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Canada's Immigration and Refugee Policies: Recommendations

On October 3rd, 2016 an Angus Reid Institute report was released that highlighted evidence that Canadians are not as welcoming of newcomers as they like to present themselves, and that xenophobia, racism, and Islamophobia continue to permeate public discourse, and by extension, policy and law on immigration and refugees in Canada.¹

As the practitioners and advocates who work with women experiencing an intersectional spectrum of violence, we have observed that in last few years, Canadian migration policies have fluctuated from a tough approach which implemented wide-ranging changes made by the former Conservative government to a more humanitarian approach evidenced by this government's public leadership on the Syria conflict. Since coming to power, the Liberal government has made a number of positive policy changes to cement its position as a leader on the refugee front, and to show a more welcoming side of Canada after years of hard-line policies. However, a number of problematic immigration and refugee policies remain. These policies pander to broader anxieties felt by Canadians about immigration. Some of Canada's policies continue to raise grave concerns for advocates and experts, such as the Barbra Schlifer Commemorative Clinic. In particular, further changes to Canada's immigration regime must include a commitment to a gendered analysis recognizing the unique pathways and drivers of migration for women in a system that was designed with the migration patterns of men in mind. Principally, women's migration is fueled and conditioned by violence.² Similarly, their landing and settlement experiences are also so conditioned, yet many aspects of our system reinforce and block escape from these known factors.

Canada presents itself as an international leader on women's issues, and in many ways, it has a past of being such. For example, Canada has recently committed to the United Nations 2030 Agenda for Sustainable Development, which includes a target to end

¹ Angus Reid Institute, "What makes us Canadian? A study of values, beliefs, priorities and identity," October 3, 2016. Online: <http://angusreid.org/canada-values/>

² World Survey on the Role of Women in Development, (A/59/287).

child, early, and forced marriage.³ However, there are profound gaps in its legislative frameworks concerning women, especially those from marginalized communities, such as refugees and sponsored spouses that the Schliker Clinic frequently works with.

Newcomer women face particular barriers to accessing justice and services. This often takes the form of lack of access to information on their legal rights and recourse, as a result of isolation or language barriers. Newcomer women in situations of violence also sometimes fall through the cracks between women's organizations and settlement organizations due to a lack of awareness and training of front-line workers regarding the particular vulnerabilities and problems they face. Here are some of the issues Liberal government has committed to changing and our recommendations for further legal reform in the context of violence against women and Canada's immigration law and policies.

Repeal Conditional Permanent Residence and the Exception in the 5-Year Sponsorship Ban

Currently, the government has announced that it is reviewing the conditional permanent residence provisions in immigration law, which puts a condition on the sponsored spouses to cohabit with the sponsor in a conjugal relationship for two years before they become permanent residents. While an exception to conditional permanent residence has been carved out in cases of domestic violence or spousal abuse,⁴ in which women who have experienced violence can apply to have the conditional permanent residence requirement waived, women's organizations continue to express concerns. Making permanent residence conditional on staying in the marriage for two years traps abused partners (mainly women) into staying in abusive relationships for fear of losing their status. Abused partners, especially women, have not been able to take advantage of the exemption because of: barriers to access information on the exemption (e.g. language, isolation); burden of proving their own abuse; cost of providing evidence of abuse. The application of the exemption provision does not take the power away from the hands of an abuser regardless of it being a good exit strategy on paper. Children

³ Government of Canada. 2016. "Child, early and forced marriage." Online:

http://international.gc.ca/world-monde/aid-aide/child_marriage-mariages_enfants.aspx?lang=eng

⁴ Government of Canada. 2012. "Backgrounder – Exceptions from Conditional Permanent Residence for Victims of Abuse or Neglect." Online:

<http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-10-26b.asp>

also have been hurt when they remain with their parent in an abusive home, or if they face being separated from one parent if the sponsored parent is removed from Canada.

The government should repeal conditional permanent residence of sponsored spouses. Conditional permanent residence represents a major step backwards in Canadian immigration policy, increases inequalities in relationships between spouses, and puts women in particular at heightened risk of violence. The government should also increase access to information and recourses for immigrant, sponsored, and non-status women experiencing domestic violence. The government should carve out protection for forced marriage victims (currently included in the exception to conditional permanent residence status) to be extended to them for protection from any possible investigation of misrepresentation and fraud. The government should also investigate sponsoring spouses who abuse and abandon spouses abroad and advise them of their rights and the supports available to them at the time of arrival in Canada. The government should also lift the 5 year sponsorship ban on the sponsored spouses in case of domestic violence situations.

