

Fleeing gender-related persecution  
from a “safe” country:

Limits of justice for Mexican women  
seeking refuge in Canada



Rupaleem Bhuyan, Adriana  
Vargas, and Bethany Osborne  
University of Toronto

Presented at International Association  
for the Study of Forced Migration, July  
16, 2014, Bogotá, Colombia

# Presentation Overview

---

- ❑ Research Goals and Methods
- ❑ Literature Review & Policy Context
  - ❑ Gender-Related Persecution in Refugee Law
  - ❑ Refugee Policy Context in Canada
  - ❑ Mexican Migration to Canada
  - ❑ Gender & Violence in Mexico & Canada
- ❑ Analysis of Refugee Decisions for Mexican Women, 2007-2012



# Research Goals

---

- ❑ How migration contributes to violence against women precarious immigration status in Canada.
- ❑ Precarious status as part of spectrum of violence against women.
- ❑ How migrant women practice citizenship, through seeking protection and rights.



# Research Methods

- **Summary of all refugee claims from Mexico, 2007-2012** (Rehaag, 2012)
- **Sample of 83 Decisions 2007-2012.**
  - Available from Canadian Legal Information Institute (CanLII).
  - Search terms: domestic violence, sexual assault, partner abuse, violence against women and Mexico
  - Discourse analysis of published decisions (e.g. meaning, ideology, action)
- **National Documentation Packages Mexico:**
  - Produced by IRB to reference in their decisions.
  - Documentation packages for Mexico were last updated in October of 2012
- **Reports from Mexico:**
  - INMujeres, Conavim and INEGI
  - Internet search for publications produced by community organizations and other gov't agencies

# Gender Persecution in Refugee Law: Canadian Context

- 1951—Gender-based persecution not identified in the original UN Convention
- 1991—UNHCR publishes *Guidelines on the Protection of Refugee Women*
- 1993—Supreme Court of Canada rules in *Ward*, that gender can be a basis of claim for membership in a particular social group (LaViolette, 2007)
- 1993--Nurjehan Mawani, Chair of Immigration and Refugee Board of Canada (IRB) issues "Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution"
- 1996—Canadian Gender Guidelines updated
- 2001—Bill C-31 introduced to add gender as a formal category for refugee protection; "dies" with call for election



# Gender-Persecution in Practice

---

- Legal hurdles for recognizing gender persecution (Mawani, 1993)
  - Persecution against women is often informal; intimate relations; indirect
  - Internal flight alternative presumes men and women have same mobility
  - Evidentiary requirements presume women have access to justice
- Uneven response to different forms of gender oppression
  - “universal” vs. “foreign”
- Backlash to Feminism and Equity Agenda (Sadoway, 2008)
  - Late 1990s, women’s advocacy groups dismantled/defunded
  - Cursory attention to gender-based violence
  - Board accepts any change in a state’s domestic violence laws as constituting state protection
  - Appeal process does not involve assessment of how the guidelines are used

# Current Refugee Policy Context

- 2008-2013—Most active period in CA immigration policy
  - Move from permanent to temporary migration
  - Growth in precarious migration
  - Restrictions on family reunification, access to PR and Citizenship
  - Criminalization of immigrants as “bogus”, “fraudsters”, “terrorists”
- December 2012—Bill C-31 implemented
  - 35 “Designated Countries of Origin” or “Safe” Countries
  - Different rights for “regular vs. “irregular” refugees
  - Decreased access to justice (i.e. time, resources, detention)
- June 2012—Interim Federal Health cuts
  - **July 2014—Federal Court rules cuts violate Charter of Rights**



(Image; CCRC, 2012)

# Violence against Women in Mexico

## ■ Rates of violence against women in Mexico:

- 43.2% of women 15 years of older have been victims of intimate partner violence (emotional, financial, physical or sexual) (ONU, INEGI, 2009)
- 2010, average of 6.4 homicides of female victims/day (ONU Mujeres, INMujeres, LXI Legislatura 2012)
- From 1985-2010, 36,606 femicides

## ■ General violence

- 50,000 deaths from 2006-2012 due to drug war (Taylor, 2012)
- Mexico listed as source, transit and destination for human trafficking (UNODC cited in Arteaga, 2014)





# Mexican Legal Context



## ■ Criminalizing Violence Against Women

- 1998, Implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
- 2006, General Law for the Equality between Men and Women
- 2007, General Law on Women's Access to a Life Free of Violence, revisions in 2009 and 2014
- 30 out of 32 states have passed laws on "women's access to life free of violence" (Amnesty International, 2009)

# Access to Justice & Safety

---

- **Support services are growing**

- In 2007, 88 women sought emergency shelter in Mexico city (Immigration Refugee Board of Canada, 2008)

- **“Failure of Criminal Justice System”** (Human Rights Watch, 2012)

- Inadequate training and resources
- Corruption
- Abusive police practices with no accountability

- **Growing insecurity**

- 2007 to 2011, nearly 5,800 human rights violation reported to Mexican Human Rights Commission (Human Rights Watch, 2012)



