NAC's Response to the Immigration "Not Just Numbers: A Canadian

BY SEDEF ARAT-KOC — IN CONSULTATION WITH, AND FEEDBACK FROM,

Le Comité d'action nationale livre ses préoccupations sur la révision par le Gouvernement canadien de la Loi sur l'immigration.

The National Action Committee on the Status of Women (NAC) agrees that there are several problems with the *Immigration Act* in Canada and that it needs to be changed. Indeed, individual women's groups and NAC have over the years made several specific recommendations to deal with problems of equity and fairness in the *Immigration Act*, immigration policies, and immigration process. When the Canadian government initiated the process of review and change of the *Immigration Act* (of 1978, which is still in effect), NAC hoped that this process would be based on such principles. NAC is disappointed, however, to observe that The Immigration Legislative Review report, *Not Just Numbers: A Canadian Framework for Future Immigration,* the document which is expected to guide this process, is very much a product of anti-immigrant, anti-refugee, and racist sentiments. We are concerned with the cynical attitude towards immigrants, especially those immigrants coming from non-traditional source countries, which colours the spirit and the tone of the document.

We are concerned that this spirit is represented even in the title of the report *Not Just Numbers*, which is reminiscent of the racist debates over immigration in Canada at the turn of the century. "Just Numbers" have never been the basis of immigration policy or practice in Canada. The implication in the title that recent immigration policies in Canada have emphasized "just numbers" is insulting to both the immigrants who have arrived in Canada in the last few decades and principles in these policies which attempted to overcome some forms of discrimination in immigration.

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Not Just Numbers: A Canadian Framework for Future Immigration claims to uphold the fundamental values and principles entrenched in the *Canadian Charter of Rights and Freedoms.* The recommendations of the report, however, would inevitably have a differential and negative impact on women, particularly poor women and women of colour. NAC, therefore, views the report as a document which contravenes the equality principles of the *Charter.* It is also concerned with the recommendations of the report which would no longer provide *Charter* protections to those affected by immigration and refugee policies. In addition to its contradictions with the principles of the *Charter,* NAC sees the report as also departing from the spirit of multiculturalism policy in effect in Canada since the early 1970s.

One of the key commitments made by the Canadian government in the "Beijing Platform for Action" was to conduct gender analysis of all its policies. The Immigration Legislative Review report not only lacks even a preliminary analysis of the gender implications of its recommendations, but also fails to acknowledge and address existing bias and discrimination against women in the immigration and refugee systems. NAC strongly urges the government to have a gender analysis of the recommendations done and prioritize gender equity among its principles, before considering and adopting any of the recommendations for actual policy and legislation.

Our observation is that the Immigration Legislative Review report paints a rather specific and unidimensional picture of who a desirable immigrant would be. NAC is concerned that this picture is of a male immigrant from traditional source countries and/or somebody who may be able to make up for the "inferiority" of his race or source country by a privileged class status.

The report treats "integration" as one of the central issues which guides its recommendations. Integration, however, is treated almost solely as the responsibility of the immigrants, but not of Canadian society and the state. This approach overlooks the significance of racism and sexism in setting obstacles to integration. It also eliminates many of the responsibilities of the state in the settlement process. We observe for example, that the report introduces demanding criteria not only for the achievement of citizenship (Recommendation 31), but (in a move that is new in recent Canadian history and that implies a suspicious attitude toward immigrants) also for the maintenance of landed immigrant status (Recommendation 30). While the report recommends the creation.

of a bureaucracy to enforce these higher expectations from immigrants, it also suggests that it is not the responsibility of the Canadian government any more to pay for such settlement services as language training for self-

Legislative Review Report
Framework for Future Immigration"

supporting and family class immigrants.

NAC is concerned about the tone of the Immigration Legislative Review, which generally treats immigrants as persons with responsibilities (e.g. to be self-sufficient, to successfully integrate) but not necessarily rights. It does not address or deal with problems of racism and discrimination that have prevailed and grown stronger in Canada in the recent period, but rather legitimates and reinforces racist, anti-immigrant, anti-refugee sentiments.

