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Beyond Cookie Cutter Templates to Women's Lived Experiences: Domestic Violence-based Refugee Claims from Guyana

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INTRODUCTION

In this chapter, we present institutional ethnography as an analytical framework for studying access to justice, using the context of Canadian refugee law and Guyanese domestic violence laws. We analyze how Canadian adjudicators at the Immigration and Refugee Board of Canada (IRB) makes legal determinations under the *Immigration and Protection Act, 2001* (IRPA) about whether state protection against domestic violence is available in a country with which the adjudicator may not be particularly familiar — in this case, Guyana. Drawing from empirical research and textual analysis, we show that a Guyanese woman's[1] ability to be protected by the state of Guyana from domestic violence is highly contextual and dependent on specific factors, such as whether the police officer she contacts has the knowledge, desire and resources to help her; whether her abuser is influential or wealthy, whether she lives in a rural area; or whether she is supported by a lawyer or an NGO worker.

We argue that an IRB adjudicator's analysis of whether state protection would be available to the claimant in Guyana — and whether a claimant is able to have access to justice — must consider not simply whether the

>> https://doi.org/10.53080/forjus-ajam.007

state of Guyana is making serious efforts to combat domestic violence, but more crucially whether such state efforts effectively translate into the actual lives of the claimants. The current regulatory framework under the *IRPA* requires a nuanced examination of the available evidence, including the claimant's own testimony and circumstances (*Smith v Minister of Citizenship and Immigration (Canada)*, 2009 at para 61; Razack, 1996; Liew, 2011). However, our review of cases shows that IRB adjudicators employed a "cookie cutter" approach — as described by Justice Snider in *Alvandi v. Canada* (2009) — in selecting what was relevant in the texts before them to come to their conclusions instead of performing a more contextual analysis as required by the *IRPA* regulatory framework.

This indicates multiple points in the process where Guyanese women dealing with domestic violence could be vulnerable to potential deficits in access to justice: first, in Guyana when they approach the state for protection from the abuse, and secondly in Canada when they approach the state for refugee protection.

We use Institutional Ethnography — a feminist socio-legal methodology drawn from Canadian sociologist Dorothy Smith (Smith, 2005) — as a framework to analyze these deficits in access to justice for Guyanese seeking claiming refugee status with domestic violence as a basis of their fear of persecution. The individual experience is the entry point that allows us to see how these practices are being disciplined by, and simultaneously mould, institutional priorities, which Smith calls "relations of ruling" (Smith, 1990). This piece involves an empirical investigation of the experience of various actors with the purpose of "knitting" their knowledge together (Smith, 2005). We also conduct a meticulous investigation of one of the elements described by Smith, *the text-based organization* of the protection of Guyanese women dealing with domestic violence, and its relation to power, by comparing primary narratives of those working in the processes to provide domestic violence protection in Guyana, with ideological institutionally oriented accounts of the law (Devault and McCoy, 2006).

We map out the processes involved in providing protection for domestic violence survivors in Guyana, and connect these experiences to the refugee determination process in Canada, where such issues are adjudicated at the Immigration and Refugee Board under section 96 of the IRPA, 2001. Institutional Ethnography allows us to connect abstract legal ideas and

top-down technocratic approaches to the law with the experiences and aspirations of actual groups of people on the ground, and therefore provides a useful analytical framework for assessing access to justice. This approach also offers a concrete contribution to the broader discourse on understanding how feminist efforts to improve access to justice for domestic violence survivors have played out over the years. The protection order approach under domestic violence laws around the world, including Guyana's *Domestic Violence Act*, represented innovative legal reform thinking at the time, empowering domestic violence survivors by allowing them the choice of simple, quick, and inexpensive protection as an alternative to criminal proceedings (Insanally, 2006). Similarly, the *Chairperson's Guidelines on Women Refugee Claimants fearing Gender-related Persecution* were put into place at the Immigration and Refugee Board in Canada to require adjudicators to use a gender-sensitive lens in their analyses (Chairperson Guidelines 4, 1996). Since then, however, scholars still found that issues still persist in the refugee determination process with claims involving domestic violence-based and other gender-related issues, particularly with respect to the state protection analyses (Bhuyan et al, 2016; Macintosh, 2009; LaViolette, 2009). By juxtaposing the perspectives of service providers working on the ground in Guyana to the interpretations by IRB adjudicators in Canada, this chapter therefore uniquely contributes to the empirical understanding the impacts of these legal reforms on women dealing with domestic violence.

In studying how legal processes under domestic violence laws are carried out in Guyana, this chapter also aspires to contribute to the body of knowledge on domestic violence in Guyana. Previous studies have been conducted in Guyana on the nature and extent of domestic violence (Peake, 2009); the attitudes of health care providers, the government, health care workers, activists and media on the subject of domestic violence (Mitchell et al, 2013; DeShong & Haynes, 2016); the economic costs of domestic violence (David, 2014); and in the context of women's empowerment (Trotz, 2007; Nettles, 2007). However, there has been less academic attention on the legal aspects of domestic violence in Guyana, other than a report commissioned from the Women's Affairs Bureau in 2006 (Insanally, 2006).

