulting policy programs produce 'outputs' with various impacts and side effects on targeted problems (and populations), such as revised policy or political aims. (1994:192).⁴¹

This model is suitable for understanding the type of policy change that occurred in the case studied. It involved international trends and instruments within both stable (i.e. Canada's refugee regime type) and changing system parameters and events (i.e. global migration trends, sending-receiving-country relations, changing supranational standards and agreements and opportunities for women), and included international actors (noncitizens)

⁴¹ The ACF further develops hypotheses concerning 'policy-oriented learning'.

confronting the constraints and resources of supranational and national refugee regimes. They worked in advocacy coalitions or networks as they advanced claims and made policy demands. Policy 'outputs' shaped their membership eligibility and rights in Canada.

Reconciling policy-making models and international influences of the type described above may not be difficult, however addressing the theoretical implications for social policy more generally may be. Can noncitizenship-based state welfare responsibilities be reconciled with traditional citizenship rooted justifications underlying social policy? In light of the case studied and the implications described above, let us return to Marshall's idea of citizenship in order to consider whether it is compatible with some of the changes brought on by globalisation and recent debates outside social policy concerning modern transformations of citizenship.

II. REVISITING T.H.MARSHALL: CITIZENSHIP AND "HUMAN EQUALITY OF MEMBERSHIP" IN LIGHT OF GLOBAL MIGRATION

Marshall was right in regarding citizenship as a *developing* institution. The boundaries and nature of inclusion and exclusion in societal structures – such as those based on race, gender, ethnicity, age, mental and physical ability – are being rethought, and the substantive rights of excluded groups broadened. We also know that international migration has created a situation in which individuals without formal citizenship status can access many substantive citizenship rights. Yet Marshall's underlying assumption that the idea of citizenship provides the fundamental justification for rights to state protection and benefits (civil, political and social rights), or 'rights to rights', has remained largely taken for granted in social policy, as Chapter 1 showed.

It is the "ideal" of citizenship with its corresponding sets of rights which provides the inspiration for their institutionalisation in relations between individuals, society and the state, toward the aim of social integration. Yet what discussions of Marshall's idea of citizenship have perhaps most failed to question is the logic and basis for individual's rights to the ideal of citizenship. Thus we must return to the idea of citizenship itself, not only broadening its parameters of inclusion as many social policy academics have advocated, but to find whether its own central justification fits expanding institutions, or is being replaced. What is the basis for citizen membership, according to Marshall?

Marshall invoked the ideal of citizenship society creates in order to explain what gives rise to social, political and civil rights and duties, and to justify those rights and duties: "If citizenship is invoked in the defence of rights, the corresponding duties of citizenship cannot

be ignored” (1950:41). But the right to equality of citizenship was explained by Marshall simply as the correlate of “*The basic human equality of membership*”.

Marshall stated: “The basic human equality of membership... has been enriched with new substance and invested with a formidable array of rights... It has been clearly identified with the status of citizenship” (1950:7). Marshall began with the postulate that “there is a kind of basic human equality associated with the concept of full membership of a community”. Full membership can be attained only when the conditions necessary to enjoy “life as a whole in terms of the essential elements in civilisation or culture” (1950:6) are met, regardless of inequalities in a social class system.⁴² Marshall then not only interpreted human equality of membership within a modern conception of “citizenship” but made these two concepts synonymous, thereby making the principle of equality of membership dependent on the nation-state. That is, Marshall not only interprets the right to be admitted to a share in the social heritage to be *within* the context of the nation-state, but equates it *with* the nation-state: “It [human equality of social heritage] means a claim to be accepted as full members of society, that is, as citizens” (Ibid,7).

How Marshall made this leap in logic is not explained, in fact no attempt is made to justify it. Nevertheless it constitutes the starting point for *Civilisation and Social Class*. We are left merely to assume that the most natural locus for rights to be developed institutionally is the nation-state. For the most part this is a reasonable assumption, as the state system was then and is today the dominant political structure and Marshall wrote in post-war years in which welfare state idealism was high. In other ways it is simply too dismissive of dramatic shifts taking place in the *interstate* system even as Marshall wrote, which have since only increased. The exclusive role of states as the only “actors” in the inter-state-system was being encroached upon by *individuals* as international institutions sprang up. Considering the broad impact of Marshall’s thesis, it is worthwhile reconsidering it in light of such developments.

Questions raised by international rights and migration trends: retrospective and prospective

As Marshall wrote individuals’ rights were coming up in regional and supranational structures, driven by supranational trends and an inter-state system changing under global pressures. These also come to bear upon both *formal* citizenship status and *substantive* citizenship rights. Humanitarian protection had been developing at the supranational level despite the strongly held principle of self-determination of nation-states (and subsequently, of state sovereignty and non-intervention). It moved from group rights, for instance in the

⁴² A qualitative assessment of life which he found latent in the earlier work of Alfred Marshall in 1873.

abolition of slavery in the Paris Peace Treaty of 1814 between Britain and France, to individual rights. Of the latter, among the earliest were treaties on the protection of minorities after WWI, providing “right of petition under international law by a group of private individuals”, through the League of Nations [later the UN] (see Davidson 1993:11).

The growth of individuals’ human rights, international human rights law, and supranational institutions and organisations to uphold those rights, have changed the nature and course of the international system. These developments were driven in large part by the atrocities of WWII. Previously, as one human rights expert explains:

States were the sole subjects of the international legal system; other entities, including individuals, were merely objects of the system. States might adopt rules for the *benefit* of individuals, but such rules conferred neither substantive rights on those individuals nor were they enforceable by any procedural mechanisms. Individuals, as citizens of the state, were subject to the complete authority of their government, and other states, in general, had no legal right to intervene to protect them should they be maltreated. (Davidson,1993:7)

The shift in roles and rights of “other entities” besides states in the inter-state system was perhaps most dramatically embodied in the 1948 International Declaration of Human Rights, and international instruments that followed. These instruments make explicit *individuals’ rights* (civil, political, economic and social) vis-à-vis states in an inter-state system. Individual rights are also specified above social categories that commonly lead to exclusion and marginalisation by ‘deep structures’ such as race and ethnicity, sex, religion and political opinion, notably including nationality. Thus individual rights are based not on nationality or citizenship status derived from membership in a nation-state, but upon membership in humanity. In this schema, *state responsibilities* vis-à-vis individuals are implicit, albeit without international monitoring and enforcing mechanisms; states are subject to international standards and human rights codes.

Two points of interest regarding the coinciding emergence of *apparatus* for human rights protections embodied in international instruments and for social citizenship rights embodied in the welfare state are worth noting. First, the Human Rights Declaration did what Marshall extolled citizenship rights for doing in the 20th century through the welfare state: bringing together civil, political and social rights.⁴³ Second, like citizenship rights, the nation-state was to be the primary implementing and enforcing institution for human rights. A primary difference is that apparatus to check state accountability for upholding or violating human rights have been slow in developing compared to checks on the state regarding

⁴³ In a rather sweeping historical assessment, Marshall claimed that “in early times... rights were blended because the institutions were amalgamated”, but eventually separated, ran their separate courses, only to re-converge again “in the present century, in fact I might say only within the last few months...” (1950:8,9).

citizenship rights from within. While the rate of development and democratisation has been rapid, between 1947 and 1967 the UN Commission on Human Rights remained a “standard-setting” body without competence to deal with human rights violations complaints. The unevenness of human rights enforcement is a reflection of the unevenness of the effects of globalisation (Held et al,1999). However, more recently international bodies have been attaining greater powers of monitoring, intervention and enforcement. And it is incontestable that since the 1940s state humanitarian responsibilities have been broadening, both within and outside national territories. But even earlier examples can be found.