Provide Protection for Claimants from Countries that Otherwise Appear Democratic

Women fleeing gender-based violence are particularly affected by the policy of deeming certain countries “safe,” since violence against women is widespread in many countries that appear stable and democratic. For example, countries such as Mexico, with very high incidence rates of SGBV and violence against women, remain on the DCO list.⁵ However, presuming that any country is “safe” for all its citizens does not take into account the complex realities of women experiencing domestic violence. Women fleeing these situations are restricted by extremely tight timelines (between 30-45 days) to find and retain counsel, gather evidence, and present their traumatic cases before the Immigration and Refugee Board.

Following a decision of the Federal court which found some of these measures discriminatory,⁶ the Liberal government promised to institute an “expert human rights

⁵ For more information, see IHRP. 2016. “Unsafe and On the Margins: Canada’s Response to Mexico’s Mistreatment of Sexual Minorities and People Living with HIV” Online: http://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-UnsafeAndOnMargins2016.pdf

⁶ *YZ v Canada (Minister of Citizenship and Immigration)*, 2015 FC 892, [2015] FCJ No 880.

panel” to determine DCO designations.⁷ As of August 2016, the specifics of such a panel’s composition and the process for DCO designation (and de-designation) have not been announced.

Women fleeing violence should not be punished by the unreasonable timelines inherent in the DCO regime and the presumption that their country is “safe.” Cases of gender persecution cases, including the persecution of sexual minorities are particularly complex. The government policies of refugee determination should clearly recognize the intersecting vulnerabilities that may make claiming refugee status retraumatizing for the claimants and that it is difficult to meet the extremely tight timelines imposed by the DCO regime. Unfortunately, problematic assumptions about survivors of sexual assault and gender based violence permeate all levels of Canada’s immigration and refugee determination regime, including at the Immigration and Refugee Board, the newly formed Refugee Appeal Division, and subsequent judgments by the Federal Court.

These prejudices exacerbate the trauma faced by migrant and refugee women going through the system and act as a deterrent to disclose prior sexual abuse as part of their claim for refugee status, potentially leading to insurmountable adverse credibility inferences. Instead, refugee determination should be informed by sound principles and international protection standards and not discriminatory and misogynistic presumptions about the behaviour and lived experiences of women who have experienced violence. The government should repeal the DCO regime in its entirety, and guarantee all refugee claimants, including victims of SGBV and domestic violence full access to appeal rights and reasonable timelines.

Repeal Bill S-7 and Decriminalize Forced Marriage⁸

In 2014, the former Federal Government tabled *Bill S-7: Zero Tolerance for Barbaric Cultural Practices Act*. This Act made participating in and supporting forced marriage a criminal act in Canada.⁹ The Government made numerous statements in support of

⁷ Prime Minister of Canada Justin Trudeau. 2015. “Minister of Immigration, Refugees and Citizenship Mandate Letter.” Online: <http://pm.gc.ca/eng/minister-immigration-refugees-and-citizenship-mandate-letter>

⁸ Forced Marriage as a form of human trafficking is about the local, national and international movement of women, men and children from one location to another through the formal institution of “marriage.” SALCO. 2014. “Forced Marriage as a Form of Human Trafficking.” Online: <http://www.sawc.org/wp-content/uploads/2015/04/Forced-Marriage-as-a-Form-of-Human-Trafficking-Resource-Guide.pdf>

⁹ Canada is also a signatory to several international consensus documents including the *Universal Declaration of Human Rights*, the *Convention on the Elimination of All Forms of Discrimination against Women*,

these changes, including the need to guard against “barbaric cultural practices.” The government particularly focused on the need to “protect women” from the practices of polygamy and forced marriage in immigrant communities.

There are a number of issues with Bill S-7 which are detrimental to women who have experienced violence. For example, the Bill criminalizes a wide range of activities associated with forced marriage under the guise of providing “protection” to the survivors and victims of forced marriages. However, criminalization has the potential to become a tool to further target and over-policed and racialized communities. Victims and survivors of gender based violence will be discouraged from coming forward if disclosing that they have experienced forced marriage or trafficking will mean criminal sanctions or deportation for their own family. While prevention is important in the discussion of forced marriage in Canada, a multisectoral approach coupled with an intersectional education strategy is the most effective preventative tool. The young women leaders in our path breaking work on the issue of forced marriages and “honour” based violence (Outburst!) have consistently held this position as the best route to ensuring their safety and access to rights.

