

Migration Challenges and Opportunities for Canada in the 21st Century

Submission to the Federal Standing Committee on Citizenship and Immigration

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Background on the Barbra Schlifer Commemorative Clinic

The Barbra Schlifer Commemorative Clinic (“the Clinic”) is the only clinic of its kind in Canada; we provide specialized services for women who have experienced violence including legal representation, counselling and language interpretation services. The Clinic engages in educational initiatives, including public legal education seminars, professional development for legal and non-legal professionals and clinical education for law students. The Clinic also works on law reform, both within Canada and internationally, consulting with all levels of government, as well as the United Nations, on policy or legislative initiatives which impact women-identified survivors of gender-based violence (“GBV”).

Since its inception in 1985, the Clinic has assisted over 65,000 women who have experienced GBV. Over the years, we have experienced a steady increase in the number of women seeking the Clinic’s assistance. In 2016/17, the Clinic assisted 4,700 women. In 2017/18, the Clinic saw an 84% increase in requests for service, assisting over 7,000 women.

The Clinic frequently assists women migrants who have experienced GBV, which is of particular relevance to this Committee’s study of migration challenges and opportunities in Canada. We represent women in refugee and immigration matters, as well as in family law matters. Many women have also come into contact with the criminal justice system as a result of the conditions imposed by the refugee and immigration process. For criminal law matters beyond summary advice, the Clinic connects women with *pro-bono* legal counsel, due to funding constraints.

Because of our work with migrants who have faced GBV and legal issues, the clinic is uniquely situated to offer the Committee a gendered analysis of the challenges and opportunities for modern migration processes. The Clinic submits that Canada’s refugee and immigration policies fall short of the government’s international obligations and public stance in favor of gender recognition and equality. The Clinic further submits that Canada, fails to meaningfully recognize the role of gender in the barriers women face when entering a host country; the ways in which the refugee and immigration system perpetuates GBV; and the disconnect between international obligations and reality.

The Need for a Gender-Based Assessment

GBV must be assessed for any meaningful study of migration patterns. According to Amnesty International, and following UN Women’s research, one in three women across the world “has been beaten, coerced into sex, or otherwise abused in her lifetime.”¹ Many

¹ Amnesty International, *Violence Against Women: A Fact Sheet* (2005) available at https://www.amnestyusa.org/files/pdfs/vaw_fact_sheet.pdf

women flee their country of origin to escape ongoing GBV or because of the fear of GBV. Some of the many forms of GBV that women experience include: domestic violence, rape, detention or confinement, all forms of abuse by an intimate partner or family member, female genital mutilation, forced marriages, forced abortions, forced sterilization and persecution for being a survivor of rape or for bearing “illegitimate” children.

Canada was one of the first countries to recognize gender as a basis for refugee claims, developing the *Gender Guidelines* in 1996.² Since that time however, our understanding of gender and GBV has significantly expanded. In 2002, the IRB announced plans to review the *Guidelines*.³ However, to date, no such review has taken place. It is imperative that the *Guidelines* be reviewed and updated to: explicitly direct refugee adjudicators to consider sexual orientation within a gendered lens; to expand the scope of violence and abuse to include emotional and socio-economic harms; and to reaffirm the importance of gender sensitivity throughout every stage of refugee assessment. What follows outlines the evidentiary basis, values and context and practical steps for advancing such a review.

Data from Canada

According to data from Immigration Refugees and Citizenship Canada (IRCC), in 2016, Canada accepted 296,000 permanent residents and issued 286,000 work permits for temporary residents.⁴ In 2017, there were approximately 50,000 recorded asylum seekers in Canada, around 22,500 of whom were reported as female.⁵

Recognizing the significant number of women migrants coming into Canada and the unique role that gender plays in assessing a claimant’s circumstances, the Immigration and Refugee Board (IRB) introduced the *Gender Guidelines* in 1993 to assist with refugee decisions.⁶ The IRB updated the guidelines in 1996 to reflect the increasing inclusion of

² Canada, Immigration and Refugee Board of Canada (IRB), “Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution,” (1996) available at <https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir04.aspx>.

³ *Ibid*, note 27.