Different classes of immigrants

Not all immigrants are equal under immigration law. Different classes of immigration not only use different criteria but they also impose different conditions regarding one's rights and freedoms in Canada. NAC finds that the separation between those contributing to the economy and those not, not well grounded.

Self supporting immigrants

The Immigration Legislative Review report introduces new criteria over and above the already demanding criteria used under the point-system to determine who can be considered self-supporting immigrants. The controversial requirements and that each and every self-supporting immigrant have proficiency in at least one of the official languages at the time of their entry into Canada (Recommendations 53, 58, 59), and that self-supporting immigrants be able to personally meet the financial costs of establishing themselves and their families during their first six months in Canada (Recommendation 52).

NAC is concerned that the new immigration requirements recommended in the report, while appearing "objective" and race-neutral, would bias immigration to Canada once again in favour of the traditional source countries. This is a strong possibility given both the variety of languages spoken around the world, and the unequal and uneven distribution of wealth and income between first and third world countries.

NAC is also concerned about the serious gender implications of the immigration criteria. The demanding criteria recommended in the current report, have negative gender-specific effects for women. First of all, gender inequalities which prevail globally mean that women have unequal access to formal education, education in foreign languages, privileged positions in the labour market, and wealth and capital. Secondly, what may appear to be "objective" criteria can be nonetheless interpreted in gender-biased ways that make it difficult for women to achieve independent status as "self-supporting immigrants." For example, "education" is used solely to refer to education that takes place in a formal institution. The criterion "skill" is used in favour of those skills acquired in formal education and/or workplaces outside the home. Likewise, "work experience" refers to experience in public-sphere work. Besides disadvantaging many women in the immigration process, these criteria devalue the education, skills, and experiences many Canadian citizens and residents use to contribute to Canadian society and the economy.

NAC strongly recommends that the government of Canada, conduct a gender analysis of these criteria and the ways they have been typically defined. There is a need for discussion and debate in Canada around what constitutes a contribution to the society and the economy.

Temporary economic immigrants

The category of "temporary economic immigrants" which has existed since the early 1970s represents a departure from the historical tradition in Canadian immigration policy to treat immigrants as permanent residents. Given our knowledge about which groups of immigrants have been categorized as "temporary economic immigrants" to Canada, there is not sufficient clarity in the definition and satisfactory justification for the distinctions made between "temporary" and "permanent" immigrant categories. The definition used for the temporary system, "persons who will consume and/or produce Canadian goods and services over a specific period of time" is too vague to be useful and insulting to the contributions many people in this category make to Canadian economy and society. Since many people born and raised in Canada move to other countries to work and live, and many people who may origi-

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RECOMMENDATION 30

The criteria for the maintenance of landed immigrant status should include 1) the demonstration of physical residency in Canada equivalent to at least one year during the initial three-year period following landing; and 2) the filing of Canadian income tax returns for each of the three years following landing. All immigrants should be advised in writing of this renewal requirement upon initial landing. Following the initial period, the requirement should be the need to demonstrate physical residency in Canada for at least two of the preceeding three years and the filing of income tax returns for each of the three years. Immigrants not able to prove their residency would be deemed to have lost their status.

RECOMMENDATION 31

The Immigration and Citizenship Act should include criteria for granting citizenship which demonstrate both personal suitability and active participation in Canadian society, including:
- Physical residence (three years residence);
- Fiscal responsibility (conformance with *Income Tax Act*);
- Knowledge of Canada and of an official language;
- Minimum age (18 and over)
- No serious criminality (including violations of Immigration Act); and
- Active participation (at least two of the following: employment, study, volunteer/community service, family care).

RECOMMENDATION 75

The Live-in Caregiver Program should be eliminated as a separate visa class and made, both in theory and in practice, entirely consistent with the Foreign Worker Program. The Immigration and Citizenship legislation should allow caregivers with a valid, permanent job offer to apply for landed immigrant status in the Self-supporting Class.