A significant and noteworthy aspect of such expansion can be found in international migration. Even in the older tradition where “states were the sole subjects of the international legal system” to the exclusion of other entities, Davidson (1993:7) observes that “the position of aliens in a foreign state was slightly different. The state of which an alien was a national might, under certain conditions, be entitled to bring a claim under international law against a delinquent host state.”⁴⁴ Another important exception well before WWII was the obligation of states to *receive* designated groups of refugees identified by nationality in treaties between particular states (see Zolberg et al,1989:5-21). Later, WWII became a decisive turning point for refugee rights as it was for social citizenship rights under emerging welfare states. The identification of refugees in treaties was moved from a nationality-basis to more universal human rights codes applicable to all signatory states (Ibid,21-27). The rights of individuals to emigrate, seek asylum and return to their country encompass a range of rights: nationality, protection from human rights violations (underlying refugee movement), social and economic rights (underlying immigration). They protect both citizens and the stateless. They were formalised for the first time through the 1948 Human Rights Declaration and reinforced three years later in the UN Convention Relating to the Status of Refugees. Moreover, international human rights instruments have increasingly become vehicles for individual *agency*, providing the legitimacy and legal framework for claims that undermine state sovereignty (see Sassen, 1996).

It is evident that Marshall’s conception of citizenship not only neglected the question of which individuals can make claims of what kind on the state, but upon *which* state. It ignores the changeableness of nationality and the long tradition of thought shaping ideas of

⁴⁴ Davidson notes such claims were not driven so much “to seek redress for the injured citizen; rather, it was to vindicate the rights of the state which had been indirectly injured through the mistreatment of its own national” (1993:8). Nevertheless the arrangement departed from established state to state relations which normatively excluded *individuals’* claims – as opposed to states acting as representative of all or certain segments of their citizenry.

nationality and nationality law that shape citizen membership.⁴⁵ It neglected globalisation's increasing and various forms of influence upon citizenship and national identity, and individuals' rights to both. Following Marshall, academic social policy has similarly taken these questions for granted both in its initial assumptions and more recently in critiques of how citizenship is used to exclude certain groups from rights to social policy.

International migration and the international laws supporting it challenge these assumptions historically, and modern international migration trends only increase the challenge. Mass immigration and refugee movements have been and continue to be nation-building forces. They have developed and changed interstate relations as well as the landscape of states from whence immigrants and refugees originate. They call into question the exclusiveness of human equality of membership based on formal citizenship status linked to a particular nation-state.

In the last few decades the primary reaction of governments and citizens to rising and increasingly uncontrollable international migration flows has been panic, posing immigrants and refugees (particularly illegal immigrants and 'illegitimate' refugees) as a threat to national identity and citizenship rights, particularly social rights, as competition for resources increases. In this the ideal of citizenship has been invoked to try to prevent too many competing claims on the state. It overlooks *rights to* citizenship and residency, as well as non-nationally defined *identity-based claims* on the state (including claims for citizenship status and for citizenship rights in themselves) that cross-cut formal citizenship status. However, given its basis in the 'human equality of membership', Marshall's conception of citizenship is not necessarily incompatible with transformations currently occurring under globalisation, as the following considers with the example of refugee movement.

Directions and dilemmas suggested by international migration trends: the dialectic between human rights and citizenship

Immigration and refugee policies set out the parameters of inclusion or exclusion from membership in a particular nation-state, where membership eligibility is defined in part by identity sub-categories (family, business, student, political refugee, etc.) and related rights, and membership is not necessarily defined in terms of citizenship status but in terms of temporary or permanent resident status. Claims upon the state for entry by refugees needing human rights protection rely upon a framework of civil, political and social rights of individuals as humans, in relation to sending and receiving states in an international system.

⁴⁵ These traditionally range from *jus soli* (right of birth) to *jus cogens* (right of residence) and the role of allegiance, from the time of Ancient Greece and Rome; see Plender, 1988 for a comprehensive historical overview of relevant international law. More recently, and more controversially, it is considered to include elements of consent and human rights (see Baubock, 1994).

In this context citizenship status or residency in a particular nation-state is a vehicle for the institutional protection and provision of *human rights*. But in receiving-countries, established citizenship rights that are of an equivalent order to human rights refugees need protected, are fundamental. As shown in the case studied, citizenship rights may even be a vehicle for expanding institutionalised norms or readings of what constitutes human rights violations.

Thus, both status and rights from international and national levels transfer protection responsibilities from one state to another. Refugees move to countries where they can find better human rights protection through the substantive citizenship rights offered in host countries, conferred through authorisation for residency. Subsequently, states are vehicles for *both* citizenship and human rights protections and their development as ideals and institutions. In this sense, both citizenship and human rights imply membership eligibility in territorially defined states (i.e. not all refugees are protected by particular states, and in practice not all human rights are promoted either within or across states).

Because of the dynamic interaction between national and international levels it seems that citizenship and human rights have some basic compatibility – in both their *ideals* of membership rights and some of the basic *institutions* of enforcement. But are they compatible regarding ‘rights to rights’, and subsequently membership status? Citizenship may be an ideal, a legal status, and an institution all at the same time. But it needs a larger organising principle which gives individuals rights to access citizenship or membership in a nation-state in the first place. So we return to the question, what is *human equality of membership*, inherent in Marshall’s theory of citizenship, as an organising principle?

Human equality of membership might be expressed as the equal right among human beings to be “admitted to a share in the social heritage”, in Marshall’s words. This is a right individuals may possess first as beings with rights to full membership in the human community, and second as persons institutionally circumscribed by a state or other governing structure. The aim of citizenship is to achieve human equality of membership – this can be interpreted in a global world. Indeed, in later works Marshall (1963) stated that nationality is too large a binding concept; he subsequently held more of a minimal conception of citizenship in this regard, describing persons related through common rules and jurisdictions regulating their conduct and opportunities (rather than through homogeneity of cultural and historical background) and therefore not excluding jurisdictions larger than the state (see Parry,1991). Citizenship achieves human equality of membership by institutionalising it through the vehicle of the state, and we are increasingly seeing, it does so by drawing on both international and national rights of personhood and the interaction between the two. Thus, universal human rights principles should in *theory* be compatible with those of national citizenship regarding ‘rights to rights’, based on human equality of membership. Human

rights and citizenship principles need not be entirely synonymous to interact in constructive ways. Social policy could draw on the human equality of membership interpretation of citizenship as a theoretical justification for extending its horizons beyond formal-status citizens and across nation-states.

However, in practice there are still major obstacles to the deployment of citizenship and human rights together. We do not yet accept all of Marshall's citizenship rights on a world basis. We do not have world government, nor are all states democracies. The majority of the world's people can not claim equal resources or equal access to fundamentals such as food and shelter, not to mention education and services targeting social problems such as violence against women. But we are increasingly seeing the growth of means to enforce some basic rights on a world basis through international treaties and conventions, regional and international bodies (the EU and the UN). Through them states ideally negotiate and share responsibilities and rewards of governance, both inward and outward looking, toward residents and nonresidents alike. Overseas humanitarian and development aid are of the 'outward' type, alongside pressures for states to conform with international standards in the treatment of their residents and potential residents.

A more current obstacle is the continuing existence of geographically defined territories, which will continue to raise questions about individuals' rights to membership. Until states are equalised in some basic respects (if at all possible), individuals will migrate to preferred states or seek asylum from persecution. The problem of membership criteria and legal status will still apply. As this study showed, in practice not all individuals enjoy equal human rights or opportunities to claim membership in a particular state or to contest their exclusion.