⁴ Canada, Immigration Refugees and Citizenship Canada (IRCC), *Annual Report to Parliament on Immigration, 2017* (2017) at 1 available at http://publications.gc.ca/collections/collection_2017/ircc/Ci1-2017-eng.pdf

⁵ Canada, Immigration Refugees and Citizenship Canada (IRCC), *Asylum Claimants by Province/Territory of Claim, Gender and Claim Month, 2016- (2018)* available at <https://open.canada.ca/data/en/dataset/b6cbcf4d-f763-4924-a2fb-8cc4a06e3de4.rep>

⁶ Canada, Immigration and Refugee Board of Canada (IRB), *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* (1996) available at <https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir04.aspx>.

women refugee claims in the law.⁷ Since then, however, practitioners and advocates working with women experiencing an intersectional spectrum of violence note that official Canadian migration policy remains pervasively problematic and unresponsive and/or insensitive to the needs of vulnerable survivors of GBV.⁸

Women migrants in Canada often find themselves overwhelmingly impoverished, underemployed, and overworked in low paying, exploitative jobs. They face deteriorating mental and physical health, and are vulnerable to violence and abuse. Many of these problems are perpetuated by Canadian immigration laws and policies that discriminate against women, especially women from the Global South.

The stated objectives of Canadian immigration law include: maximizing social, cultural and economic benefits; reuniting families; and promoting international justice and security by fostering respect for human rights.⁹ Despite these objectives, Canadian immigration policy prioritizes prospective migrant wealth (i.e. economic stability), “high skilled” employment, official language fluency, and recognized credentials. This serves to further disadvantage and marginalize women seeking to migrate to Canada due to global gender inequality and disparity with respect to access to education, employment, and independent wealth.

The following sections outline the Clinic’s submissions addressing the challenges faced by female migrants who have experienced GBV. These submissions address: (1) the barriers to entry experienced by female migrants; (2) how Canada’s migration system perpetuates GBV; and (3) the disconnect between Canada’s official policy and practice. Where applicable, suggested reforms are outlined throughout.

1. Gatekeeping Gender: Barriers to Entry

Female migrants fleeing GBV face a number of barriers in seeking asylum in Canada. The Clinic submits that gender is inextricably linked to “gatekeeping” structures and processes that deny access to vulnerable women.

a) Unique Harms Facing Female Internally Displaced Persons (IDPs)

⁷ Guha, Julia Patricia, *The Immigration and Refugee Board of Canada's guidelines on gender-related persecution: An evaluation* (2000) at 52.

⁸ As an example: The Migrant Mothers Project, “Unprotected, Unrecognized: Canadian Immigration Policy and Violence Against Women, 2008-2013” (2014) available at <http://www.migrantmothersproject.com/wp-content/uploads/2012/10/MMP-Policy-Report-Final-Nov-14-2014.pdf>

⁹ Immigration and Refugee Protection Act (S.C. 2001, c. 27), s 3(1).

Internally Displaced Persons (IDPs) do not cross international borders, but rather, are displaced by their own state and forced to migrate within their country of origin. Women IDPs suffer from unique harms that must be addressed. These harms are fairly consistent. For example, women IDPs in several different countries have reported physical and sexual assault while migrating to IDP camps established by the United Nations High Commissioner for Refugee (UNHCR).¹⁰ Older women and women who have physical disabilities experience further barriers in seeking shelter on route to the camps due to mobility issues.¹¹ LGBTQ population experience unique challenges in finding safe resting grounds while migrating due to homophobic and discriminatory attitudes held by some landlords and shelters.¹²

Some women never reach UNCHR or NGO camps because they are pressured by family members or spouses to remain in their locality, despite the state violence they have encountered. They may also simply lack adequate resources or access to information regarding the location of camps. Local organizations and NGOs must play an active role in disseminating information and resources to women in such circumstances, who are often the most marginalized and at risk of violence.

Further violence often awaits women who have travelled many miles, sometimes while caring for children, when they arrive at IDP camps. In 2010, the UNHCR conducted one-year focus group dialogues with over 1,000 refugee, asylum-seeking and IDP women in seven different locations across the world.¹³ The interviews revealed that many women in camps experience sexual and physical violence. The women described the prevalence of rape on the borders of the camp, where water and firewood are stored. Given the small quarters in which families are housed in IDP camps, some IDP women in Nigeria described the sense of shame they felt after being raped by spouses in front of their children.¹⁴ Along with rape, the women described increased incidents of domestic violence since their displacement.¹⁵ In Northern Uganda, for example, one study found that 50% of the women surveyed in IDP camps reported some form of violence in the

¹⁰ United Nations High Commissioner for Refugees (UNHCR), *UNHCR's Dialogues with Refugee Women* (2013) available at: <http://www.refworld.org/docid/5231b1214.html>.

¹¹ United Nations High Commissioner for Refugee's (UNHCR), *Survivors, Protectors, Providers: Refugee Women Speak Out* (2011) at 13 available at <http://www.unhcr.org/50f919f39.pdf>.

¹² Ibid.

¹³ Ibid.