# Mexican Migration to Canada

- ❑ Since mid-1990s has grown rapidly (Mueller, 2005)
- ❑ 1991-2001, Permanent and temporary residents doubled from 22,035 to 42,720
- ❑ 2003-2012, PRs have risen slightly; TRs have doubled (CIC, 2012)
  - ❑ New PRs rose from 1,738 in 2003 to 4,032 in 2012
  - ❑ New TRs rose from 11,630 in 2003 to 23,683 in 2012
- ❑ Primary channels of immigration:
  - Returning Canadian Mennonites\***
  - International Students\***
  - Seasonal Agricultural Program**
  - NAFTA\***
  - Refugees\***
- ❑ Growth in refugee applications since late 1990s
  - ❑ 2009—Visa requirement for Mexico and Czech Republic

# Analysis of Refugee Claims 2007-2012



## MEXICAN REFUGEE CLAIMS, 2007-2012

YEAR	TOTAL	FEMALE	POSITIVE	NEGATIVE	WITHDRAWN or ABANDONED	GENDER RELATED
2007	2150	662 (30%)	95 (14%)	324 (48%)	242 (36%)	240*
2008	1958	635 (32%)	131 (21%)	504 (78%)	n/a	n/a
2009	3497	1066 (30%)	108 (10%)	515 (48%)	438 (41%)	257**
2010	3374	1032 (30%)	141 (13%)	502 (48%)	387 (37%)	n/a
2011	6072***	2629 (43%)	567 (21%)	1762 (67%)	298 (11%)	n/a
2012	1660	499 (30%)	133 (26%)	296 (59%)	57 (11%)	n/a

\*IRB data indicated which claims involved "domestic violence"

\*\* IRB data indicated which claims were "gender-related"

\*\*\* Includes data for principal applicants and dependents

# Sample of Claims from 2007-2012: Reasons for Denial

	2007	2008	2009	2010	2011	2012	Total
# of Claims Reviewed	17	21	14	14	6	9	84
Reasons for Denial							
Credibility	7	8	6	6	5	4	36 (43%)
Internal Flight Alternative	9	14	7	6	5	2	43 (51%)
State Protection	8	13	10	11	4	7	53 (63%)
Combo of 2 or more	4	9	7	6	5	5	36 (43%)

# Sample of Claims from 2007-2012: Types of Reported Violence

	2007	2008	2009	2010	2011	2012	TOTAL
Physical Abuse	13	20	13	13	6	6	71 (85%)
Verbally Threatened	8	9	6	10	3	4	40 (48%)
Emotional Abuse	1	4	5	4	2	2	18 (21%)
Kidnapped or attempt to Kidnap	1	1	0	0	0	0	2
Sexual Abuse	4	8	6	5	2	1	26 (31%)
Abuse (no further description)	2	0	1	2	0	1	6

# Analysis of Negative Decisions

---

- ▣ Credibility
- ▣ State Protection
- ▣ Internal Flight Alternative



# Challenges to Credibility

---

- Provided inaccurate or inconsistent information
- Provided an account of violence that does not seem truthful
- Evidence from “experts” refutes claimant’s story
- Lack of police response when violence is severe, raises questions about the claimant’s credibility



# Credibility Challenged by Experts

---

- Credibility is refuted by evidence from experts
  - A letter from a Mexican lawyer
  - Excerpts from Federal Policy on jurisdiction.

“This document therefore shows that it is possible to file a complaint with a state jurisdiction; the complaint would be transferred, as applicable, to another state jurisdiction... In conclusion, the panel does not believe that the lawyers told the principal claimant that she could not lodge a complaint... This undermines the credibility of the claimant concerning this aspect of her testimony” (MA8-09643, pp. 6-7)

# Lack of Police Response

---

- If reported violence is severe, but police did not respond, claimants credibility is questioned.

"This panel finds that if physical violence of any sort was involved on **XXXXXX**, 2010, on a balance of probabilities, more drastic measures would have been taken; such as an arrest or at least a summons to appear in court. But more importantly, in the panel's view, the claimant's husband would not have been told to return the next day to resolve things with his wife - this is domestic violence, and this is Canada. Even the claimant's friend knows that she can expect the police to do their job in Canada." (VBO-00422)

# Protection in “Safe” States

---

- States are presumed to be capable of protecting their citizens.
  - Claimant thus has burden of proof for lack of state protection
- Failure of local police ≠ lack of state protection
- No state can guarantee perfect protection; only adequate protection
- Mexico has control of its territory:
  - Having canvassed the country conditions documents, the Panel finds that Mexico is in effective control of its territory and has in place a functioning security force to uphold the laws and constitution of the country. (TA9-14562)

# State Protection and Burden of Proof

---

“On xxxx, 2008, the claimant again reportedly received a death threat and was beaten, assaulted, and raped by her husband. Once again, the claimant sought no protection whatsoever from any police authority, explaining that she was certain that they would do nothing.

When the panel asked how she could make such an assertion when she never took any steps in this regard, the claimant gave the example of one of her female friends who had problems similar to hers, who had unsuccessfully gone to the police....