At the moment right to claim benefits of citizenship through human rights principles – a case of human equality of membership in all major aspects of 'rights to rights' – is still reserved for refugees. They are thus an interesting but unique example that points toward future possibilities. Indeed, refugee policies and application have been expanding in some important ways since the 1960s. First, they *increasingly* draw upon human rights principles, to the extent that the common interpretation of 'persecution' is now considered 'human rights violations' (Hathaway,1991b:104-5). Second, new types of refugee claims are being made which either enlarge the pool of human rights from which refugees can draw, enlarge the interpretation of what constitutes human rights violations, or increasingly blur human rights and citizenship categories together and transform them. This study revealed that asylum seekers drew as much upon citizenship rights as upon human rights to make claims, participate in policy-advocacy and influence policy outcomes (their membership eligibility, and Canada's transnational responsibilities). It helped explain why refugee policy actually

expanded in a significant way despite the current context of government restraint and cutbacks in refugee admissions and social policy provisions generally.

Asylum seeking may be just one of many examples of the changing dynamic between human rights and citizenship rights, changing access to citizenship rights and changing processes and pressures on national policy-making in an increasingly global community. If the idea of citizenship in social policy is compatible with changing access to 'rights to rights' beyond national borders, as suggested, asylum seeking presents a significant example of human equality of membership. To grapple with issues of this kind and the problems it brings more generally, as indicated above, social policy would benefit by engaging with current citizenship debates in other fields. The following reconsiders theories of transformations of citizenship⁴⁶ in light of the dynamics between citizenship and human rights illuminated in this study, to further suggest directions social policy might want to consider if it is to become more globally aware.

Revisiting possible theoretical implications: Expanding or replacing citizenship

Two general propositions regarding transformations of citizenship under globalisation have received substantial attention in political science, sociology, international relations, and to a much lesser extent in social policy. The first sees citizenship expanding progressively to include transnational rights of the kind supported in human rights principles, but remaining very much nationally based. The second sees the traditional citizenship model losing its value or being replaced by one based on universal human rights. Both views raise citizenship issues concerning the range of *substantive rights*, *beneficiaries*, and *state responsibilities* to be encompassed.

The expansion of citizenship:

As demonstrated in Chapter 1, social policy has only begun to recognise the of globalisation. So far the few accounts offered of a more 'global social policy' describe or more often prescribe an *expansion* of the idea and institution of citizenship. Lister (1997) provides an in-depth discussion and prescription of the expansion of citizenship under feminist influences and more generally under global influences. Deacon (1997), by way of describing the internationalisation of social policy generally, also prescribes a global concept of citizenship. Several others have more indirectly described the changing nature and role of citizenship for social policy, for instance in work concerned with social policy in the European Union, or

⁴⁶ This is necessarily only a brief sketch of the literature and various perspectives. The literature on citizenship is now quite extensive and indeed goes back to ideas of democracy in Ancient Greece. The work covered here is limited to those relevant to social rights and social policy, and also excludes in-depth coverage of broader related topics in political theory, such as global democracy.

social policy reforms in recent EU member states (for example Kleinman and Piachaud, 1993). Deacon's (1997) approach was presented in Chapter 1 as advocating transnational social issues and welfare state responsibilities, in part through global citizenship for rights to transnational social policy, and international policy actors whom he identifies as international organisations. He does not explain just what global citizenship might entail, but implies access to transnational welfare states in one's own country rather than by moving abroad. Lister's (1997) account, which is perhaps the most extensive attempt to engage fully and directly with issues of citizenship and social policy, focuses squarely on the theoretical and practical details concerning the use and transformation of citizenship, in particular to suit a 'feminist conception of citizenship', and thus shall be elaborated here.

Lister's (1997) feminist conception of citizenship suggests we can aspire to an ideal that accounts for the duality of public and private experiences of citizenship. It says further that to simultaneously account for women's diversity and differences in increasingly multicultural nation-states requires a "global notion of citizenship" that bridges citizenship and human rights. This would enable women to claim universal citizenship rights with respect for cultural differences. The new 'differentiated universalism' of citizenship rights would fulfil substantive rights to the level of an 'ideal' citizenship.

Arising out of social policy, Lister's model is highly relevant to the questions at hand. For as we saw in the case studied, established citizenship rights – women's rights to protection from female-specific violence, and citizens' rights to resources and avenues for participation – were drawn upon and *expanded* toward noncitizens from culturally diverse backgrounds and different citizenship traditions. However three dimensions of Lister's model remain unclear and somewhat problematic. These inter-linked problems are endemic to considerations of the relationship between citizenship and human rights.

First, Lister's conception of citizenship does not clearly delineate between substantive and formal expansion, somewhat neglecting the latter. It neglects the question of exactly what kind of formal *or* informal status the proposed ideal set of rights would be based on, or what defines membership (rights to access rights). In this Lister's idea of citizenship follows the general trend in social policy, which concentrates on substantive rights but neglects the question of how these rights are to be framed in law governing who is eligible for membership in a particular place. Migrants are discussed primarily in terms of resulting multicultural societies with diverse membership needs, not their formal status legitimating access to rights. The possible liberalisation of naturalisation and multiple-citizenship laws, or the extension of full political rights to noncitizen residents, which Lister mentions in a cursory look at this problem (1997:49) furthermore applies to established migrants and does not address rights to social policies by *residence-seeking* migrants. The question of status

eligibility is not likely to disappear, as states are unlikely to stop attempting to regulate international migration and the various status types that subsequently arise are not likely to disappear. Unless we do away with all border controls (including regional, in the case of the EU), distinctions will remain between authorised and non-authorised residents as well as controversy about priority to rights and competition for resources among them. As we saw in the case studied, even asylum seekers, the one migrant type whose claim to membership lay in universal human rights principles, face status determination processes and formal entry constraints that in most countries have been tightening in the past few decades – not loosening. Negotiating membership status types is a complicated endeavour that would need some thinking through if states were to take on the responsibility of noncitizens to ensure their human rights, as part of a global citizenship project. It is further complicated by the following two problematic dimensions, which are more explicitly inter-linked.

Second, Lister's conception of citizenship does not sufficiently address how human rights conflict with cultural relativism. It takes human rights automatically as being of a higher order than citizenship rights, and does not look at the hard questions about where values fundamentally conflict. It simply takes the citizenship as the legal form in which human rights are manifested at the level of the nation-state and suggests the two should merge. The third problem is that the question of whether states' roles would subsequently be enlarged or diminished through the new respect for 'differentiated universalism' is not fully explained. For instance, her idea of citizenship relies on institutions of the state but also "loosens its bonds with the nation-state" and involves international institutions and discourses; at the same time it is suggested that invoking human rights might alter states' responsibilities toward citizens of other countries "that lack the resources to translate human rights... into effective citizenship rights" (1997:196). This relates back to the first problem, that of not addressing how members – those with rights to citizenship rights – are to be identified in an inter-state system that still requires border controls, and how they could draw on rights and resources developed in *particular* nation-states. It relates to the second question in neglecting the conflict that could arise regarding the *choice* of various applications of human rights *and* various traditions of citizenship rights that currently exist. This would entail negotiating conflicts among governing states and international bodies, and social groups within them both. As the currently diverse application of human rights and citizenship across countries indicates, this is no easy feat. In assuming the universality of human rights is of a higher order than citizenship rights, it is subsequently assumed that citizenship rights should ultimately take on the same form in different countries, without at the same time questioning the culturally relative ways universal human rights principles evolved and will continue to be interpreted and contested. It also takes an inherently Western approach toward the choice of

citizenship rights that will remain in an elaborated application of human rights; for example, in many non-western cultures *collective* rights are valued over and above the individual. This sometimes gives rise to structural justifications of controversial social practices that individuals can not decline, for example the widespread practice of female circumcision in many African countries is known in the West as 'female genital mutilation'.