¹⁴ Fiath Osasumwen Olanrewaju, Femi Omotoso & Joshua Olaniyi Alabi, "Datasets on the challenges of forced displacement and coping strategies among displaced women in selected Internally Displaced Persons' (IDPs) camps in Nigeria," *Data in Brief* (2018) available at <http://creativecommons.org/licenses/by/4.0/>.

¹⁵ Ibid.

previous year at the camp; 40% experienced rape by an intimate partner; and 5% experienced rape from someone outside of the camp.¹⁶

The sexual and physical abuse suffered by IDP women is unacceptable. As a world leader in human rights protection, Canada could do much more to help improve the safety and security of women in UNHCR and NGO IDP camps. Small improvements, such as ensuring that there are locks on doors, adequate lighting, and security personnel, could make a significant difference in ensuring the safety of these women. Using its example in the G7 as a starting point, Canada should advocate for the UNHCR to adopt a gender-based perspective, ensuring UNHCR personnel are adequately resourced and trained to be able to recognize, address and prevent GBV.

A deeper understanding of GBV helps to explain some of the reasons why IDP women choose to stay in their countries of origin. Women may stay because they fear reprisal from abusive spouses or do not want to leave their children behind. UNHCR and NGO camp personnel should provide counselling and information about the migration process so that IDP women who arrive at camps can make informed decisions about whether they want to migrate.

Recommendations:

- Canada advocate for improvements in UNHCR and NGO camps, with a focus on addressing the unique challenges faced by women.
- Canada further advocate for increased exposure of diplomatic and UNHCR personnel in remote areas, where IDPs are most vulnerable and least likely to be able to access camp resources.
- Further training of international actors on GBV is required to better understand the reasons why female IDPs may choose to stay in their country of origin. Canada must be willing to advocate for this exceptionally vulnerable population in a way that ensures meaningful change.

b) Strict Border Control Policies Increase the Risk of Trafficking and Make Migration Terrain More Treacherous

Migration is costly, both financially and in terms of personal security. Nonetheless, women decide these costs are worthwhile in order to seek safety and a brighter future for their children. Unfortunately, not every woman can absorb the financial costs of safe

¹⁶ Alastair Ager et al., “Local constructions of gender-based violence amongst IDPs in northern Uganda,” *Conflict and Health* (2018) at 2.

travel. For these women, smugglers and irregular routes of entry are the only available options.

Although smuggling is often less costly than regular modes of travel, it may still be too expensive for the most marginalized women. In exchange for assistance with irregular entry, marginalized women are forced to exchange sex for the promise of safe transit. In doing so, these women are at a greater risk of being subject to human trafficking.

The United Nations defines human trafficking as the “recruitment, transportation, transfer, harboring, or receipt of persons by improper means (such as force, abduction, fraud, or coercion) for an improper purpose including forced labor or sexual exploitation.”¹⁷

One reason for the steep costs of migration is that state policies restrict border access. Borders are increasingly undergoing heavy patrol to reduce the numbers of “illegal” migrants. The emphasis on security has made it increasingly difficult for even “legitimate” asylum seekers to seek refuge. Studies assessing the Mexican border control regime indicate that restraining migration policies and border controls does not stop irregular migration; rather, it serves only to make “more precarious and unsafe the conditions in which it takes place.”¹⁸

Canada’s emphasis on border security may have the negative consequence of forcing women fleeing GBV into more unsafe and irregular passageways to seeking asylum. Canada is experiencing a dramatic increase in irregular border crossings from asylum seekers who are unable to enter Canada through official channels because of the Safe Third Country Agreement. Loly Rico, president of the Canadian Council for Refugees, remarked that the Safe Third Country Agreement “encourages desperate people to take desperate measures which may put their safety and even their lives at risk”¹⁹. These people include women and children whose forced underground entry makes them susceptible to exploitation by human traffickers. Since the implementation of this Agreement, the Clinic has seen a dramatic increase in clients who have entered Canada from the United States through an irregular border crossing.

To reduce the risk of human trafficking and subjecting women to dangerous and costly entry in their search for safe haven, measures that serve to restrict access to Canada’s

¹⁷ *United Nations Convention Against Transnational Organized Crime and Protocols Thereto*, 2004, Article 3(a).

¹⁸ Amalia Campos-Delgado, “A Picture is Worth a Thousand Words: Irregular Transmigrants’ Journeys and Mental Mapping Methodology,” *International Migration* (2017) at 195.

¹⁹ Canadian Council for Refugees, “Safe Third Country Agreement must be suspended, say Canadian Council for Refugees and Amnesty International in comprehensive brief to Canadian government” (2017) available at <http://ccrweb.ca/en/media/safe-third-country-agreement-must-be-suspended>

borders, especially the Safe Third Country Agreement, should be abandoned. Legal pathways must be made available and well known to asylum claimants.