Once again the panel cannot accept such an explanation. The fact that according to the claimant, one of her female friends did not obtain a positive, concrete result does not show that she personally would have received the same treatment from the police authorities....

States are presumed to be capable of protecting their citizens.

The simple assertion that corruption exists is insufficient to conclude that the state is incapable of protecting its citizens. (MA9-00629, p. 5)

# Limited References to Gender

---

- Standard statement that the guidelines were considered
- Systematic reference to laws in Mexico as evidence that state security is available
- In 2012, 1/3 decisions included more analysis of the gender guidelines
  - Influence on credibility and trustworthiness
  - Cycle of violence
  - Psychological trauma of taking part in hearing
  - 1 decisions involved a lesbian identified woman claiming DV from former spouse
- Some acknowledgement of insecurity in Mexico; IFA is proposed as a remedy

# Internal Flight Alternative

---

- Mexico is a Large Country
  - Geographically large
  - Over 110 million population
  - Densely populated cities are IFAs
    - Mexico City, Veracruz, Monterrey, Guadalajara, Puebla
- District Federal (Mexico City) most common IFA
  - Population to 22 million and growing
  - Global metropolis
    - BBC compared quality of life in “some parts” of Mexico City to “rich European cities”
  - Evidence of shelters, hotlines, orders of protection

# Concluding thoughts

---

- ❑ “Democratic Countries” and proof of burden on claimant
- ❑ Cursory attention to gender based guidelines may reflect weakened feminist politics in Canada
  - ❑ Gender guidelines are not enforceable or evaluated
  - ❑ Rates of domestic violence remain high in Canada (eg. 1 in 4 women will experience partner/spousal violence)
  - ❑ Violence against indigenous women is systematically ignored (e.g. Missing and Murdered Aboriginal women and Trans persons)
- ❑ Intersection of gender related persecution and economic conditions
  - ❑ Mexico City seen as IFA, despite economic challenges of relocation for single women with children



# References

---

- Arteaga, Rosa Elena(2014). Lucia Vega Jimenez – and the Many Women with Precarious Immigration Status. *Battered Women's Support Services*. Available at <http://www.bwss.org/lucia-vega-jimenez-and-the-many-women-with-precarious-immigration-status/>
- Citizenship and Immigration Canada (CIC)(2012). Immigration overview: Permanent and temporary residents. *Facts and Figures, 2012*. Available at <http://www.cic.gc.ca/english/resources/statistics/facts2012/temporary/20.asp>
- Immigration Refugee Board of Canada (IRB) 2007). **Mexico: Situation of Witnesses to Crime and Corruption, Women victims of Violence and Victims of Discrimination Based on Sexual Orientation. February 2007**. Available at [http://www.irb.cisr.gc.ca:8080/Publications/PubIP\\_DL.aspx?id=327](http://www.irb.cisr.gc.ca:8080/Publications/PubIP_DL.aspx?id=327)
- Instituto Nacional de Estadística y Geografía (INEGI) (2009). Mujeres y Hombres in Mexico. *Instituto Nacional de Estadística y Geografía*. Available at [http://www.inegi.org.mx/prod\\_serv/contenidos/espanol/bvinegi/productos/integracion/sociodemografico/mujeresyhombres/2009/MyH\\_2009\\_1.pdf](http://www.inegi.org.mx/prod_serv/contenidos/espanol/bvinegi/productos/integracion/sociodemografico/mujeresyhombres/2009/MyH_2009_1.pdf)
- Keung, Nicolas (2013). Visa requirement lifted for Czech visitors in Canada. *The Star*, Toronto. November 14, 2014. Available at [http://www.thestar.com/news/canada/2013/11/14/visa\\_requirement\\_lifted\\_for\\_czech\\_visitors\\_to\\_canada.html](http://www.thestar.com/news/canada/2013/11/14/visa_requirement_lifted_for_czech_visitors_to_canada.html)

# References Continued

- LaViolette, Nicole (2007). Gender-related refugee claims: Expanding the scope of the Canadian guidelines. *International Journal of Refugee Law*, 19, 2, 169-214.
- Mawani, N. (1993). The factual and legal legitimacy of addressing gender issues. *Refuge*, 13(4).
- Mueller, R.E. (2005). Mexican immigrants and temporary residents in Canada: Current knowledge and future research. *Migraciones Internacionales*, 3(1). Available at <http://www.colef.mx/migracionesinternacionales/revistas/MI08/n08-032-055.pdf>
- ONU Mujeres, INMujeres, LXI Legislatura (InMujeres) (2013). Violencia Femicida en Mexico. Caracteristicas, tendencias y nuevas expresiones en las entidades federativas:1985-2010. *ONU Mujeres*. Available at [http://www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2013/2/Feminicidio\\_Mexico-1985-2010%20pdf.pdf](http://www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2013/2/Feminicidio_Mexico-1985-2010%20pdf.pdf)
- Taylor, Alan (2012). Mexico's Drug War: 50,000 Dead in 6 Years. *The Atlantic*, May 17, 2012. Available at <http://www.theatlantic.com/infocus/2012/05/mexicos-drug-war-50-000-dead-in-6-years/100299/>