In the case studied, protection from female-specific violence was initially more well elaborated and upheld through Canadian women's citizenship rights than through standard human rights interpretations and applications. Yet for these noncitizen claimants, human rights – *not* citizenship rights – ultimately provided the legal basis for membership and state protection from female-specific violence. As asylum seekers their eligibility for membership would always be assessed through refugee law based on international human rights principles and state's enforcement responsibilities, but before this could occur, they had to engage in protracted moral and legal debates about cultural relativism, imperialism, citizen versus human rights, and transnational identity rights of women.

It is undeniable that citizenship was expanded and formed a crucial building block for these asylum seekers claims. Yet the processes this study uncovered are not adequately explained by Lister's model which in many respects reflects the way *human rights* work, in theory. No territories or memberships are needed to claim 'rights to' human rights; cultural relativism is forecast to yield to its higher neighbour, universalism; and while deriving its legitimacy from international institutions and discourses, universal human rights need to be enforced by states (both in their own citizenship rights and in policies toward foreign nationals). Thus overarching the three problematic dimensions is the possibility that if citizenship and human rights could really merge, we may as well simply refer to *either* human rights *or* citizenship as mutually encompassing terms and adjust them accordingly. One could ultimately drop off because they would become synonymous. The issue initially would no doubt concern different ideas in different places regarding which citizenship and human rights should be merged, and which left off. But if citizenship is supposedly of a lower order than 'universal' human rights as usually assumed, it seems natural that it would be the dimension to drop off.

Lister's model corresponds closely to the literature in sociology, political science and international relations which explores new forms of expanded citizenship arising with globalisation. These include cultural citizenship (Turner,1994), ecological citizenship (Van Steenberg,1994), European citizenship (Habermas,1994, Meehan,1991) and global citizenship (Falks,1994) to name but a few. Many reinforce the substantive rights of different segments of national populations, based on *shared cross-national collective identities* (such as women), and many discuss the growth of international institutions suitable for this purpose.

What is on one hand a fruitful and abundant area of scholarship also illustrates even more clearly the danger of extending the idea of citizenship so much that its analytical and practical usefulness becomes questionable, or becomes subsumed under human rights principles. This was an often repeated concern at the Conference on *Rethinking citizenship: critical perspectives for the 21st century* (Leeds, June 1999) which explored citizenship and difference, children's citizenship, sexual citizenship, science and technology and citizenship, corporate citizenship, cultural citizenship, gendered citizenship, indigenous citizenship, migrant citizenship, and many other forms.

These accounts also tend to suffer from the same three problems discussed in Lister's work. In particular is the continuing question of governing institutions and rights to rights within territorially defined ones. Citizenship issues and the nature of citizenship can increasingly be discussed from deterritorialised or inter-territorial standpoints, but if the concept of citizenship is to be expanded there must be institutions and laws able to enforce those rights. If enlarged citizenship rights remain governed by nation-states, will there be rules for inclusion or exclusion from residency in particular territories? If attempts to regulate international migration are not about to disappear (even in the EU), there needs to be a continuing distinction between global and state level rights, if only to regulate entry.

In the case studied, by using both global level and state level rights *noncitizens* were able to shape their entry eligibility criteria and thus their 'rights to rights' *in a particular territory*. It is not only the nature of citizenship that is changing, but also individual's means of changing it. This suggests the citizenship model needs to change in some respects to accommodate noncitizen rights and participation, as part of the process of negotiating extended forms of citizenship. However, extended citizenship models do not explain or discuss the implications of noncitizens with 'rights to rights' being part of the transformation process. Rather they primarily consider individuals assumed to have formal citizenship status (even in a futuristic global democracy; for example Held, 1995), or they neglect the question of formal status altogether.

Theories of the transformation of citizenship that describe new transnational and postnational forms of membership arising, suggest an alternative by keeping a firmer eye on the duality of formal status and substantive rights, under overarching 'rights to rights' that transcend nation-state borders.

The replacement of citizenship:

The literature on the replacement of the citizenship model suggests human rights are becoming the basis or legitimacy of membership and 'rights to rights'. It is argued that rather than ever progressing and expanding the value of citizenship is contracting or being replaced,

and that with it the concept of nationality and national membership must be recast under more universal notions of human rights or universal personhood. Studies of international migration in particular have made fundamental contributions to discourses and debates on citizenship by demonstrating that citizenship rights often accrue to residency rather than formal citizenship status. These studies tend to concentrate on changing processes of noncitizen integration or incorporation into host countries and the benefits of membership.

In *Rights Across Borders* (1996) Jacobson contends that changing relations between individuals' rights and states in the global system are causing citizenship to undergo devaluation. Taking the case of illegal immigration, he argues that "Transnational migration is steadily eroding the traditional basis of nation-state membership, namely citizenship", and "contribut[ing] to the increasing importance of international human rights codes" (1996:9). Jacobson suggests that the 'devaluation' of citizenship is not decreasing the role of states in proportion to "a supranational polity". Rather it is increasing the role of the state as a "mechanism essential for the institutionalisation of international human rights." (1996:11). While citizenship and nationality may be in a process of being recast, the rights of individuals in relation to states and benefits of membership are growing through the institutionalisation of human rights codes.

Jacobson's analysis agrees in many respects with Soysal (1994), who in *The Limits of Citizenship* argues that a new form of *post-national* membership is arising. Building on the example of guestworkers' incorporation into European nation-states, she elaborates a postnational model as a replacement for the citizenship model. Guestworkers have been incorporated into host countries in various ways corresponding to different national incorporation regimes, and drawing upon human rights discourses to legitimate and facilitate making claims upon states. Soysal explains:

... membership and the rights it entails are not necessarily based on the criterion of nationality. In the postnational model, universal personhood replaces nationhood; and universal human rights replace national rights. The justification for the state's obligations to foreign populations goes beyond the nation-state itself. The rights and claims of individuals are legitimated by ideologies grounded in a transnational community, through international codes, conventions, and laws on human rights, independent of their citizenship in a nation-state. Hence, the individual transcends the citizen. This is the most elemental way that the postnational model differs from the national model. (Ibid,142)

Soysal's model suggests that a dialectic between citizenship and universal personhood is maintained, and that together with international instruments the state maintains or strengthens its importance as a vehicle for institutionalising human rights in new forms. But the *justification* for rights and claims is becoming increasingly postnational.

Not all residents are 'citizens', thus their experience does not correspond to traditional citizenship models. Different legal status types, different rules of entry and degrees of access to rights persist corresponding to different immigration regimes and patterns of incorporation. Yet the experience of international migrants today demonstrates that an expansion of state responsibilities toward noncitizens *and* citizens is occurring through recognition of their international human rights. This gives noncitizens new legitimacy and agency; they can evoke institutionalised discourses and norms of universal personhood to advance claims and undermine traditional state sovereignty.

Other studies on the incorporation or integration of international migrants into host societies observe or prescribe similar trends, with the aim of moving toward increasingly tolerant and fair multicultural societies, although some give greater emphasis to the importance of established citizenship traditions for progress – or regress – in rights (for example Baubock,1997,1998). Baubock refers to the new forms of membership as *transnational* in nature, maintaining more of an emphasis on host-country and sending-country citizenship rights while explicitly drawing on human rights and transnational state responsibilities.