Excerpted from, "Not Just Numbers: A Canadian Framework for Future Immigration."

nally arrive as temporary immigrants end up staying permanently (as a result of continuing high demand for their occupations and their individual preferences to make Canada home), we are concerned that the categories are arbitrary and may be used and abused to disadvantage those categorized as temporary. Recommendation 71, for example, which assigns responsibility of health coverage to the employer (but does not recommend measures to enforce this) contradicts the principle of universality in health care, and leaves the temporary immigrant in a dependent and vulnerable position.

Foreign domestic workers

Given the inequalities that prevail globally in terms of women's access to formal education and the labour market, and the sexism which prevails in the interpretations of what counts as "skill" and "economic contribution" under the point-system, the vast majority of women immigrants come to Canada under some sort of sponsorship. Historically, as well as in the recent period, domestic work has been one of the few occupations through which women have gained entry to Canada as independent immigrants.

However, since the 1970s, domestic workers have been accepted to Canada only as temporary workers. Research has shown a significant relationship between the temporary status imposed on domestic workers and their vulnerability to abuse. Given the high demand that has always existed for domestic workers, and the valuable skills domestic workers offer in their occupation, there has been no justification for the obstacles created to prevent domestic workers from achieving independent status under the point-system.

NAC demands that domestic work be accorded its value under the point-system and domestic workers be treated equally with other workers and immigrants who meet a labour-market need in Canada. NAC, INTERCEDE and other domestic workers organizations have over the years insisted that an equal and fair treatment of domestic workers would involve the elimination of the live-in requirement which is reminiscent of historical forms of indenture, and the acceptance of domestic workers to Canada as landed immigrants.

Even though Recommendation 55 suggests that there should be no excluded occupations under the point-system (which might remove one of the obstacles in the way of permanent status for domestic workers), we are concerned that the report (Recommendation 75) automatically categorizes domestic workers as belonging in the Foreign Worker program, once again reinstating the temporary status of domestic workers in Canada, in ways very similar to the infamous policies of the 1970s. In the 1970s, most domestic workers from non-European countries were allowed to come and stay in Canada only under temporary work permits, with no possibility of converting their status to a permanent one. Since 1981, policies have

been slightly revised to allow for application for permanent status following two years of "successful" performance under temporary status. Recommendation 75 suggests that domestic workers ("live-in caregivers" since 1992) would come to Canada as temporary workers, but could apply for landed immigrant status if they could get a valid, permanent job offer. What would constitute a permanent job offer in the care-giving occupations is not clear. The dependency of the caregiver upon a specific employer to obtain a permanent job offer could potentially lead to abusive employer/employee relationships. We welcome the recommendation to eliminate living-in as a government requirement. The wording of the report however, leaves the issue to "the arrangement they make with their employer." In a relationship where the employee is made dependent on the employer for the possibility of permanent status in Canada, NAC is concerned that domestic workers would be especially restrained and disempowered in their negotiations with employers.

Family class immigrants

NAC applauds the changes the Immigration Legislative Review recommends regarding the definitions of "spouse" and "family" used in discussions of family class immigration (Recommendations 32 and 34). Such changes seem to respond to criticisms made over the years regarding the homophobic as well as ethnocentric biases which prevailed in the previous definitions of spouse and family. NAC has been concerned and critical over the years about the fact that women are over-represented in family class immigration and that they experience dependency and are potentially vulnerable to abuse in the sponsorship relationships created by the conditions of Family Class. It therefore considers Recommendation 37, which suggests that the period of sponsorship for spouses and dependent children be reduced from ten to three years, a relatively positive move, which would decrease the period of dependency and make some Family Class immigrants members and residents of Canadian society in their own right. We also welcome Recommendation 45 which asks for the exemption of sponsored spouses and children from the excessive cost component of the medical inadmissibility provisions, and which would therefore limit the ableist biases of the general immigration criteria.

While Recommendations 37 and 45 are relatively positive we find Recommendation 42 to be ambiguous as it suggests the termination of sponsorship obligations in cases of physical and psychological abuse (failing to add sexual abuse), but does not specify or clarify what would happen to the family class immigrant in cases of sponsorship termination.