Bill S-7 has not been repealed and there has been no effective follow-up on the issue of forced marriage in Canada; no consultations have occurred with expert and advocacy groups that work with newcomer women. In fact, through the criminalization of forced marriage, the practice has been pushed further underground, further exacerbating the risks to newcomer women who continue to experience violence.

Stop the Immigration Detention of Women and Children

As a legal rule, children and youth should not be held in immigration detention. Canada has ratified *the United Nations Convention on the Rights of the Child*, which insists that “the best interests of the child” always be a primary consideration and that detention must be a complete “last resort.”¹⁰ Pregnant women are also being detained

and *Convention on the Rights of the Child*. However, Canada has not signed or ratified the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*.

¹⁰ As per Art. 37 of the *United Nations Convention on the Rights of the Child* (1577 UNTS 3, 20 Nov.1989 (entry into force: 2 Sep. 1990. Section 60 of *Immigration and Refugee Protection Act (“IRPA”)* affirms “as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.

and some have been forced to give birth while in immigration detention.¹¹ Despite knowledge of their legal responsibilities as well as the harms experienced by detained children,¹² CBSA detains children with their families. The detention of children has been condemned by The UN Special Rapporteur on the Human Rights of Migrants, Francois Crepeau.¹³ A September 2016 report also called for the end to the detention of children.¹⁴

The Federal Government's August 15, 2016 announcements of wide-ranging changes to Canada's immigration detention policy¹⁵ are welcome, but it is still unclear how these changes will be implemented. However, the Government should immediately stop the practice of detaining children and pregnant women, implement alternatives to detention, such as community release and supervision or tracking mechanisms, and increase oversight and implement independent and effective complaints and monitoring mechanism of CBSA detention policies.

Strengthen Pathways for Permanent Residence for Live in Caregivers

The Live-In Caregiver Program introduced by the previous government in November 2014¹⁶ placed caps on applications for permanent residence, thus removing the guaranteed pathway to permanent status in Canada.

According to CUPE:

“Caregivers are still required to work as temporary foreign workers for two years so the promise to process applications for permanent residence within six

¹¹Amnesty International. 2014. “Canada Submission to the United Nations Human Rights Committee.” 112th Session of the Human Rights Committee, London. Online: <https://www.amnesty.org/en/documents/amr20/1806/2015/en/>

¹² See International Detention Coalition (IDC). 2012. “Captured Childhood: Introducing a New Model to Ensure the Rights and Liberty of Refugee, Asylum Seeker and Irregular Migrant Children Affected by Immigration Detention.” Online: <http://www.refworld.org/docid/510a604c2.html>

¹³ Francois Crepeau. 2016. “Any Detention of Migrant Children is a Violation of their Rights and Must End. Online: <https://theconversation.com/any-detention-of-migrant-children-is-a-violation-of-their-rights-and-must-end-64985>

¹⁴ International Human Rights Program. 2016. “No Life for a Child”: A Roadmap to End Immigration Detention of Children and Family Separation,” available at http://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf

¹⁵ CBC News. 2016. “Canada's immigration detention program to get \$138M makeover.” Online: <http://www.cbc.ca/news/canada/montreal/goodale-immigration-laval-1.3721125>

¹⁶ Government of Canada. 2016. “Live-in caregivers.” Online: <http://www.cic.gc.ca/ENGLISH/work/caregiver/index.asp>.

months does not prevent family separation. Women from poor countries who are now working under the LCP are separated from their own children for at least three to five years in the heartbreaking situation of caring for someone else's children here in Canada. Given the reality of medical, security screening and other requirements, in order to apply for permanent residency status, migrant advocates do not expect these changes to be realized or families to be reunited quickly.