METHODOLOGY

INSTITUTIONAL ETHNOGRAPHY AS A RESEARCH APPROACH FOR ANALYZING ACCESS TO JUSTICE: WOMEN'S EXPERIENTIAL KNOWLEDGE AND THE IMPORTANCE OF TEXTS

We use a type of feminist sociological inquiry called Institutional Ethnography as a methodological framework for access to justice. The methodology essentially involved talking to people and examining texts. Central to institutional ethnography is a feminist attention to the work performed by people situated throughout the institution. Work is defined generously, including paid and unpaid labour alike. The research in this chapter is based on an ethnography that involved talking to service providers working in the field of domestic violence issues in Guyana, through 26 interviews in total, holding their experiences at the centre of the inquiry, and stretching out from the local sites further into the veins of the institution, tracing connections or "relations of ruling." Institutional ethnography is an explicitly feminist method of investigation that reveals how institutions organize people's everyday lives. (Smith, 2005, 1). Instead of testing "expert-generated" theories or hypothesis, this methodology allows us to generate knowledge — such as this paper – that is grounded in the standpoint of daily life. People are considered experts in their own lives, and the researcher's objective is to listen from their accounts and provide an analysis of the institutional relations parting from their voices and experiences.

This approach may be considered unorthodox compared to conventional positivist studies because it does not require a rigorously determined "sample" of informants. However, this does not mean that the process is haphazard. Instead, interviews and fieldwork were driven by faithfulness to the actual processes of work that connected individuals in the various parts of the institutional complex that rules domestic violence in Guyana. Rigour does not come from technique such as thematic analysis or sampling; instead, rigour comes from "the corrigibility of the developing map of social relations" (DeVault and McCoy 2002, 764). In short, institutional ethnography, an explicitly feminist methodology, allowed us to make a number of empirical discoveries grounded on the realities and everyday experiences of professionals and workers in the field of domestic violence in Guyana. We place lived experience front and centre, holding women's experiences at the heart of our enquiry.

Smith's approach to research, rooted in a combination of feminist standpoint methodology and Marxist materialism (Smith, 2004), aligns with access to justice research through its commitment to the actual rather than the conceptual: rather than focusing solely on what the law promises as an indicator of access to justice, Institutional Ethnography allows us to understand how a person experiences the law.

Institutional Ethnography requires us to focus on the everyday experience of actors involved in institutional processes — such as legal systems — and to use this daily experience as the entry point to start unravelling how their work — defined very broadly — is being shaped, and simultaneously helps moulding, institutional goals or "relations of ruling" (Smith, 1990). We do this by explicitly connecting the experiences of Guyanese professionals working directly in the legal processes regarding domestic violence with Canadian IRB adjudicators' interpretations in analyzing these very issues.

Experience comes directly from the actualities of people's lives and is fundamental to feminist theory and feminist politics (Smith, 2005). As Dorothy Smith explains, "giving voice to experience remains a rich source of understanding women's lives, people's lives, inserting knowledge that rupture those subject to the monologies of institutional discourse and ideology" (Smith, 1990, 124). Speaking from one's own voice has been essential in the ways women have challenged established discourses of dominant and hegemonic masculinity in the legal, institutional, political, cultural, social, economic and domestic spheres. Similarly, prominent access to justice scholars advocate for understanding access to justice from the point of view of those who use the system (Farrow, 2014, 968).

INTERVIEWS AS METHOD

During field visits to Guyana, I interviewed frontline professionals who work with domestic violence issues in Guyana as part of their everyday work, including lawyers, magistrates, government staff and women's rights non-governmental organizations (NGO).[2] I asked open-ended questions about how these frontline professionals observed and experienced domestic violence legal processes working in actuality in Guyana, particularly the protection order process under section 4 of Guyana's *Domestic Violence Act*, 1996. Informants in these frontline positions are particularly crucial for institutional ethnographies because they mediate the relations

between clients and discourses of ruling, examining daily practice so that specific human activity fits into pre-determined categories, procedures, conventions and protocols of a professional regime (Devault & McCoy, 2006, 27).

Interview transcripts were read following a very loose thematic analysis, identifying related themes amongst participants, while narrative analysis helped to understand how participants grappled with and made sense of their own experiences. Interviewing these professionals therefore allowed us to assemble their diverse perspectives from different corners of the legal system into a socially-organized map of what happens when Guyanese women seek protection from domestic violence.[3]

TEXTS AS METHOD

Smith points out that "texts are key to... regulating the concerting of people's work in institutional settings in the ways that they impose an accountability to the terms they establish" (Smith, 2005, 118). Texts can easily be reproduced and distributed, enabling institutional processes to occur across multiple locations in a coordinated manner. *Feminist textuality* allows us to analyze the so-called institutional ideology reflected in the text and to consider how this ideology is both created and perpetuated by text-based institutional practices.

In recognizing how texts mediate discursive practices as a fundamental element of social coordination, we treated texts as data, extending beyond interviews to other texts (Griffith, 2006, 129). As part of a media scan, I reviewed newspaper articles from the online archives of Guyana's two largest newspapers, *Kaieteur News* and *Stabroek News*, for the last five years before my 2016 field research in Guyana, to better understand the social construction of domestic violence laws in public discourse. I also worked with my research assistant,[4] who reviewed all of the protection order application case files at the Guyana Legal Aid Clinic from 2011 to 2016 to get a sense of how these cases progress through the system.

This project involved knitting together the local experiences in Guyana (implementation of the *Domestic Violence Act* in Guyana) to transnational processes, examining how the adjudicators at the IRB in Canada interpret certain texts and narratives to make decisions about state protection in

Guyana as part of the refugee determination process. These texts include the *IRPA*, 2001, the Chairperson's Guidelines on Women Refugee Claimants fearing Gender-Related Persecution (Chairperson Guidelines 4, 1996), and the written decisions from the IRB itself. Through an Access to Information request to the IRB, I obtained written decisions from the IRB's Refuge Protection Division involving claimants from Guyana who have included domestic violence as part of their claim for refugee protection. We studied how adjudicators interpreted the evidence before them to arrive at their decisions, focusing on identifying how these institutional texts "subsume the particularities of everyday lived experience" (Smith, 2005, 113).

