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**GENDER ASPECTS OF INTERNATIONAL MIGRATION TO
CANADA AND THE UNITED STATES***

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*The views expressed in the paper do not imply the expression of any opinion on the part of the United Nations Secretariat.

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A. INTRODUCTION

Historically and today, Canada and the United States are two of the major catchments regions for international migrants. Together they contain nearly 44 million migrants or approximately 23.5 percent of the world's total.¹ While popular imagery depicts the United States as the major magnet for migrants, Canada – with a population one-tenth that of the United States – admits a greater proportionate share of immigrants to North America. In the first four years of the 21st century (2000-2003), twenty percent of all 6,196,637

B. MIGRATING TO NORTH AMERICA

1. *Gendering Permanent Migration*

Both Canada and the United States view migrants as permanent settlers, and admit most migrants with the right to live permanently in the host country. Such migrants are called “permanent residents” under Canadian immigration legislation, and “aliens” in American immigration law, although in this paper the term “immigrants” is used to denote permanent residence status. In principle, women who seek permanent resident status in Canada and the United States enter in ways similar to men. They may be admitted on the basis of their family ties, their economic contributions or on the basis of humanitarian based concerns. Within each of these three categories of “admissibility”, they may enter as independent or autonomous migrants who are bureaucratically defined as “principal applicants,” or they may enter as “tied movers” who are members of a migrating family or household unit.

But reflecting social and cultural ideals, practices and displays of masculinity and femininity that constitute gender roles, relationships and hierarchies, women are more likely than men to be admitted in administrative and visa categories as family members and as spouses rather than as workers. In the United States for example, between 2001 and 2004, females were 60 percent of those legal permanent residents who entered in the second family class as spouses, children and unmarried sons and daughters of alien residents; they were nearly two-thirds of those entering as parents of American citizens and 61 percent of those entering as spouses of American citizens (unpublished figures supplied by Department of Homeland Security, Office of Immigration Statistics). In Canada, where published immigrant data distinguishes by gender, females were 61 percent of the Family class admissions, and 47 percent of those admitted in the Economic and Humanitarian classes. The gender divide is even more obvious among those who are the principle applicants. Here females represent 60 percent of principal applicants in the family class, reflecting their petition to join members of their families already in Canada and subsequent sponsorship; they were 29 percent and 37 percent respectively of all principal applicants in the Economic class and in the Humanitarian class, which includes those admitted as United Nations Convention refugees.

These figures highlight the fact that the mode of legal entry is closely associated with gender. However gender also is embedded in immigration rules and regulations. Here the risk is that such regulations often appear gender neutral but have gender specific implications for the ease of entry and the entry status of women and men. For example, criterion of admissibility that assess economic migrants on their years of work experience may disadvantage the entry of women workers if they have interrupted their labour market participation for care-giving or other family responsibilities. Or, criteria that include the capacity to “make ones way” or “make a living” may mean that women are less likely than men to meet refugee admissibility criteria necessary for permanent settlement in an industrial country. This would seem especially likely for women who lack high levels of education as a result of gender stratification in their source counties, and who may have married at young ages and borne many children as a result of societal norms (Boyd, 1998).

Gender biases in immigration regulations have the potential to be minimized both by the implementation of gender based analysis and by special programs targeted at women. As developed over the years, and articulated in Canada’s Federal Plan for Gender Equality presented to the United Nations Conference of Women, gender based analysis is consistent with the emphasis in the Beijing Platform for Action on the importance of mainstreaming a gender perspective in all policies and programs in order to determine the impacts on women and men.³ Gender based analysis did provide a framework for more gender sensitive changes in several sections of Canada’s recent Immigration and Refugee Protection Act (IRPA), effective June 2002.⁴ Starting in 1995 in the United States, a President’s Interagency Council on Women was mandated to encourage gender mainstreaming; this agency was replaced in 2001 with the Office of International Women’s Issues although its impact is debated.⁵