Migrant advocates are clear that as long as the status of a caregiver is tied to one employer, employers can make demands on caregivers to live in their homes which render the "option" of living outside the home a risk. Providing the option to live out without addressing the root of this vulnerability - being tied to one employer is pointless. Furthermore, caregivers in the LCP are only paid minimum wage, without a living wage most are unable to afford to live out' It is not a real choice."¹⁷

In our work at the Schlifer Clinic, we are seeing the pathways into human trafficking that are opened up when predators prey on caregivers with precarious status due to being abusively released on arrival by their putative employers, and when women try to protect themselves from sexual or labour exploitation by an employer by "going underground." The government should strengthen pathways to permanent residence for Live-in Caregivers and expedite processing of pending cases instead of imposing what can amount to a gendered migration trap. It should also implement express entry family reunification, reuniting children with their mothers as they work on getting their permanent residence in Canada. Importantly, the government should implement policies that do not tie Live-in Caregivers to one employer, placing them at further risk of isolation and abuse

Strengthen Family Reunification¹⁸ Policies

Refugee and immigrant families are frequently separated for prolonged periods or indefinitely, due to policies and practices that block or delay reunification.

¹⁷ CUPE. 2015. "Fact sheet: Temporary Foreign Workers Program and the Live-in Caregiver Program," Online: <http://cupe.ca/fact-sheet-temporary-foreign-workers-program-and-live-caregiver-program>.

¹⁸ Canadian Council for Refugees.2016. "Family Reunification." Online: <http://ccrweb.ca/en/family-reunification>.

The barriers include a narrow definition of family (excluding, for example, non-biological children), costly and time-consuming DNA testing, bars on sponsorship if the sponsor is receiving social assistance, a category of "excluded family members," and administrative delays.

Immigration Refugee Protection Act Regulation 117(9)(d) imposes a lifetime bar on sponsorship of a family member, if the family member was not examined by an immigration officer when the sponsor immigrated to Canada. This permanent ban on family class sponsorships, no matter how compelling the case, is inconsistent with the Act's objective of seeing "that families are reunited in Canada." It has an extremely detrimental impact on children.

Refugees, particularly women with children, are among those hardest hit. Women who flee persecution and seek asylum in Canada often arrive, by force, without their spouse or children. Once recognized as refugees in Canada, they can apply to bring their immediate family members to Canada. However, sometimes they are forced to wait years to be reunited with their spouses and children overseas, who can be in situations of danger and persecution.

The government should implement express entry family reunification, where children are reunited with their parents in 6 months or less. It should also reinstate the previous age of dependants (to 21 years old) and eliminate the 'excluded family member' rule (Regulation 117(9)(d) to recognize that a definition of family members is broad and inclusive.

Increase Resources Devoted to the Resettlement of Refugees including Women

Government-assisted refugees ("GARs") are persons who have been found to be Convention Refugees abroad whose initial resettlement in Canada is entirely supported by the Government of Canada. They are usually referred to the Government by the UNHCR, who determines their refugee status claim when they register. GARs must establish that their case is appropriate for Canadian resettlement because they do not have access to other durable solutions, such as remaining in the country of asylum or returning to their country of origin.

Canada allocates targets each year for the resettlement of convention refugees who are eligible to receive financial assistance from the government. The federal government is fully responsible for GARs for up to one year. This support includes accommodation,

food, clothing, and assistance with employment¹⁹ and is delivered by CIC-supported NGOs. Support can last up to one year from the date of arrival in Canada or until the refugee is able to support himself or herself, whichever occurs first.

Two specific programs are particularly useful to women who have experienced violence. The Urgent Protection Program (UPP) ensures that Canada is able to respond to urgent emergency requests by the UNHCR to resettle refugees under threat of being returned home, expulsion or facing direct threats to their lives. The Women-at-Risk (WAR) program is a subsection of the UPP, which processes cases of women who are at risk and who require urgent protection or who are in need of special attention. According to the UNHCR, Canada defines women-at-risk as "women without the normal protection of a family who find themselves in precarious situations and who are in a place where local authorities cannot ensure their safety."²⁰ WARs may be accepted even if they have "limited settlement prospects" if they are in need of urgent protection.²¹ WARs may also be privately sponsored.²²

State induced displacement also exacerbates women's inability to seek adequate modes of state protection and redress. Unfortunately, in the context of state-induced displacement, protection mechanisms implemented by the state have repeatedly instigated violence in women's lives, such as when their bodies are used as shields in cases of exchanges for protection during mass population movements; in instances of state-induced marriages; or forced pregnancies. These phenomena in state-induced displacement, create a persuasive case for protection that is unique to women's experiences. The unique vulnerability of women to SGBV in contexts of prolonged conflict, particularly at the hands of the state, must be recognized when monitoring human rights abuses against women. This includes accounting for the structural inequality experienced by women in contexts of ongoing conflict, including precarious living situations, inadequate access to supports, and widespread prejudice against women who have experienced violence

The government should continue resettling refugees to Canada, including women who have experienced domestic violence and SGBV, and strengthen the UPP and WAR programs for faster processing of particularly vulnerable and at-risk cases, including

¹⁹ CIC, "Government-Assisted Refugee Program," 01 February 2015, available at:

<http://www.cic.gc.ca/english/refugees/outside/resettle-gov.asp>.