WORK PROCESSES IN GUYANA: PROVIDING PROTECTION FROM DOMESTIC VIOLENCE

DOMESTIC VIOLENCE IN GUYANA

Although Guyana is located on the northern shore of South America, it is culturally considered to be a Caribbean country and is the only country on the continent with English as its official language (Central Intelligence Agency, 2018). It is one of the top ten least densely populated countries in the world, with a population of less than a million people spread over an area roughly the size of the state of Kansas (Central Intelligence Agency, 2018).

Guyana has a high rate of violence against women, with an estimate of one in four Guyanese women having experienced violence (Peake, 2009, 143). Previous studies indicate that of those who have experienced violence, only 40% have received assistance of some kind (Peake, 2009). Domestic violence in Guyana has been described as being deadlier than sexually transmitted diseases, due to the rates of domestic-violence related murders (Kaieteur News, 2013). Domestic violence has been estimated to cost Guyana more than 200 million Guyanese dollars per year, approximately 1.3 million in Canadian dollars (David, 2014, 23). Amnesty International in particular has highlighted concerns about Guyana's high levels of violence against women and alarmingly low conviction rates for sexual offences (Amnesty International, 2015).

LEGAL FRAMEWORKS FOR DOMESTIC VIOLENCE IN GUYANA

Guyana's legislation, regulations and policies provide a legal framework of the processes for dealing with domestic violence at the institutional

level. Domestic violence matters can proceed through the criminal justice process. There is also a civil option to apply for protection orders under section 4 of the *Domestic Violence Act,* 1996, which was meant to guarantee a "simple, quick and cheap means of obtaining protection" for domestic violence victims, particularly those who might not wish to go through criminal proceedings (Insanally, 2006). Depending on what is needed, the protection order can contain a variety of provisions restraining the respondent's behavior (*Domestic Violence Act*, 1996, s.6). If a respondent is found to have breached a protection order, the *Domestic Violence Act* provides criminal sanctions through the criminal justice process (*Domestic Violence Act*, 1996, s.32).

The result of advocacy by women's rights activists in Guyana (Insanally, 2006, 24), the *Domestic Violence Act* is an example of a conceptual approach to addressing domestic violence in a way that provides survivors with a simple, quick, and inexpensive option for seeking protection that could present an alternative to criminal proceedings (Insanally, 2006). This approach could be seen as empowering survivors by providing them with accessible choices of legal options in dealing with their situation, in direct contrast to other approaches such as mandatory charging provisions, which takes control out of survivors' hands by requiring police officers to charge abusers even if the woman does not want to. Some anti-essentialist feminists might also describe Guyana's *Domestic Violence Act*'s focus on protection orders as a separation-based remedy, which assumes that separation is the appropriate response to domestic violence, even if it may not be a particular woman's goal (Goodmark, 2012, 82).

The Guyana Police Force were not consulted when the *Domestic Violence Act* was developed and introduced (Insanally, 2006, 21), even though the legislation assigns various responsibilities to the police, including to "take all reasonable measures within his power to prevent the victim of domestic violence from being abused again" (*Domestic Violence Act*, 1996, s.42).

The criminal justice process and the *Domestic Violence Act*'s protection order process are two separate systems that can run in parallel with each other. In theory, a victim can choose one of the processes, or both, or neither. Practically speaking, however, both options require the police for enforcement.

These processes prescribed within the institutional texts present the institutional discourse of how Guyanese domestic violence laws are intended to operate. Despite this, the frontline professionals in Guyana's justice sectors that I interviewed suggested that these processes work in a different manner from the institutional texts as they are translated to local embodied contexts.

GUYANA'S DOMESTIC VIOLENCE LEGAL PROCESSES IN ACTUALITY

The frontline professionals I interviewed observed that the police were often the first point of contact within the legal system for women seeking help with domestic violence. However, they noted issues with having the police properly investigate reports of domestic violence, echoing previous reports by Amnesty International (Amnesty International, 2015).

Despite policies outlining how police should handle domestic violence cases, participants reported that police sometimes refused to provide assistance because they viewed domestic violence as a private family matter with which they should not interfere. Dea,[5] a lawyer, noted:

> You'd hear women complaining all over the country, especially in rural areas, that they go to make a police report and the police said, "Oh, it's a private matter, and you and your husband will make up. You're wasting our time." And basically all negative, and taking no action. And serious death or harm has resulted.

Dea described to me a project that she and her colleagues had done a couple of years earlier, after the police had undergone sensitization training on following domestic violence procedures:

> We assigned ourselves to different police locations that may not know us by seeing us. I was assigned to [anonymized] police station, which is close to where I live. I went there, dressed casually…and I said that I came to report a matter. So of course they had me waiting and then when I got to see the police, there's usually a counter that you stand behind. So immediately the procedure would have been for me to be taken into a room. I was treated very badly. 'Oh, what is this? Why are you reporting?' I didn't speak proper English. I went into the Creole dialect and all that. We had different scenarios, where someone went as a proper, you know, someone who spoke more urban, and so different

> scenarios, different races, dresses, and all of that. And most of it, even the professional women, were castigated or not taken seriously....All of the procedure was breached. In all of the situations I had the sense that most of them were not allowed to go into a private area to get their report...Half the women were just told to go home, shut up, sit down, we have more important things to do. And so it was all negative.