Special programs targeted at women and girls also may help remove the potential indirect gender biases that can occur with immigration policies. In response to a UN request to assist vulnerable women in UNHCR camps in the late 1980s, Canada developed a “Woman at Risk” program, which was followed by similar initiatives in Australia and New Zealand. "Women at Risk" lack the normal protection of a family unit, and find themselves in situations where the local authorities cannot assure their protection.⁶ They do not have to have the same potential for settlement as do other refugees or humanitarian based cases. However, the numbers admitted are small, representing fewer than 2,500 women and their dependents through the late 1990s; the program has since been extended to include other vulnerable groups and renamed the Urgent Protection Program (UPP). The United States does not have a formal "women at risk" program (Boyd and Pikkov, 2005).

C. TEMPORARY MIGRATION: A POTENTIAL BACKDOOR OR A TRANSITORY STATE?

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of human rights, and/or in which the state fails to protect individuals from harm (Boyd, 1998; Boyd and Pikkov, 2005).

Again, gender mainstreaming and putting special procedures in place may lessen or remove such potential gender specific impacts. Canada was the first country worldwide to issue guidelines to address gender related persecution, released on International Women's Day, 1993. Fear of gender related persecution now may be part of the subsequent adjudication process to determine if claimants are admissible as refugees or on other humanitarian grounds. It includes taking into consideration the fact that women may fear persecution solely for reasons pertaining to kinship (i.e. because of the status, activities or views of their spouses, parents, and siblings, or other family members); that they may 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 (this also includes the failure of the state to protect from domestic violence; and that they may fear persecution as the consequence of failing to conform to, or for transgressing, certain gender-discriminating religious or customary laws and practices in their country of origin.⁸ Between the 1993 introduction of the Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and December 31, 2002, the IRB finalized 2,331 Gender-Related claims. As of December 31, 2002, a total of 1,345 of these claims had been accepted, 691 rejected, and a further 295 claims were either withdrawn, abandoned, discontinued or otherwise finalized.⁹

Since 1993, similar guidelines have also been adopted by other countries including the United States (Scialabba, 1997), Australia and most recently the United Kingdom. Despite their differences (Macklin, 1999), both American and Canadian guidelines note the need to be gender sensitive when considering the grounds for persecution, as well as the need to make special efforts for women claimants during the refugee determination process (such as having female interviewers). However, although successful cases exist that demonstrate the use of gender based claims of persecution, determining how gender based claims are actually treated in Canada and in the United States and quantifying results remains difficult.¹⁰ The acceptance rates of all refugee claimant cases have dropped in Canada since the early 1990s. As well, concern exists that the Safe Third Country Agreement, signed by officials of Canada and the United States on December 5, 2002 as part of the Smart Border Plan may reduce the capacity of all persons, including women, to make refugee based claims (Macklin, 2003).¹¹

3. Temporary Workers

The number of visas issued on a temporary basis to workers has increased in both countries. In

which target nurses.¹⁵ In Canada although health care workers are not among the top five sectors of flows (primary industries, sales and services, natural and applied sciences and social science, education and government) the trend line is upward. In December 2004 there were 4,611 temporary health professionals in Canada, up from nearly 1,500 in 1996.¹⁶ The sex composition of this pool of health workers is not publicly available.

In the occupations defined as less skilled, male temporary workers in both countries concentrate in agricultural jobs; in Canada, Seasonal Agricultural Workers Program (SAWP) allows for the entry of agricultural workers from Mexico and the Caribbean to assist in the harvesting of Canadian crops. For the past 10 years, workers coming to Canada under this program have been overwhelmingly male, accounting for 97% of the total in 2004.¹⁷ Women predominate in the Live-in Caregiver Program (LCP) which brings workers to Canada for live-in caregiving when there are not enough Canadians to fill the available positions. Workers hired under this program care for children, seniors or people with disabilities, without supervision, in a private household.¹⁸