²⁰ UNHCR Resettlement Handbook, Country Chapters – Canada, July 2011 – revised August 2014, page 9.

<http://www.unhcr.org/3c5e55594.pdf>.

²¹ UNHCR Resettlement Handbook, Country Chapters – Canada, July 2011 – revised August 2014, page

10. <http://www.unhcr.org/3c5e55594.pdf>.

²² CIC, "Government-Assisted Refugee Program," 01 February 2015, available at:

<http://www.cic.gc.ca/english/refugees/outside/resettle-gov.asp>.

women who have experienced violence. It should also support private sponsorship in addition to government assisted refugees, including targeted sponsorship of women who have experienced SGBV, committing to a substantive gender analysis in Canada's refugee resettlement policies.

Conclusions

We wish to express that a siloed approach to domestic and sexual violence—dealing with each as separate phenomena, when they are experienced together by women seeking protection—has been shown to have limitations. Though we recognize the challenges in creating a more comprehensive approach, we wish to acknowledge that violence against women is experienced in a continuum and across the lifespan, and in different life situations, often by individual women who may not see the benefit of strict policy and strategy separation.

Any “whole of government” approach to addressing violence against women will be necessarily complex. This submission cannot capture the detail and nuance of every aspect of that strategy. Instead we have strived to cover the broad range of issues that must be addressed, and point to the important lessons and recommendations already made. Many of the catalogues of standing recommendations and promising practices across the country have yet to be implemented. In particular we suggest you see the annotated bibliography of the same in *Policies Matter: Addressing Violence Against Women Through Reflection, Knowledge and Action* (2013).²³

As a final thought, we note with concern that policy regarding violence against women is becoming increasingly neutral on the one hand and punitive on the other. This is seen in the discourse and use of terminology such as ‘domestic assault’ whereby victims of violence - women - are rendered invisible. This is also reflected in the penalization women experience when, in trying to create safety in their lives, they are required by intersecting and contradictory program and eligibility requirements to, in effect, give up their homes, their communities and sometimes their children. Gender-based analysis is a process that examines the differences in women's and men's lives, and identifies the potential impact of policies and programs in relation to these differences. Gender-based analysis also examines the intersection of gender with other identity factors such as income, race, age, religion, etc. The aim is that this information will support more evidence-based decision-making by both policy makers and service providers, resulting

²³ See “Policy Analysis, an Annotated Bibliography”, http://womanabuse.ca/policiesmatter/docs/PoliciesMatter_Final.pdf at 22-30.

in efficient and effective programs and services that are responsive to the realities of women's lives. A Gender-based analysis identifies how policies can create barriers to the determinants of safety for women.

Barbra Schlifer Commemorative Clinic

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Background on the Barbra Schlifer Commemorative Clinic

The Barbra Schlifer Commemorative Clinic is the only Clinic of its kind in Canada. It directly assists over 3500 women a year. It has been providing legal representation, counseling, and interpretation in over 100 languages to women who have experienced all forms of violence since 1985. The Schlifer Clinic was established in the memory of Barbra Schlifer, an idealistic young lawyer whose life was cut short by violence on the night of her call to the bar of Ontario on April 11, 1980. The Schlifer clinic does not substitute for the state mandated legal aid services in Ontario, Canada; rather, it supplements the lack legal aid services for survivors of violence.

We assist about 4,000 women every year. We also engage in various educational initiatives, including public legal education, professional development for legal and non-legal professionals, and clinical education for law students. We work on law reform activities both within Canada and internationally, and consult broadly with all levels of government on policy or legislative initiatives that impact on women survivors of violence. The Clinic serves women from ethno-racially and socio-economically diverse backgrounds, frequently from highly marginalized communities. Our clients often experience multiple social inequalities, including poverty, homelessness, racism, and discrimination on the basis of religion, country of origin, newcomer status, mental health, and disability. We have been part of numerous legal test cases, are represented at public policy tables and in law reform efforts related to immigration in context of violence against women.