Dea's experience suggest that even after some training, some police officers may not follow set procedures. Sometimes the police would advise the victim to apply for a protection order under the *Domestic Violence Act*, even though the victim may wish to have the matter go through the criminal process. For example, lawyer Ena reported:

> Sometimes you'd find that they'd been to the police and the police tell them, no you should go to a lawyer and get a domestic violence order. And they'll come [here].

Victims would go to a lawyer to get assistance in filing charges, with varying level of success. Lawyer Nadia noted issues with getting police offices to lay criminal charges for breaches of protection orders under the *Domestic Violence Act*:

> I can tell you now, in about 99.9% of the cases, the police do not take action to charge them, even when you personally call the police. You speak with the person in charge. You point to the relevant section to them. You tell them you have the authority to charge, they're still not charging because they say we don't think we can charge.

Lawyer Olivia explained her negative experience in trying to alert the police's attention to a breach of her client's protection order:

> I can remember doing that I think maybe once or twice. But the reaction wasn't good. In one instance, the person, the policeman, didn't know that it was a breach. And then the other one, I got a whole lot of attitude. So I try to refrain from calling the police. They very most times are discourteous and rude.

According to the participants, police sometimes claimed that they did not have enough personnel or transportation in form of a vehicle to respond to the report of domestic violence. Lawyer Olivia explained:

> You might call to say, "I have a protection order and my husband is not supposed to be within so-and-so feet of me. He's outside of the home." You don't get any support. They would say they don't have vehicles to come. They don't have ranks in the station to come. Or "Ma'am, just stay inside and lock up; don't come outside."

Nadia, a lawyer, observed this to be the main issue when asking police to serve a protection order:

> I think the major issue is they always complain, "Oh, we don't have transportation." If you go to get a taxi, you get some vehicle, once they have persons, they generally go... Sometimes they say there is just one vehicle assigned to the station, and they have it elsewhere, and they don't have any other vehicle.

Magistrate Lila made similar observations about the inadequate vehicles at police stations as an explanation for the lack of police response:

> Every now and then, the applicant would come back to me — and this is *ex parte* where the respondent has not been to court — they would come back to me and say they went to the police station to have it served, and the police did not have the vehicle available. Or that the police... there was one instance only where there was a complaint that the police were saying she had to pay their taxi money because they didn't have the vehicle available to go serve it. I did raise that issue with the commander of the division, because that ought not to have happened. But the issue in terms of service of those orders has to be with the police not having available resources to have it served. At least that is what the police are telling the applicants.

Lawyer Olivia raised some skepticism about this explanation from the police about their lack of vehicles:

> They don't always have a lot of vehicles, but I think there's always at least one vehicle to a station. And if it's out, I don't believe that's an excuse because it can't be out all day. You could probably tell the person when you're expecting it back and then they could come or they could hold on, as opposed to just saying "We don't have vehicles." It's like, 'We will never have one today," you know?

There was a perception among many participants that there were issues of bribery or corruption with the police. Mona, an NGO worker, noted:

> We even have cases whereby the police would try to tell the victims to settle the matter for an amount of money. But they are getting part of the money from what the perpetrators are offering... So now it becomes as though justice is a business. I can tell you that for five hundred thousand [Guyanese dollars] you could not go to court and they wouldn't do anything.

Once a protection order application is filed, both lawyers and magistrates noted that the courts made efforts to hear the application as soon as possible, sometimes even within minutes, as applications of this kind are considered to be urgent priority.

Reviewing the case files of protection order applications at the Guyana Legal Aid Clinic provides an illustrative snapshot of how applications progress through the system.[6] In 160 of the 472 applications, the requested orders were granted. What is significant to note is the prevalence of incomplete processes, as in most of the remaining applications, there was either no outcome reported or the application was dropped, either at the client's request to withdraw the matter or due to lack of further action by the client. Sometimes, the clients simply did not pursue the matter further after the interim order was obtained.

The workers I interviewed generally did not see a need to amend the domestic violence laws, but instead stressed that what was more important was the enforcement of the protection order. As magistrate Nina stated,

> As to whether the person is protected or not protected, it all depends on the police and the other issues that we face all over the world. Because the order is just a document, and if they want to breach, then it is how quickly the police can come to deal with the breaches.

Some magistrates were of the view that most of the orders were enforced, while others noted issues. Lawyers highlighted enforcement issues. Lawyer Ena told the following story:

> There was one case where the young woman went back to the police, and they told her, go to your lawyer. So

> I said, why are they sending you to me? You have a court order. They need to find this man and enforce the order of the court. Get him back in court. And they just had her on a run around.

Lawyer Nadia similarly noted the issue of enforcing protection orders:

> So when it comes to — you have the protection, the court can do this, the orders are granted. But…I think it's great, the provisions are great, but personally, in practice, I think it's just…I think it's basically just a piece of paper when you have someone who does not respect the "order" because if the police are not going to do their part to enforce the order granted, then the entire thing is broken. It's as if they really have no protection.

Issues of confidentiality were also raised as a concern for the police. NGO worker Mona reported her doubts:

> You go to the station and you make a report and the police knows who your husband is, not only will they refuse to take your statement, but they will call your husband and tell him that you were there, and that you were trying to make these allegations against him. So even if you're still in the situation, and you're trying to work on a way out of the situation, you've then placed them in a more desperate need to leave, because when you return home to that man, who is already abusing you, and he knows that you're trying to get him convicted, he will try to instill fear in you that you will not return to the station.
>
> But even in knowing that you went — because it takes a while for a woman to build the courage to move towards going to the police station and getting justice…— so when you do that, and then you're slapped with something like that, you lose all hope in the system.