The LCP is an unusual program in that it provides a bridge to permanent resident status. While such bridging mechanisms also exist in the United States with respect to the H-1B visas, workers in the LCP are considered to be in occupations at moderate levels of skill. This bridging arrangement reflects earlier abuses and the pressures of NGO groups to remove those associated with continual renewals without entitlement for permanent residence. Those admitted through the LCP may apply for permanent residence in Canada after completing two years of live-in caregiving employment within three years of their arrival in Canada. In recent years the educational and language requirements have been strengthened, and it is thought that some of the caregivers are former nurses and teachers. A similar program does not exist in the United States although a small “Au Pair” program has existed since 1986 as an educational and cultural exchange with a strong child care component. Among the requirements is that the applicants be between the ages of 18 and 26. A sub-sector of the program (Edu-Care) also exists with a stronger educational component.¹⁹ The larger numbers and greater availability of illegal workers in caregiving may partly explain the absence of program in the United States that is similar to Canada’s LCP (Ray, Lowell and Spencer, 2006)

Workers who enter Canada as temporary workers in the LCP are almost all women. Levels declined from the mid 1990s on, then rose in the early 2000s. In 2004, Canada admitted 5,850 workers under this program, the highest level since 1991. The vast majority of these workers now are women from the Philippines (85%). Other source countries have varied through time, with most numbers coming from the United Kingdom, France, Slovakia and India. Actual annual landings also declined during the 1990s but now are increasing again.²⁰ (Citizenship and Immigration Canada, 2005, pp. 11-13). The stock of foreign workers who came here as live-in caregivers has also increased steadily over the past several years. As one might expect from the flow data, foreign workers from the Philippines also dominate the stock data, accounting for 14,327 of the 16,297 total numbers of foreign workers in the program. A small survey finds that the decision of these Filipino women to come to Canada is largely driven by the financial and social welfare of their families; sending remittances home is considered to be very important (Stasiulis and Bakan, 2005, pp. 102-103)

The LCP also is an unusual program because it bears the imprint of considerable public scrutiny alongside NGO interventions. While the government ultimately sets policy for special programs, public inventions and NGO lobbying can be of influence. A number of NGO groups exist in Canada that are focused around the concerns and needs of immigrant women working as domestics, particularly those in the Live-in Care Program. The groups have been active since the 1970s, with INTERCEDE, a Toronto based organization, active in lobbying the federal government.

D. IRREGULAR MIGRANTS

illegally, that is without undergoing formal admission. Terms such as “non-status” or “undocumented” migrants are also applied to the irregular population.

The irregular population in the US is estimated at about 10 million, representing a little over one-quarter of all foreign-born in the country. Backlogs for permanent residence status are thought to be responsible for a good part of this population; family members can wait for as long as 10 years for a visa.²¹ A majority of these in line are women and children, Women are estimated to comprise about 41 percent of irregular migrants in the United States; about 90 and 62 percent of these men and women are in the America labour force, with women often working as domestics, or sub-contracted cleaners.²² Women do not appear to have benefited as much from legalizations that occurred under IRCA in 1986, which were easier to obtain for men (Powers, Seltzer and Shi, 1998). Yet, the fact that US born children have full legal citizenship complicates any requirement that workers return to countries of origin. Currently, it is estimated that there are 3 million US citizen children whose parents have irregular status.²³

In Canada the issue of irregular migrants has suddenly become very public after two decades of neglect following the amnesty-based federal “Long Term Illegal Program” between August 1983 and July

Trafficking is hard to quantify because of its covert and illegal nature. While estimates exist as high as 4 million women and girls sold world-wide into slavery, forced prostitute or forced marriages, the U.S. State Department reports suggest smaller numbers in the range of 600,000 – 800,000 annually, of whom 80 percent are female. The United States is ranked very high as a destination country. Recent estimates of those trafficked into the United States range from 14,500 to 17,500, down from earlier higher estimates of 45,000 to 50,000 in the late 1990s. Canada is ranked high as a destination country, and estimates also vary. A 1998 study commissioned by the Solicitor General of Canada concluded that trafficking accounts for 8,000-16,000 people arriving illegally in Canada. More recently, the Royal Canadian Mounted Police (RCMP) estimates that 800 persons are trafficked into Canada per year although non-governmental organizations (NGOs) suggest much higher numbers (Gozdziak and Collett, 2005; Langevin and Belleau, 2000; Stewart and Gajic-Veljanoski, 2005; U.S. Department of State, 2005).²⁵

Not all trafficked persons enter Canada or North America illegally although most are thought to do so. Some may enter legally as students, visitors, domestic workers and as brides. A 2000 Canadian report notes that many entertainers and sex workers from Eastern Europe entered legally through a visa program that granted short term work permits for exotic dancers. Issuing of visas for entertainers has subsequently declined (McDonald, 2000; U.S. Department of State, 2005).