These models of postnational and transnational membership are concerned with the duality of membership status and rights, drawing on studies of *established* migrants to demonstrate that nationally-bound citizenship no longer adequately describes or explains national membership and the rights it confers. They directly confront the problem of formal membership (having 'citizenship status') which theories of *expanding* citizenship tend to neglect. In the case of illegal migrants, states' abilities to select potential residents (with access to substantive citizenship rights) is questioned altogether. While illegal migrants do not attain authorised entry or formal membership status, the processes by which they evade or undermine state regulations may be understood as part of broader global trends. As Sassen (1996) describes, global pressures on nation-states – arising from the global political economy and the international human rights regime, for example – both contribute to and arise from international migration which further undermines state sovereignty.

These explanations further address the transformation of citizenship as a process of conflict and negotiation between noncitizenship-status and citizenship-status groups, describing how the struggle between cultural relativism and universalism is actually played out in ethnically mixed populations. In the postnational model minority group claims formerly described as culturally relativist are drawing on universal human rights frameworks for legitimacy in multicultural societies, while the ability of majority cultures in host countries to maintain their own culturally relativist rules for inclusion or exclusion from rights is cast into question. In the transnational model, citizenship is a well established 'moral resource'

(see Linklater, 1998) for universalising rights. In both, driving the capacity for the internationalisation of rights is the continuing – and expanding – role of sovereign states able to enforce rights, drawing on international principles and instruments. But driving the enforcement or expansion of state responsibility are also individuals' abilities to draw on national and international norms and legal codes in an increasingly transnational community.

These migration studies also benefit from being more descriptive than prescriptive. They portray on-going processes through which membership models and rights are being transformed, rather than advocating forms of global governance (for example) which do not yet exist, or advocating group-related transnational rights without reference to formal membership for rights-protection. They do so without discarding the persistence of formal residence status which among many established migrants is not based on formal citizenship status; rather, the strength of these studies is in describing the paradox of substantive rights without formal status. New forms of membership and rights can not be explained simply as an expansion of citizenship without addressing how global citizenship (with, consequently, globally-based rights) may be governed and also still maintain territorial borders of sovereign nation-states. States *are* still concerned with preserving and strengthening their economic, demographic, and cultural integrity and therefore will continue to regulate immigration, resulting in different legal status types that in the past and foreseeable future include those without formal citizenship status.

But by the same token, neither can new forms of membership and 'rights to rights' which established migrants may enjoy be explained without accounting for the processes by which international migrants gain entrance into geographically bounded areas in the first place, thus gaining 'rights to rights' within a specified territory. The studies considered above drew on examples provided by *established* migrants who already enjoyed many formalised substantive citizenship rights (institutionalised rights to citizenship rights, without formal citizenship status). These rights provided a basis for migrants to build upon. After attaining certain substantive citizenship rights through residency, layers of internationalised rights found in human rights frameworks and instruments could be added. In contrast, the study of asylum seeking in this thesis considered the processes and implications of *status-seeking* migrants making claims upon host countries. In their case, the very process of gaining entry and membership status involved invoking both citizenship and human rights in a more symbiotic than hierarchical relationship.

This can be explained in part because these asylum seekers had different access to and justifications for drawing upon human rights compared to other migrants, namely to justify *making claims* for authorised membership. But like established migrants, they had access to various formal and informal citizenship rights despite their lack of formalised

membership, as inland asylum seekers awaiting decisions on their claims. They further combined both citizenship and human rights in ways somewhat different from those described above, and they had different aims. Asylum seekers clearly wanted Canadian citizenship rights, and moreover, established citizenship rights were fundamental to their claims. They aimed to formalise their entry eligibility, and did so through human rights to make claims upon the Canadian state, the expansion of human rights applications through existing Canadian citizenship frameworks, and consequently the expansion of state responsibilities toward female noncitizens and citizens (whose rights became 'human rights') alike. They participated in political processes in the host country before attaining citizenship or permanent resident status, and in some cases even after they were issued deportation notices and declared illegal. They helped enumerate new eligibility frameworks in refugee policy, actually shaping their own rights to entry in ideal and institutional terms through expanded interpretations of human rights.

Thus while the above citizenship debates offer invaluable foundations, neither the extending nor the replacing models in themselves seemed to fully correspond to either the dynamics between citizenship and human rights in the case studied, or its outcomes. This indicates social policy would do well to consider different dimensions of the various citizenship debates that are still being developed and contested: expanding citizenship rights within countries, altogether new forms of membership arising within countries, and expanding applications of human rights. It can do this by bettering its understanding of the dynamics between citizenship and human rights, exploring and theorising why and how transformations are currently occurring rather than searching for an overarching solution or final conclusion which can not yet be clearly seen and, so far, does not adequately account for the way 'rights to rights' developed in the case studied.

Earlier this chapter demonstrated why social policy should and could incorporate transnational actors – namely noncitizens – into explanations of policy-making processes influenced by globalisation, taking the example of asylum seekers' participation in refugee policy development. We further saw that the basis of asylum seekers' rights to membership and participation were compatible with Marshall's conception of 'the human equality of membership' underlying citizenship and social policy. And in the case studied, asylum seekers' rights and means to challenge refugee policy and national membership eligibility were framed by the institutional structure of society, or institutionalised cultural rules and norms (Powell and Dimaggio,1991), in particular the developing dynamic between national and 'world level' institutionalised cultural rules and norms (Meyer, Boli and Thomas,1994). This developing dynamic provides legitimacy and mobilising vehicles for individual political action within an increasingly transnational community. It makes the political actions of

noncitizens viable and subsequently exerts new pressures for states to expand their social responsibilities, and for international human rights norms to be further developed.

Further research is needed which for the time being avoids polarising or completely merging citizenship and human rights, keeping an eye on the problem of distinguishing between formal status and substantive rights. One possible line of research is to further consider cases in which citizenship rights may feed into and further develop human rights applications, in addition to human rights extending or replacing conceptual foundations and substantive forms of citizenship rights (possibly to eventually replace it), exploring how individuals and groups actually drive such developments through the new opportunities for political agency which the dual international/national context affords. Like the dynamics illuminated in this study, such an approach concentrates on citizenship and human rights as mutually reinforcing ideals in a symbiotic rather than necessarily hierarchical relationship, with distinct though interdependent institutionalising vehicles.

The challenges posed by status-seeking migrants offer several avenues for research along these lines. Interesting studies might include considering the rights and processes of *nonresident* asylum seekers – overseas refugees – making claims for membership in potential host countries like Canada. They too can lay claim to a range of human rights as well as substantive receiving-country citizenship rights which frame status determination processes. A fruitful exploration could also be made by comparing the asylum seeking and policy process studied in Canada with inland asylum seekers' rights and claim-making processes in countries with different types of refugee regimes and policy-making traditions, including for example countries without a strong common-law tradition. A third avenue for research might be comparing the Canadian experience with that of countries with less advanced welfare states – those with intermediate development. How might citizenship rights in such countries be played off human rights to argue cases involving human rights violations for which the receiving-country does not have well established and integrated policies for its own citizens, such as domestic violence? Perhaps noncitizens could influence citizenship rights and social programmes in countries developing welfare states. Such studies are bound to reveal a number of ways citizenship and human rights are being used in interesting and significant new ways. They might also show the persistence of exclusive citizenship frameworks, and deleterious effects upon the interpretation and application of human rights.