Mona explained the impact of this lack of police assistance on other women in deciding how to deal with their own violence:

> And that's why in some communities, women don't even report it. Because when you see how others are treated, your main thing is why waste my time? And that's why some of them will say, "I'd rather run than to report it." Because when you report it, nothing happens. And also, you become the laughingstock in the community,

> because everybody knows that you went to report it and then persons who are insensitive to the situation would see you, and instead of trying to help you, would try to cast blame on you.

Participants therefore expressed concern that as people realize that the police may not respond even if there is a protection order, the deterrence effect of the order may be lost. A few participants did identify cases where protection orders were successfully enforced. Lawyer Sheila recounted one time when her client was the respondent and was convicted for breaching the protection order against him:

> This lady had gotten a protection order against my client, and when he come to me, he had breached the protection order, so he actually did spend about six months in jail for that.

Sophia, a lawyer, was of the opinion that the police did respond promptly and recounted that she was aware of instances where protection orders were enforced:

> I can remember, it wasn't my matter, it was another matter where I saw the respondent brought to court for breach of the protection order.

Some participants suggested that a party may be more likely to have a favourable response from the police if they are accompanied by someone, such as a lawyer or an NGO worker.

These comments from justice service providers have been echoed in the newspaper articles that were reviewed, which have reported that the *Domestic Violence Act* is often not utilized due to a lack of confidence in obtaining a remedy through the courts (Kaieteur News, 2011; Kaieteur News, 2014). The newspapers also note significant implementation issues, such as police bribery and the insufficient capacity of government ministries (Kaieteur News, 2011; Kaieteur News, 2014).

THE SOCIAL ORGANIZATION OF LEGAL PROTECTION PROCESSES FOR DOMESTIC VIOLENCE IN GUYANA

The diverse perspectives and experiences of the differently-situated participants working on varying angles of domestic violence laws in Guyana allowed us to map out the socially-organized processes involved in re-

sponding to Guyanese women seeking protection from domestic violence (Smith, 2005, 158). The generalizability of these stories are not based on a claim that these experiences are the same in every situation, but instead focusing on "the social relations that organize these local settings and action within them," that is, examining the "relations producing varied experiences, rather than on the experience itself" (DeVault, 1999, 102).

Despite the regulatory texts setting out general processes, it would appear that other factors shape these practices in actuality. Although the principle of the rule of law requires the law to apply to everyone at all times, whether a Guyanese woman is able to obtain adequate state protection from domestic violence in actuality is highly specific to her individual situation, depending on a number of factors such as whether the police officers she contacts happen to have the work knowledge, desire, and resources to help her, whether she lives in a rural area,[7] and whether her abuser is influential or wealthy, as noted by lawyer Ena and NGO worker Helen. This is because these processes play out in a "definitely embodied world" with real-time physical constraints (Smith, 2005, 177). The policy may dictate that police officers must investigate when domestic violence is reported, but if the police station is understaffed or lacking in vehicles, this will affect their ability to follow the prescribed process in a timely manner. The domestic violence laws may require that protection order application hearings be held in private, as opposed to publicly in open court, but in an embodied world, this translates to potentially lengthened court times as magistrates must clear the courtroom of everyone but relevant staff and parties, as confirmed to me by lawyer Sheila. The *Domestic Violence Act* also allows for parties to apply for protection orders without a lawyer, which is important for victims who may not have access to a lawyer, but the magistrates interviewed noted that these procedures with self-represented parties could take longer, as evidence must be entered through oral testimony, rather than through written affidavits. Magistrate Lila noted, for example, the additional explanations required for self-represented parties:

> More time has to be spent because you have to explain in very simple language things that somebody would have had an attorney would have done it separately in their office, speaking to their clients. So I have to use court time, of course, to explain to the parties exactly what is going on, and what it is that they can expect.

> I have to take the time to truly understand what is it they want? Why is it they came to the court first? What orders they're seeking? Why their seeking the order?

Magistrate Lila contrasted this with a proceeding where parties are represented by lawyers:

> If the person is being represented by an attorney, the evidence is done through affidavit. And only in a situation where perhaps the attorney wants to cross-examine someone who filed an affidavit, only then would it go to a hearing. And even then it's not a full hearing. Then it's just a matter of them questioning on specific issues. But the bulk of evidence will have already been prepared, and would have already been in the affidavit.

All of these factors have a significant effect on access to justice under Guyana's domestic violence laws. This is not to criticize the intent of the relevant laws or policies, but rather to demonstrate how it is inadequate to only study these regulatory texts in the abstract; instead, it is important to see how these processes work in actuality — what is actually happening? This approach is particularly important when considering whether adequate state protection will be available to a particular domestic violence victim, as is done during refugee determination hearings at the Immigration and Refugee Board in Canada.

WORK PROCESSES IN CANADA: STATE PROTECTION ANALYSES AT THE IMMIGRATION AND REFUGEE BOARD

THE LEGAL FRAMEWORK FOR REFUGEE STATUS DETERMINATION IN CANADA

As was done in the previous section, we will describe the refugee determination process as set out in the regulatory texts, before examining how they play out in actuality. The key principle of refugee law, laid out in Canada in the legislative framework of the IRPA, 2001, is that states will not return a person to a territory "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (*Convention Relating to the Status of Refugees*, 1951). The Immigration and Refugee Board is the tribunal in Canada that determines whether a claimant is a Convention refugee based on the definition provided in section 96 of the *IRPA*, 2001, starting at the Refugee Protection Division. In order for her claim to proceed, the

refugee claimant must prove, among other elements, that the country of origin would be unwilling or unable to provide her with state protection (*Ward v. Canada*, 1993). For domestic violence-based claims, the IRB adjudicators are also required to consider the Chairperson's Guidelines on Women Refugee Claimants fearing Gender-related Persecution (Chairperson Guidelines 4, 1996).