Trafficking not only occurs in both Canada and the United States; it also links the two countries. The RCMP estimated in 2004 that beyond the 800 persons estimated to be trafficked into Canada annually, an additional 1,500 to 2,000 persons are trafficked through Canada to the United States. Again, some estimate that this number is much higher. It is thought that relatively weak Canadian enforcement efforts, particularly in British Columbia, are responsible for a clandestine trafficking operation in which hundreds of South Korean women are smuggled through Canada into the United States (U.S. Department of State, 2005). Other sources for transporting women to the United States via Canada include Central and South Eastern Europe, China – particularly from the Fujian region, the Russian Federation, and Western Asia. Women are also trafficked into the United States from Malaysia, Mexico and Thailand.²⁶ One RCMP officer recently noted that the journey from point of origin to destination in the United States can take up to two years and involve as many as eight steps; one example involved travel from Fujian (China)-Vietnam-Egypt-South America-Europe-Mexico –the United States.²⁷

Both Canada and the United States governments are signatories to the United Nations Protocol on Trafficking which entered into force in 2003. Consistent with the principle of preventing and combating trafficking in persons, each government funds anti-trafficking initiatives abroad. Critics, however, note that the supply of trafficked women arises from poverty and under-development and that greater contributions to international development initiatives are needed (Oxman-Martinez, Hanley and Gomez, 2005; U.S. Department of State, 2005).

Both countries also have internal programs targeted at victims (Gozdziak and Collett, 2005). Nevertheless, tension remains between the prosecution and protection elements of trafficking. In the United States until the passage of the Trafficking Victims Protection Act (TVPA) of 2000, human trafficking was viewed as an immigration problem.²⁸ Canada was heavily involved in the negotiations leading to the adoption of the UN Trafficking and Smuggling Protocols. Canada's new legislation, the Immigration and Refugee Protection Act effective June 2002, makes trafficking in persons a criminal offense with penalties of up to life imprisonment and fines of up to one million dollars. However, variation exists between individuals and between various government agencies with respect to the application of a human rights based protection of victims and the emphasis placed on crime and security aspects of trafficking (Gozdziak and Collett, 2005; Oxman-Martinez, Hanley and Gomez, 2005).²⁹ Victims of trafficking may apply as refugee claimants for the right to remain in Canada although if they are arrested first, they may be deported. On May 11, 2006 the Canadian government announced that immigration officers will issue temporary resident permits (TRPs) for up to 120 days to victims of human trafficking, who also will be exempt from the processing fee and will be eligible for health care benefits under the Interim Federal health care program.³⁰ However, security issues since September 11 have generated complaints, particularly from the United States that Canada's immigration laws are lax and

both jeopardize North American security from terrorism and facilitate trafficking to the United States. As a result, Canada has negotiated with the United States a number of new and restrictive measures; critics charge these mean that would be entrants to Canada are seen first through a security lens before a compassionate or humanitarian one (see: Oxman-Martinez, Hanley and Gomez, 2005).