Refugee movement is far from an ideal way of increasingly universalising either citizenship or human rights, since refugee movement is always a product of structural root causes which in themselves need to be addressed to stop persecution from occurring in the first place. Asylum seekers can not *easily* influence policy, nor should policy respond immediately to reflect all claims. Indeed, rising panic about the unmanageability of

international migration, and refugee flows in particular, has brought world-wide tightening of border controls and increased controversies about "illegitimate" and "illegal" international migrants. Rather, this thesis has simply explored some long overlooked dimensions and implications of asylum seeking for policy and policy-making, under the recognition that there are now and will likely always be, refugees fleeing injustice and persecution. It revealed asylum seekers' use of changing dynamics between citizenship and human rights as justifications and basis for membership, and their subsequent influence upon policy and state responsibilities.

CONCLUDING REMARKS

Marshall's idea of citizenship may be inherently compatible with a notion of human rights or universal personhood upon which claims by non-citizens for access to host countries and the benefits of membership (rights and participation) may be supported. However, selecting *which* rights, *which* beneficiaries, *which* governing institutions and *how much* state (or international) responsibilities, is no easy feat. This study provided one example of how universal human rights and citizenship rights can be negotiated, in this case by noncitizens seeking residence.

Blurring across traditional boundaries between citizenship rights and human rights was remarkably demonstrated by asylum seekers requesting the same protection that Canadian women are entitled to receive through the combined efforts of the nongovernment sector and eight government departments in the social services which address violence against women. Traditionally perceived as among the most powerless of the powerless, women refugees became a political force in Canada, helping to redefine the basic parameters of refugee policy and state responsibility for the protection of female foreign nationals and stateless persons, or non-citizens.

In this claim-making and policy development process, we have explored more fully and gained a better understanding of changing relationships between *noncitizens* and states in a global system, and the complexity of the unfolding dialectic between citizenship and human rights. Social policy will need to increasingly engage with consequences of globalisation such as those described in this study. It illustrated a *symbiotic* relationship between citizenship and human rights. It illuminated the structural context for seeking asylum, challenging refugee policy to seek social citizenship rights, and participating in policy processes. It explored why status-seeking international migrants had access to and actually drew upon citizenship rights in Canada to expand the interpretation and application of human rights. And it described how, using an expanded human rights interpretation, they gain authorised entry into Canada

and received the benefits of substantive citizenship rights – namely protection. In so doing, despite their noncitizen status they helped expand the substance and applications of both citizenship and human rights and subsequently of state responsibilities toward citizens and noncitizens alike. They played political roles, participating in the development of refugee policy and their own eligibility criteria for membership and the rights it confers. They were supported by and furthered the developing dynamic between institutionalised norms and values at national and international levels.

The study also suggests that listening to asylum seekers can create a fairer refugee system without compromising the rigour of selection systems. Ideally, eligibility criteria can be negotiated to reflect more accurately the range of social injustice that exists in the world, while narrowing in on those most in need within each category. Listening to asylum seekers can also open up new vistas for academics trying to understand the current transformations and future potential of a more global responsibility for social welfare.

APPENDICES

APPENDIX A. ASYLUM SEEKERS, INTERVIEWEES AND QUESTIONNAIRE RESPONDENTS

A.1 ASYLUM SEEKERS IN THE STUDY WHO WENT PUBLIC

Major case histories

Name*	Country of origin
Dulerie	Trinidad & Tobago
Taramati	Trinidad & Tobago
Ferdousi	Bangladesh
Nada	Saudi Arabia
Lee	Trinidad & Tobago
Azadeh	Iran
Fatima	Lebanon
Hindra	Trinidad & Tobago
Ines	Peru
Olga	Russia
Liza	St. Vincent
Nadia	Bulgaria
Maria/Miranda	Guatemala
Kapinga	Zaire
Thérèse	Seychelles
Anna	Bulgaria
Angela	Dominica
Phagawdeye	Trinidad & Tobago
Ginette	Cameroon

Minor case histories:

Ana	Mexico
Sandy	Germany
Kissoon	Trinidad & Tobago
Amina	Somalia
Zahra	Iran
Fatima	Turkey

* Names are sometimes Alias; see section on Confidentiality in Chapter 2

A.2 EXPERT INTERVIEWS

Refugee Lawyers:

Marie-Louise Cote, Montreal, 13 January 1995

Barbara Jackman, (Ontario Lawyer Association, President), Toronto, 22 November 1994

Diane Belanger, Montreal, 11 July 1995

Suhk Ramkisson, Toronto, 18 October 1996

SylviePiriou, Montreal, 30 October 1996

Sonia Heyeur, Montreal, 2 February 1995

Pierre Duquette, Montreal, 20 July 1995

Women's Groups:

A. *National Women's Groups*

National Action Committee on the Status of Women (NAC),
Executive Committee, Violence Against Women Unit: Flora Fernandez 24 August 1995

National Organisation of Immigrant and Visible Minority Women of Canada, member, Flora
Fernandez 24 August 1995

B. *Women's shelters*

Flora Tristan (Montreal shelter for immigrant women), Director Elizabeth Montecino 31
January 1995

Women's Aid (Montreal shelter for immigrant women), Director Flora Fernandez 24 August
1995

Auberge Transition (Montreal women's shelter), Staff Member Martha, 17 January 1995
(phone interview and survey)

Multi-Femmes (Montreal shelter for ethnically diverse women), Staff Member Julie
Asimaliopulos, February 1995

Refugee and Human Rights Groups:

A. International

International Centre for Human Rights and Democratic Development (ICHRDD): Information Officer Diana Bronson, 25 January 1995

International Centre for Human Rights and Democratic Development (ICHRDD): Arienne Brunet, 21 December 1994

B. National

Canadian Council for Refugees (CCR): Executive Director Janet Dench 20 December 1994

C. Community & local

Table de Concertation des Organismes de Montreal au service des Refugies (TCMR), President Rivca Augenfeld, 22 August 1995

Refugee Action Montreal (RAM), Coordinator, Glynis Williams 28 July 1995

Refugee Action Montreal (RAM), Board Member And Refugee Claimant, Therese 19 July 1995

Coalition Aux Refugees, Montreal (CAR), member, Marie LaCroix, 27 August 1995 (phone interview)

Institutional – Government organisations:

Immigration and Refugee Board (IRB): Working Group On Refugee Women, Adjudicator Nancy Doray, 30 January 1995

Library Of Parliament: Research Division, Law and Government, Margaret Young, 23 August 1995 (phone interview)

Asylum seekers:

Thérèse, 19 July 1995

A.3 QUESTIONNAIRE RESPONDENTS: WOMEN'S SHELTERS

Montreal

Auberge Transition
Maison d'Amitie
Maison Marguerite

Toronto and Ottawa

Robertson House
YWCA Women's Shelter
Nellies Hostel
Harmony House

APPENDIX B. SEMI-STRUCTURED INTERVIEW AND QUESTIONNAIRE SCHEDULE

As described in Chapter 2, interviews were loosely structured. Interviewees provided their own chronology of events, but questions were at times interjected to ensure that all the basic themes were covered. Interviews were also tailored to the professional background or experiences of interviewees for the purpose of obtaining more detailed information about participation (i.e. legal experience, NGO experience of different kinds, governmental experience, and asylum seeking experience). However guidelines used for interviews followed the same main themes. The Questionnaire sent to women's shelters similarly followed the same themes but emphasised case-experience more than campaign experience, and was more detailed with specific questions elaborated under each question and prompts for various dimensions of the question to be answered. The interview schedule for asylum seekers was different in not departing from professional experience, and allowing for an even looser, unstructured (narrative) account of asylum seekers' experience. A sample describing themes in both supporter-oriented interviews and questionnaires, and asylum seeker interviews is provided below.