There are several other problems with respect to Family Class immigration. The first problem has to do with access. Given the expectation that sponsors would now have to pay for the language acquisition of their dependents (Recommendations 35, 41, 64); the new criteria used to determine who could and could not sponsor family (Recommendations 38, 39, 41); and the harsh enforcement measures recommended to ensure fulfillment of sponsorship obligations (Recommendation 36), few people would find the financial means and confidence to sponsor family members to Canada. This would result in Family Class immigration being reserved for a small elite, while the majority of newcomers, as well as some long-time Canadian residents, would be separated from their families.

NAC is also concerned about the fact that the report, while appearing to liberalize the definition of family, also introduces a hierarchy into this definition, once again repeating the ethnocentric biases as to whom would be among the most significant family members (Recommendation 40). The combination of a ten-year sponsorship and the excessive costs involved in paying for the immigration application, right of landing, and language tuition fees suggests that very few relatives and significant others, if any, would realistically be sponsored to come to Canada. Despite the seeming liberalization in the definition of family, therefore, we think that the report is arguing, in effect, for a closing of Family Class immigration.

Refugees

One of the most significant recommendations of the report is the separation of legislation governing refugee protection from that governing immigration (Recommendation 2). NAC has been concerned over the years that much of the admission criteria used in the overseas admission process focussed on potential for successful economic settlement, rather than actual need for protection. In this sense, we cautiously welcome this recommendation in the report, as it can be interpreted as a way to separate principles governing admission of immigrants and refugees. There are, however, several recommendations regarding a system governing refugee protection that we have serious concerns over.

The system of decision-making

The report recommends that all of Canada's protection activities, inland and overseas, be managed by a single streamlined system (Recommendation 83). According to the report, this system is to consist of a cadre of career civil servants acting as Protection Officers and Appeal Officers (Recommendation 85). At present, the inland refugee determination in Canada is in the hands of the Immigration and Refugee Board which was founded in 1989 in response to a Supreme Court decision

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that refugees were entitled to a hearing to determine matters of credibility. Although there have often been questions raised about the connections between the Immigration and Refugee Board and the government, the board has been, at least in principle, an independent body.

The report does not identify or address the lack of independence of career civil servants from government—their direct paymasters—and the potential for institutional bias in the proposed regime. NAC is of the opinion that Recommendation 85 contradicts some of the stated aims of Recommendation 2, separating refugee protection from immigration. We are concerned that the reintroduction of a bureaucratic system in refugee determination would leave the decision-making body vulnerable to pressures from government to affect policies and decisions that may conflict with principles governing refugee determination.

Speedier determination of status

There is a great deal of emphasis in the recommendations made to restructure the refugee protection system on a speedier process. In some ways, a speedier process would certainly be favourable as it would reduce uncertainty in the lives of refugee claimants. NAC is concerned, however, that the increased speed of determination will likely be attained at a price. Speed may mean that there would be very little time to choose and engage competent legal counsel and interpreters, less opportunity to gather relevant documentary evidence and witnesses to put forward the best case possible, and less opportunity to know and refute the case made against the claimant by the Immigration Department.

Unification of inland and overseas claims processing

The Immigration Legislative Review report recommends a centralized decision—for both overseas and inland refugee claims processing (Recommendation 83). Currently, there are two different sets of criteria applied to refugee claims. Whereas the inland system focuses mostly on the need for protection, overseas claims equally takes into consideration the likelihood of the applicant to adapt successfully in Canada. The vast majority of inland claimants are men while the pool of overseas claimants (residing in refugee camps) are primarily women and children. Women and children are less likely than men to afford the means to travel to Canada to make an inland claim, and are also less likely than men to meet the criteria of the, "likelihood of successfully adapting to life in Canada," used in overseas claims. The report criticizes the latter criteria as it "gives priority to the most economically viable of the world's refugee population rather than those most in need." The elimination of the "adaptation" criteria (Recommendation 88) may potentially benefit women and children. NAC is in support of such a move.