D. CONSEQUENCES OF GENDERED MIGRATION AND DOMESTIC POLICIES

Many of the consequences of gendered migration flows to North America are documented elsewhere (Boyd, 1989; Boyd, 1995; Boyd and Pikkov, 2004). These include: the actual vulnerability of migrant women who are sponsored as fiancées to removal if the marital agreement breaks down or if the marriage is dissolved within a specified time period,

denied Medicaid benefits to legal immigrants who arrived after August 1996 (Kausahl and Kaestner, 2005). The actual effects of this legislation on migrant use of health care are still debated. Many states created substitute programs for newly arrived immigrants; however several studies report loss of Medicaid coverage, and increases in the proportion of uninsured among low educated, foreign born unmarried women in the United States (Hagen, Capps and Kabiri, 2003; Kaushal and Kaestner, 2005) . Narratives testify about the hardships incurred for migrant women. One woman reported loss of Medicaid services to various family members as a result of the legislation, followed by immense difficulties in having health care reinstated for an eligible child and over the counter drugstore treatment for other family members because of the high cost of user-pay medical services. Another delivered a child at home, and resorted to treating a second asthmatic child with herbal remedies, again because of an inability to pay for private medical care (Hagen, Capps and Kabiri, 2003).

Restrictions to health care have special implications for women who are illegal entrants and/or who are trafficked. The physical and psychological health risks faced by women who are trafficked include: food and sleep deprivation, repeated rape, physical injury such as bruising, broken bones or teeth, mouth injuries, cuts, burns; emotional manipulation including threats and blackmail; persistent sexual exploitation, social marginalization; deteriorating mental health include anxiety, post-traumatic stress disorder, depression, suicidality; somaticised symptoms including headaches, pain and body aches, dizziness, nausea, and vision disturbances; inability to recuperate and integrate into society; threats to reproductive health that include sexually transmitted disease, unwanted pregnancies, force or unsafe abortion and the absence of gynecological care and HIV testing (Stewart and Gajic-Veljanoski, 2005). Although the Canadian government has indicated that trafficked persons who receive temporary resident permits under the program announced May 11, 2006 will now be eligible for health care, it also observes only “bona fide” victims of trafficking will benefit. Those who continue to be in trafficked, and thus in clandestine, conditions also remain less likely to receive any health care in both countries.

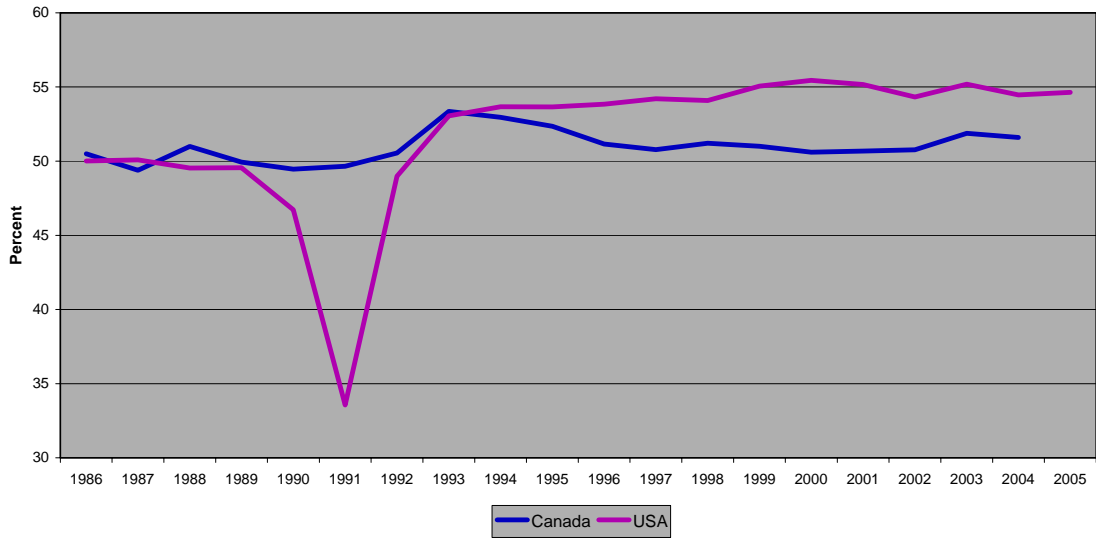
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Figure I: Percentage Female in Annual Admissions of Permanent Residents, Canada and the United States, 1986-2005 (All ages)



Source: Citizenship and Immigration Cannt

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