Sample interview schedule and Questionnaire themes: core and secondary supporters

Themes and subthemes:

- What was your previous experience with these types of cases?
- Can you describe trends in the types of cases you saw, in your experience, previous to the campaigns?
 - during the campaigns? (particular case scenarios, pre- and post- Guidelines)
 - after the campaigns?

- Why did you get involved with the campaigns?
 - do you/the organisation usually get involved in campaigns for particular cases/asylum seekers?
- How did you get involved with the campaigns?
- Can you describe your involvement in the campaigns?
 - Working with other core supporters
 - working with particular asylum seekers who went public
 - relationship with government; strategies for influencing government
 - relationship with media; strategies for using the media
- Can you describe how the Consultations came about, and what they were like (if participated)?
 - organising sectors to be represented
 - relationships with other participants (by sectors)
 - participation of refugee women
- Were you satisfied with the Guidelines?
- If you didn't engage in advocacy in later cases (post-Guidelines), why not?

Sample interview schedule for asylum seekers who went public

(Interviews were even more loosely structured in these cases. We first began talking about the interview process. I then asked general questions about how the campaigns began and proceeded, and how the particular claimant's case was resolved. Descriptions of the asylum seeking and campaigning experience unfolded in the asylum seeker's own way).

Themes and sub-themes

- When and how did the claimant first seek asylum
 - made an independent refugee claim
 - how did the claimant arrive at these decisions? (advice from others, lack of options, etc)
- When and how did the claimant decide to go public
- How did the claimant go public
 - what *enabled* her to go public
 - in what *manner* did she go public
- Who did the claimant work with
- Interaction with the media
- Description of the asylum seeking process, and campaigns
- Outcome of endeavours (application outcome)
- Did the claimant believe refugee policy and/or its administration should be changed, why and in what way

APPENDIX C.

CHARACTERISTICS OF CORE ORGANISATIONS IN THE ADVOCACY NETWORK

Core organisations in the policy advocacy network (expert interviews) had the following characteristics, described generally in chapter 6 as an outgrowth of trends and developments in the 1980s (formalisation, funding, interests), and chapter 8 regarding organisational type, mandate/interests and political access.

C.1 Refugee and humanitarian organisations

	CCR	ICHRDD	TCMR	RAM
FOCUS	Refugee issues (inland and overseas, policy and administration).	Human rights and democratic development.	Refugee entry, settlement and integration, some policy advocacy.	Refugee issues, primarily entry and settlement
YEAR of formalisation	1977 / 1978, volunteer effort. Formalised in 1988.	1988	Early 1980s	1985, first paid staff
WOMEN'S ISSUES an interest (Year)	Working Group on Refugee Women 1985; became a Core Group in 1988, Refugee Women's Issues	Women's Human Rights part of mandate from the start, targeted as a <i>domestic</i> issue in 1992	Member of CCR Working Group on Women Refugees, 1988.	Member of CCR Working Group on Women Refugees, 1988. Focus on refugee women, networking, policy advocacy in 1993
LOCALE & MANDATE	National umbrella organisation for refugee groups 1. education & networking forum for nonprofits 2. policy advocacy through meetings, correspondence & telephone contact with Gvt., and through media *Rarely advocates for individual cases, unless representative of a structural or group problem	Canadian International organisation. 1. Primarily international advocacy work, mediating between government and NGOs/citizens 2. occasionally takes up domestic issues *Rarely advocates for individual cases, unless representative of a structural or group problem	Montreal umbrella group co-ordinating refugee organisations 1. Research/education on refugee rights 2. develop and coordinate settlement service among NGOs 3. foster understanding btw. society and migrants. 4. Policy advocacy particularly through the CCR *Rarely advocates for individual cases, unless representative of a structural or group problem	Front-line community service for refugees 1. Intervention in entry processes 2. networking, education 3. Policy advocacy through national umbrella groups (ICCR, CCR, TCMR) *Advocacy in individual cases (front-line services)
FUNDING	Government funding for specific activities on short-term basis (unstable).	'Arms-length' or 'independent' nongovernment group created and funded by government.	Government funding, from various departments for specific activities on short-term basis (unstable).	Ecumenical group funded by Protestant church but operating independently since 1992
POLITICAL ACCESS	High political and media access. Serve on several government Working Group committee (IRB Advisory Committee; UNHCR consultative status), regularly advise government on policy and practice, attends and organises Consultations with government	High political and media access, including representation by former party political leader	Moderate political access, particularly on a regional level, and with IRB in Montreal	Moderate/Low direct political access; operates primarily on local level, advocacy through umbrella groups

C.2 Characteristics of Women's organisations

	NAC	NOIVMW	Women's Aid	Flora Tristan	Multi-Femmes	Auberge Transition Women's shelter, Montrea
FOCUS	Women's issues, general	Immigrant and visible minority women's issues	Women's shelter	Immigrant women's shelter	Women's shelter for women of different race and ethnicities	Women's shelter, Montrea
YEAR of formalisation	1972. Years of institutionalisation: 1980-1988	Formalised in 1986	Late 1970s	1986	Early 1980s	Late 1970s
Refugee women's issues an interest (Year)	Increased attention to visible minority, ethnic and immigrant women's issues since 1988.	Always – but more attention to immigrant women and settlement issues than entry issues	Sensitisation toward the needs of immigrant women, late 1980s	Always; Sponsorship abuse a particular focus in late 1980s	Always	Increasingly catering to women of different ethnic and racial origins, mid 1980s
LOCALE & TARGET	National umbrella organisation for women's groups	National umbrella organisation for immigrant and visible minority women's groups	Front-line community service for immigrant women fleeing domestic violence	Front-line community service for immigrant women fleeing domestic violence	Front-line community service for immigrant women fleeing domestic violence	Front-line community service for women fleeing domestic violence
MANDATE & ACTIVITIES	Primarily lobbying federal government on legislation and policy; education and research *Rarely advocates for individual cases, unless representative of a structural or group problem	Education, research Policy advocacy *Occasionally advocates for individual or representative cases	Provide residence, counselling and support; policy advocacy through Provincial and national networks *Advocacy in individual cases	Provide residence, counselling and support; Research and education; policy advocacy through Provincial and national networks *Advocacy in individual cases	Provide residence, counselling and support; Policy advocacy through Provincial and national networks *Advocacy in individual cases	Provide residence, counselling and support; Policy advocacy through Provincial and national networks *Advocacy in individual cases
FUNDING	Government grants from the Women's Program and Secretary of State. Non-government funding sources: membership fees and donations.	Government funding	Government funding	Government funding	Government funding	Government funding
POLITICAL ACCESS	High political and media access.	Moderate access to government, Moderate to media	Low access to government, Moderate to media	Low access to government, Moderate to media	Low access to government, Moderate to media	Low access to government, Moderate to media