CANADA'S REFUGEE DETERMINATION PROCESSES IN ACTUALITY

In the review of the 35 written decisions in the IRB's response to my Access to Information Request, state protection was the second most common reason for denying a refugee claim (14 cases), after credibility (17 cases). In these cases, the claim for refugee protection was rejected because the adjudicator found that state protection would be available to the refugee claimant if she were to be returned to Guyana. This is similar to the findings in Bhuyan, Vargas, and Pintin-Perez's study on Mexican refugee claims based on domestic violence and MacIntosh's survey of domestic violence-based refugee claims on LexisNexis Quicklaw, highlighting that the state protection component appears to be a major legal hurdle for women refugee claimants escaping domestic violence (Bhuyan et al, 2016). Similar findings have been made for refugee claims by sexual minorities (LaViolette, 2009; Macintosh, 2009).

Institutional ethnography analyzes how adjudicators interact with the available texts in order to come to their conclusions about state protection. The decisions reveal how the experiences of Guyanese women in seeking state protection must be fitted to the language of institutional categories, which in this case is in the context of the Canadian refugee determination system, carried out in an office or hearing room in Canada, by adjudicators who are Canadian. These local settings all impact how adjudicators translate the texts and distill from the narratives the elements that they would consider most relevant.

In over half of the cases that rejected refugee claims on the basis of state protection, adjudicators pointed to the efforts of the Guyanese state to provide state protection, but failed to examine the actual effects of those efforts (*Re XXXX* (15 December 2010), TA8-05174; *Re XXXX* (13 December 2010), TA8-09779; *Re XXXX* (14 December 2010), TA8-21402; *Re XXXX* (29 October 2010), TA9-03575/TA9-03574; *Re XXXX* (4 March 2011), TB0-

05805; *Re XXXX* (14 October 2011), TB0-08627; *Re XXXX* (25 January 2012), TB1-03957; *Re XXXX* (28 February 2012), TB1-13436; *Re XXXX* (30 October 2015), TB4-11845). This class of IRB analyses would typically provide a brief overview of Guyana's political and legal systems. Sometimes the analyses would acknowledge some inefficiency and corruption issues in the security forces, discrepancies in police training, and reports of a "laissez-faire attitude" among police. The adjudicators then typically found that the state of Guyana was making efforts with respect to domestic violence (*Re XXXX* (15 December 2010), TA8-05174, para 25; *Re XXXX* (13 December 2010), TA8-09779, para 24; *Re XXXX* (29 October 2010), TA9-03575/TA9-03574; *Re XXXX* (14 October 2011), TB0-08627, para 21). This is despite the fact that the documentation before adjudicators in the IRB's National Documentation Package for Guyana (such as the Response to Information Request (RIR) on domestic violence in Guyana) notes that although the government has made efforts and steps to address domestic violence, further work is required to implement the law, challenges exist in changing the attitudes of service providers including police, and that there are frequent breaches in domestic violence policy and procedures (Research Directorate, 2012).

The Federal Court has stated that the test for state protection is "an assessment of the adequacy of the protection at an operational level" because a state's efforts in themselves do not constitute adequate protection (*Paul v Canada*, 2017, para 17, referring to *Kumati v Canada*, 2012, para 27). Despite these instructions, when confronted with situations where existing laws and policies had unsatisfactory results, adjudicators claimed for some reason that the evidence before them was "mixed" as to whether laws were effective, rather than acknowledging that laws that are not satisfactorily enforced are not, in fact, effective. Similar conflations were observed in the studies of refugee claims in Macintosh (2009, 153), Bhuyan et al (2016, 103), and LaViolette (2009, 457).

AN INDIVIDUALIZED EMBODIED APPROACH TO STATE PROTECTION ANALYSES

Scholars have noted the challenges of rebutting the presumption of state protection where there is little documentation on actual state practices (LaViolette, 2009, 455-456; Stairs & Pope, 1990, 203; Razack, 1996, 64). Part of the challenge for adjudicators conducting state protection analyses is that this exercise requires evidence about country conditions

specific to domestic violence, which can be difficult for smaller countries like Guyana, where there appears to be insufficient information about domestic violence cases themselves (Kaieteur News, 2012).

The Gender Guidelines require adjudicators to consider that "the forms of evidence which the claimant might normally provide as 'clear and convincing proof' of state inability to protect will not always be either available or useful in cases of gender-related persecution" (Chairperson Guidelines 4, 1996). However, ultimately this lack of information has adverse impacts on the claimant, who bears the burden of rebutting the presumption of state protection and must provide evidence to that effect. As a result, the gathering of information to ultimately support a refugee claim is work that must be completed by the applicant. This places an additional burden on women to not only ensure their own safety, but to provide information regarding their abusers as well.