On the other hand, our support is a cautious one, as we are not clear as to how exactly a centralized system would look and work. Under the 1951 *Refugee Convention* which Canada has signed, the obligation to offer protection is only reserved for inland refugee claimants. There are no obligations towards claims made abroad. We there-fore question what centralization of claims processing and decision-making would mean: whether it would open up the protection system to all who genuinely need it, or, in effect actually close it.

Criteria for refugee determination: no reference to gender-related persecution

The report proposes that the *Protection Act* define refugee determination criteria not only on the basis of Canada's obligations under the 1951 *Refugee Convention*, but also "more inclusive grounds for protection" consistent with other human rights and humanitarian standards. For the latter, the report uses the examples of the protection of the rights of the child, and protection against torture and slavery. NAC is totally supportive of the principle of recognizing more inclusive criteria for protection. It is disappointed, therefore, that the report makes no mention of gender-related persecution as one of the grounds for protection.

In 1993, Canada took leadership in the world for development of more inclusive criteria that included gender-based persecution. While the *Immigration Act* was not amended to officially change the definition of who was a refugee, The Immigration and Refugee Board (IRB) adopted the "Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution." While the IRB Guidelines have been limited in their application as they only dealt with inland claims, they have been at least a symbolic first attempt to recognize gender-related persecution. The Immigration Legislative Review report makes no mention of the Guidelines and what would happen to them with the elimination of the IRB, as proposed. The absence of any references to gender-related persecution is particularly interesting because Chapter 7 dealing with refugee protection, is probably the only part of the report acknowledging gender inequalities in the system. We question why the report would, on the one hand, demonstrate gender sensitivity by justifying the unification of the refugee claims processing on the grounds that the present system creates inequalities because of gender differences in who can gain access to inland processing, and on the other hand, be totally silent on other issues regarding gender bias in refugee-determination criteria.

NAC thinks that more inclusive protection criteria should explicitly recognize women's rights as human rights and incorporate human rights abuses directed at women and children including sexual violence, domestic violence, and sex slavery. This should be done by incorporating the notion of gender-related persecution into the *Protection*

Act so that the Guidelines used by the IRB can apply to overseas claims as well as claims made in Canada.

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PHERYNE WILLIAMS THATCHER

The Narrowing View

It's what Irene sees
out her kitchen window
from where she sits
at an angle. All day
she shuffles her cards
she eats her meals
and chews her nails.
She gazes out the window
with such longing at all
her precious shrinking
memories.

Pheryne is a graduate of both Queen's University, Kingston, and York University, Toronto. She is a teacher living in Montreal who has had work published in literary journals in North America and abroad.

HAWA JIBRIL

Qaxootiga Kanada

Qaxootiga Kanada dhakhso waa u
qaabishaa
Lamana qadiyee waxbaa loo qorshaynayaa
Qanaacad ma laha lacagtaannu qaadannaa
Qawtalyoonka iyo guryohooda qaaligaa
Markii loo qaybasho jeebkaagi baa
qallalan
Ummad qalaad weeye oo qaarba meel ka
yimid
Salaan kaa qaadahayn oodan la qabsan
karin
Qofkaad aragtaaba albaab buu qafilanayaa
Waa qaloodaayoo cidladu waa wax lagu
qandhado ee
Qadiyadaydiiyo qarankaan u heesi jirey
Africa quruxdeedi mar haddaan ka
qaawanahay

Refugees in Canada

Indeed Canadians welcome refugees
And do not let them starve
Yet one is always unsatisfied and broke
For the little we get
Hardly suffices our food and shelter
They are strange people coming from
everywhere
Never notice you or even greet you
Each one keeps to himself
Always hastily locking his door
I feel isolated and sick with loneliness
Deprived from my beautiful Africa
And the land of my inspirations and songs
I must be contented with the fate
That my God has reserved for me

Translated into English by Faduma A. Alim.

Hawa Jibril, an 80-year-old Somali landed immigrant, is a well-known poet and patriot who writes on the social and political events of her country.