APPENDIX D. CHRONOLOGY OF PRESS COVERAGE AND CAMPAIGN CORRESPONDENCE ANALYSED, 1991-1997

- May 2, 1991. Le Journal de Montreal. "Retourner dans leur pays ou continuer d'etre maltraitées."
- December 20, 1991. CCR president David Matas letter to Immigration Minister Bernard Valcourt.
- July 8, 1992. Randy Gordan, Assistant to Immigration Minister, letter to David Matas.
- August 13, 1992. ICHRDD letter to potential supporters.
- August 19, 1992. ICHRDD president Ed Broadbent, letter to Immigration Minister Bernard Valcourt.
- September 17, 1992. The Toronto Star. Canadian Press. "Trinidad can protect woman, Ottawa insists."
- September 23, 1992. The Toronto Star. Willkes, Jim. "Abused woman allowed to stay here."
- November 11, 1992. Montreal Gazette. Bindman, Stephan. "Victim of spousal abuse can stay: Trinidadian woman's refugee claim 'credible'."
- November 11, 1992. The Toronto Star. Special. "Court allows refugee bid by abused woman."
- November 23, 1992. Secours aux Femmes, letter to immigration officials and supporters.
- November 30, 1992. Montreal Gazette. LaSalle, LuAnne. "Make Canada a haven for abused women: NAC."
- January 1993. The Globe and Mail. Oziewicz, Estanislao. "Canada not planning to widen refugee rules to cover sex bias: women fleeing abuse would strain system, Valcourt says."
- January 16, 1993. The Globe and Mail. Oziewicz, Estanislao. "No plan to accept victims of sex bias."
- January 18, 1993. Press release issued by the ICHRDD.
- January 20, 1993. Press release issued by the CCR.
- January 20, 1993. CCR letter to Laura Chapman, Director General of Policy and Program Development, EIC.
- January 25, 1993. Montreal Gazette. Scanlan, David. "Consider gender: persecuted women should have refugees status".
- January 25, 1993. Montreal Gazette. Bennett. "Rape and war: They go together, experts say."
- January 29, 1993. Press release issued by the Immigration Minister's office.
- January 29, 1993. Immigration Minister, letter to Ed Broadbent, ICHRDD.

January 29, 1993. Press release issued by the ICHRDD.

January 30, 1993. Montreal Gazette. Canadian Press. "Persecuted woman gets refugee haven."

February 2, 1993. Press release issued by the CCR. February 3, 1993. Montreal Gazette. Scanlan, David. "Women's groups say abuse is ground for refugee status."

February 6, 1993. Montreal Gazette. Canadian Press. "Valcourt stays deportation of Trinidad woman."

February 10, 1993. Montreal Gazette. Miller. "Battered Montreal mother fears for life if deported to Bangladesh."

February 11, 1993. The Toronto Star. Thompson, Allan. "Women fleeing abuse to qualify as refugees."

February 11, 1993. The Toronto Star. Canadian Press. "Valcourt to review case of Bangladeshi woman."

February 11, 1993. ICHRDD president Ed Broadbent, letter to Immigration Minister Bernard Valcourt.

February 15, 1993. Montreal Gazette. Curran, Peggy. "Is sexual equality a universal value?"

February 26, 1993. NAC letter to Immigration Minister Bernard Valcourt.

March 1993. Montreal Gazette. Curran, Peggy. "Ottawa eases way for women seeking refugee status".

March 1993. Montreal Gazette. Fitterman, Lisa. "Woman gets 18-day delay on deportation: Seychelles native fears estranged husband will kill her if she's sent home".

March 1993. NAC press package on fourteen women seeking stay of deportation.

March 1, 1993. Press release issued by Legal Counsel for Fard, & Firoozeh Radjai, and Iranian Immigrant and Refugee of B.C. "Hunger strike day".

March 3, 1993. Press release issued by legal counsel and the IIRBC. "Hunger Strike Day 9."

March 5, 1993. Montreal Gazette. Bagnall, Janet. "Stop deporting female refugee claimants: NAC".

March 8, 1993. Montreal Gazette. Bagnall, Janet. "Battered Bangladeshi woman can stay."

March 11, 1993. Montreal Gazette. Broadbent, Edward. "Indivisible: Until women's rights are human rights, we have far to go."

March 11, 1993. The Ottawa Citizen. Nada. "A serious step toward accepting female refugees."

March 19, 1993. Letter to Madeleine Barnabé at the Centre Immigration Canada.

March 25, 1993. ICHRDD letter to Immigration Minister Bernard Valcourt, and MPs.

June 6, 1993. The Toronto Star. Thompson, Allan. "Woman given refugee status after fleeing spouse's beatings."

November 1993. Women's Aid, letter to Immigration Minister Bernard Valcourt, and MPs.

December 21, 1993. The Globe and Mail. Broadbent, Edward. "Prisoners in their own homes." Editorial.

November 16, 1994. Press release issued by NAC.

November 17, 1994. Montreal Gazette. "Woman fears death if deported tomorrow".

November 17, 1994. Montreal Gazette. Cherney, Elena. "Can't shelter all battered refugees".

November 17, 1994. Montreal Gazette. Semenak, Susan. "Marchi stops deportation of abused woman and two children"

November 1994. The Westmount Experience. Harting, Clare. "Un sursis de 18 jours ne rassure en rien la famille Sabadin: Une mère et ses deux enfants vivent dans la peur."

November 23, 1994. The Westmount Experience. "Westmounters backing Seychelles refugee: Petition to prevent deportation of threatened woman available for signing at Church of the Advent."

December 1994. The Westmount Experience. Williams, Glynis. "Success for Refugee Action Montreal".

December 6, 1994. Montreal Gazette. Wilton, Katherine. "Pleading to stay."

December 7, 1994. Montreal Gazette. Norris, Alexander. "Woman hides from deportation: says in-laws will kill her in Cameroon."

December 12, 1994. Multi-Femmes (Coalition Quebécoise et Canadienne d'appui a Ginette Ngueyo et a sa fille Belinda), letter to Immigration Minister Sergio Marchi, request for ministerial intervention.

December 12, 1994. Mulit-Femmes (CQCGNB) letter to potential supporters.

December 20, 1994. La Quartier Libre. Calmels, Didier. "Entre la mort et la clandestinité."

January 1995. Dossier prepared for Immigration Minister Sergio Marchi.

January 5-11, 1995. Hour Magazine. Feinberg, Jennifer. "Cameroonian woman threatened from the grave."

January 5, 1995. Mirror. "Hiding out, waiting, hoping." Ginette; Coalition contacted over 50 Montreal groups and local MPs to lobby Federal immigration department.

January 11, 1995. Montreal Gazette. Binder, Sarah. "Cameroon woman in hiding tests new immigration guidelines."

February 2, 1995. Montreal Gazette. Norris, Alexander. "Battered woman kicked out."

February 8, 1995. Montreal Gazette. Norris, Alexander. "Ottawa ruling angers women's groups."

February 8, 1995. La Presse, Montreal. Berger, Francois. "Ottawa déporte une immigrant battue... mais accept l'ex-mari agresseur."

February 8, 1995. Le Journal de Montreal. "Immigration Canada accusée de déporter une femme battue."

February 8, 1995. The Globe and Mail. Canadian Press. "Deportation order fought."

February 10, 1995. Montreal Gazette. Norris, Alexander. "Battered woman to be deported today: immigration rejects last-ditch plea to allow Trinidadian to stay."

February 10, 1995. La Presse, Montreal. Berger, Francois. "Les groups de femmes demandent à Québec de bloquer la déportation d'une famille de Trinidad."

February 11, 1995. La Presse, Montreal. Berger, Francois. "Enfants appréhendés en vue de l'expulsion de leur mère."

February 1995. The Westmount Experience. Regina. "Irrégularités dans la déportation d'une mère et de ses deux enfants."

March 8, 1995. Sabadin, Therese. Speech delivered at the IRB Conference for International Women's Day, Montreal.

March 9-15, 1995. The Carribbean Camera "Guyanese granted refugee status."

July 12, 1995. Montreal Gazette. Wilton, Katherine. "Woman had reason to flee Ghana: threat of genital mutilation justifies her appeal to stay, court rules."

June 21, 1996. The Carribbean Camera "Lesbian gets walking papers."

August 26, 1996. The Toronto Sun. Godfrey, Tom. "Battered wife can stay here."

December 28, 1998. Montreal Gazette. Jelowicki, Amanda. "Deportee fears for her life."

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