Even with adequate evidence on country conditions, adjudicators are required to conduct the state protection analysis of each refugee claim in a way that is individualized to the particular facts of each case (*Smith v Minister of Citizenship and Immigration*, 2009, para 61; Razack, 1996, 66; Liew, 2011 at 691). Institutional ethnographers might describe this as an embodied approach, one that pays attention to the individual in her specific situation. However, in a number of cases in the dataset, Canadian adjudicators provided descriptions of the state protections in Guyana using nearly identical wording (*Re XXXX* (5 March 2009), TA6-07231; *Re XXXX* (15 December 2010), TA8-05174; *Re XXXX* (13 December 2010), TA8-09779; *Re XXXX* (14 December 2010), TA8-21402). One adjudicator in particular appeared to be using a template, re-using very similar wording in multiple cases (*Re XXXX* (9 August 2011), TA9-17170; *Re XXXX* (12 March 2013), TA9-02039; *Re XXXX* (28 February 2012), TB1-13436. Such "cookie cutter" state protection descriptions bring into question whether adjudicators are actually conducting individualized analyses for each refugee claim. The Gender Guidelines note that where there may be less documentary evidence on state protection, there may be a need to rely on evidence of women in similar situations and the claimant's own experiences of state protection:

> In cases where the claimant cannot rely on the more standard or typical forms of evidence as "clear and

> convincing proof" of failure of state protection, reference may need to be made to alternative forms of evidence to meet the "clear and convincing" test. Such alternative forms of evidence might include the testimony of women in similar situations where there was a failure of state protection, or the testimony of the claimant herself regarding past personal incidents where state protection did not materialize. (Chairperson Guidelines 4, 1996)

Despite this guidance, adjudicators seemed to highlight as more relevant the evidence of the Guyanese state's efforts to address domestic violence, despite the evidence provided by claimants that such efforts are not effective. Of the 14 cases where adjudicators determined there was adequate state protection in Guyana, 11 of the claimants had testified that they had previously sought police protection, and in 8 of those cases, they had done so multiple times. The police did not take any action in 6 of those cases, and in one of those cases, the police appeared to have informed the abuser of the complaint (*Re XXXX* (12 March 2013), TA9-02039, para 4). Despite these experiences of unsuccessful attempts to seek state protection, the adjudicators still found that state protection existed in Guyana.

We suggest that despite the need for an individualized embodied approach to state protection analyses, the practice of law and the application of legal principles itself — as it is happening in actuality in refugee claims — can be seen as an inherently disembodying and dehumanizing process, as "the objectification of institutional realities overrides individual perspectives" (Smith, 2005, 186) while "subordinating local experiential knowing to the discursive" (Campbell, 2006, 95). Institutions create laws that are generally applicable and "establish procedures for telling stories about people that isolate them from their own lives and the settings of their lives" (Smith, 2006, 77). This subsuming of the local and the particular into generalized forms[8] can be seen in the way adjudicators summarize the claimant's narratives with institutional languages and categories, and referring to the claimant as "the claimant" and not Mary or Wilma.

It seems to us that adjudicators analyze state protection in this manner because their activities are "shaped by racial-ethnic dimensions of social organization without bearing explicit marks of that influence" as described by DeVault (1999, 100). Adjudicators may strive to maintain neutrality and objectivity in their assessment of the evidence, but, as DeVault notes on

the process of reading texts, "a tradition constituted largely through the activities of white, Western, male readers and writers tend to take the perspectives of such individuals for granted" (DeVault, 1999, 133).

The Gender Guidelines state that a claimant's failure to seek protection from the state should not defeat her refugee claim if she can prove that it was objectively unreasonable for her to seek state protection, and that adjudicators should determine this by considering the claimant's social, cultural, religious and economic context, among other relevant factors (Chairperson Guidelines 4, 1996). Out of the 14 cases where adjudicators had found state protection would be forthcoming to the claimant, three of the claimants had not previously sought police protection, with two of those claimants noting that the abuser had friends in the police (*Re XXXX* (10 November 2009), TA6-14655; *Re XXXX* (4 March 2011), TB0-05805). Despite the Gender Guidelines' guidance, the adjudicators dismissed their concerns, noting that they still should have approached the police for support.

When exploring what adjudicators conceive as appropriate state responses, it would appear that adjudicators took the same approach not only at the state level but also at the local level of police: they interpreted *any police response*, even if inadequate, as being the same as the ability to protect. In some cases, the adjudicators used the fact that the claimant *had* complained to police multiple times as evidence of effective state response (*Re XXXX* (28 February 2012), TB1-13436; *Re XXXX* (31 May 2012), TB1-06954, para 17), without considering whether these interventions resulted in actual protection for the claimant, not exposing her to further abuse in the future. This suggests a ruling ideological discourse — a prevailing belief that the police protects people — and where claimants' individual narratives do not conform to this generalized institutional account, it is the claimant's experiences that are discounted, rather than the institutional knowledge. The adjudicators' approach to analyzing state protection for domestic violence in Guyana suggest "disjunctures between the artificial realities of institutions and the actualities that people live" (Smith, 2005, 187). Smith argues that this is inherently part of the transformative process of making "people's everyday experiences become subject to institutional action by being fitted to institutional categories" (Smith, 2005, 198) resulting in deficits in access to justice.

CONCLUSION

In this chapter, we have attempted to hook up access to justice processes relating to state protection for domestic violence in Guyana to transnational access to justice, as observed in the refugee determination processes at the IRB in Canada. Our research shows that in light of the various issues that justice service providers highlighted in the domestic violence legal processes in Guyana, whether a Guyanese woman is protected by the state from domestic violence is highly dependent on factors unique to her context. This means that analyses of whether state protection would be available to the claimant in Guyana — and whether women are able to access justice — must consider not only whether the state of Guyana is making serious efforts to combat domestic violence, but whether such efforts are operationally effective for that claimant. The current regulatory framework under the *IRPA* requires not a state protection analysis using a "cookie cutter" template but rather a nuanced analyses of the available evidence, including the claimant's own testimony, with respect to the claimant's individual circumstances (*Smith v Minister of Citizenship and Immigration*, 2009, para 61; Razack, 1996, 66; Liew, 2011, 691).

However, the cases we reviewed suggest IRB adjudicators employed a different approach in selecting what was relevant in the texts before them to come to their conclusions. This approach employed by IRB adjudicators prioritizes a state's efforts to address domestic violence, rather than the actual results of such efforts, and reveals a persistent and prevailing ideological belief in the police as protectors, such that where claimants' individual narratives do not conform with this ruling belief, it is the claimant's experiences that are discounted, rather than the institutional knowledge. This is particularly problematic because the legal burden of rebutting the presumption of state protection falls on the applicant, the women escaping domestic violence, which can be difficult where there is a lack of information on these issues.

We do not highlight these practices with the aim of passing judgment from a standpoint of moral superiority (Devault, 1999, 99) or to emphasize the competence or incompetence of individual workers, but rather to reveal the relations of power that shape what happens in actuality in these access to justice processes. Just as Wilson and Pence (2006, 217) found that the power — and problems — lay not within individual practitioners

holding specific positions, but rather the routine institutional processes for dealing with domestic violence, our aim is to use this study to make explicit how these forms of domination are socially organized, in order to make progressive change more possible (Smith, 2005, 220). In Guyana, this means understanding that laws, policies, and other plans are implemented in an embodied world with real life, everyday physical constraints, with consideration for how processes might be adjusted accordingly in response to these realities. In Canada, this means state protection analyses need to be conducted in a manner that accounts for the individual localized context of the refugee claimant. Refugee claims must be determined case by case on an individualized basis, and as such there can be no cookie cutter "template" refugee determination.

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ENDNOTES

1 Although in certain instances we will refer to "survivors" where specifically appropriate, we generally refer to "women" in this chapter. We acknowledge that defining what constitutes a woman is a contested concept as particularly noted by postmodern feminists. We generally use "women" in this chapter, not only to highlight the gendered nature of the higher rates of domestic violence experienced by Guyanese women but also in recognition that in the cases discussed for this research, all main applicants were identified as women. We use the terms "victim," and "perpetrator" or "abuser," loosely to facilitate writing, but we recognize that not all domestic violence cases will be resolved through the court system or lead to convictions. It is also necessary to clarify that the term "victim" is controversial. Many scholars prefer to use the term "survivor" rather than "victim," since the former would honor the fact that people who have suffered or suffer from domestic violence are not and should not be labeled as powerless, helpless, or naive. The term "survivor" would better respect the agency, resilience and power of women who are trapped in violent relationships. Most people who experience domestic violence exert considerable effort and display great courage to leave these abusive relationships. J. Moldon (2002) argues in favor of rejecting the term "victim" and explains the therapeutic advantages of such a decision. As women recover from the violence, they cease seeing themselves as "abused women" and begin to identify as women who "were abused" in the past. They see it as not their identity, but an event of their past. Nevertheless, it is important to recognize that using the term "survivor of domestic violence" creates other exclusions. While many people in situations of domestic violence survive, many women sadly die. Furthermore, the vast majority of victims suffer from trauma and continue to react emotionally to the harms caused by domestic violence for a long time, sometimes

indefinitely. Indeed, the term survivor — a person who comes out of a situation of extreme danger alive — excludes those who have not survived. For a detailed analysis, *see* Moldon, J. (2002) Rewriting Stories: Women's Responses to the Safe Journey Group in L. Tutty, C. Goard (eds.) *Reclaiming Self Issues and Resources for Women Abused by Intimate Partners*. Halifax: Fernwood.

2 This primary research was conducted in 2016 by one of the authors of this paper, Gloria Song, through the Research Award program at the International Development Research Centre (IDRC). References to the singular first person such as "I", "me", and "my" are references to Gloria Song, while references to the plural first person reflect the voices of both co-authors. The research project was reviewed and approved by IDRC's Advisory Committee on Research Ethics in 2016. I also subsequently obtained ethics approval for the secondary use of this data from the University of Ottawa's Office of Research Ethics and Integrity in 2018.

3 I was not able to interview domestic violence survivors in Guyana themselves. There is no doubt their stories would have provided valuable perspectives on how the law affects them. Interviewing survivors was beyond the scope of this project's constraints, due to the heightened ethical considerations when dealing with vulnerable research subjects that could potentially re-live trauma. In order to mitigate this limitation, I chose to speak to the frontline professionals who worked closely with these women and Guyana's justice system as part of their everyday professional lives.

4 We would like to extend our profound thanks to our research assistant Danielle Anthony, a Guyanese law student at the time, for her hard work in supporting this project.

5 All names reported here are pseudonyms to protect the identity of the participants.

6 It is important to note that this file dataset is not comprehensive nor representative of all protection order applications made in Guyana. Although for many years the Guyana Legal Aid Clinic handled a large number of the protection order applications, in recent years many of the applications are done without lawyers, and as such, those applications would not be reflected in the clinic's files.

7 Participants explained to me that the court process can be difficult for the more outlying rural regions in Guyana, where courts sit on a monthly basis, or less. If a witness does not appear or a police report is not provided, a matter might be adjourned again, preventing a victim from moving on with her life because the matter has not yet been resolved. Participants also noted that in order to file a protection order application, some victims have to travel long distances to the nearest court, or wait until the days where the local court is in town.

The authors would like to thank: the International Development Research Centre for their support through its research award program, and in particular Adrian DiGiovanni, Senior Program Specialist in Governance and Justice for supervising the field research of this project; our research assistant based in Georgetown, Guyana, Danielle Anthony; the Guyana Legal Aid Clinic for making their files and time

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