Recommendations

- The Safe Third Country Agreement should be abandoned to reduce the increased safety risks for women and potential for human trafficking.
- Canada must increase its exposure internationally so would-be asylum seekers are aware of legal routes of entry.
- Efforts should be made to educate would-be asylum seekers and migrants about the risk of human trafficking through irregular entry, emphasizing their potential agency over their circumstances, rather than employing scare tactics.

2. Canada's Immigration System as a Vehicle for Violence

Those women who overcome the barriers to entry and successfully migrate to Canada are greeted by an often insensitive and unresponsive refugee and immigration system. Canada's refugee and immigration system is a system that unintentionally perpetuates GBV through its procedural aspects, as well as through its impact.

a) The Procedural Aspects of Violence

i. Immigration Detention Traumatizes Survivors of GBV and Separates Children From Their Families

One of the most blatant forms of violence faced by migrants who enter the country irregularly is immigration detention. Female migrants fleeing GBV face an increased risk of detention, as they are unlikely to carry identifying documents.²⁰ For example, women escaping domestic violence or fleeing from a country dominated by a patriarchal social and legal system may not have access to these important documents. Failing to identify themselves to border officials, women survivors of GBV are more likely to be viewed as economic migrants entering illegally and be detained under the *Immigration and Refugee Protection Act* ("the Act") for security or other reasons.²¹

Detention can be traumatizing for survivors of GBV, considering the significant power differential that exists between survivors and border officials, and especially if the border

²⁰ Susan M. Akram, "Millennium Development Goals and the Protection of Displaced and Refugee Women and Girls," *Laws* (2013) at 288.

²¹ *Immigration and Refugee Protection Act* (S.C. 2001, c. 27), s 55.

official is male: it may directly replicate the experiences of confinement, abduction and sexual assault that led them to flee in the first place. Additionally, separation from their children can further exacerbate their powerlessness and trauma. Border officials should be trained and given a framework to recognize trauma, screen violence and be sensitive to the needs of female migrants who have survived GBV, and conduct themselves accordingly.

Immigration detention can also have serious deleterious impacts on children who migrate to Canada with their mothers. In Canada, Children are consistently detained by immigration authorities. It has been widely acknowledged that children who are separated from their parents because of their parents' immigration detention suffer potentially grave mental health consequences.²² Additionally, pregnant women are also detained in Canada, and some have therefore been required to give birth while in immigration detention. Their children are necessarily born under violent and traumatic circumstances. A recent report from the University of Toronto's International Human Rights Program argues that the best interests of children should be a primary consideration in all detention related decisions that affect children, including the detention of mothers.²³

Although the Federal Government announced on August 15, 2016, that there would be wide-ranging changes to Canada's immigration detention policies, it remains unclear how and when these changes will be implemented.²⁴

Recommendations

- The federal government should immediately stop the practice of detaining children and pregnant women, and implement alternatives to detention, such as community release and supervision or tracking mechanisms.
- In case of wrongful detention, the federal government should increase oversight and implement independent and effective complaints and monitoring mechanisms of CBSA detention policies.
- The federal government should increase training and education to IRCC and CBSA officials about GBV and domestic violence, as well as the trauma faced by women and children in detention.

²² Kathleen Harris, "Canadian Children 'locked up' in Immigration Detention Centres, report says" *CBC News*, February 24, 2017. Online: <http://www.cbc.ca/news/politics/canada-immigration-detention-children-1.3995461>.

²³ Hanna Gros, *Invisible Citizens: Canadian Children in Immigration Detention* (University of Toronto Faculty of Law: International Human Rights Program, 2017) at 30-32

²⁴ 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>

ii. How the Lack of a Gendered Analysis in Determining Refugee Claims Impacts Survivors of GBV

Canada's refugee system recognizes five enumerated grounds on which an individual can claim refugee status. Although gender is not explicitly expressed as an enumerated ground, the Immigration and Refugee Board (IRB) has interpreted gender to be included as one of the enumerated grounds; namely, as a "particular social group."²⁵

Under section 96 of the Act, a Convention Refugee must establish a well founded fear of persecution for reasons of membership in a particular social group; they must further show that they are unable or unwilling to avail themselves of the protection of their country of origin.²⁶ This section requires evidence of objective and subjective fear. In contrast, section 97 of the Act suggests that a claimant can claim refugee status if their country of origin would subject them to a risk of torture, risk to their life or risk of cruel and unusual treatment. Section 97(b)(ii) requires that the risk to the claimant's life or the risk of cruel and unusual punishment, not be one that is faced generally by others in or from that country.²⁷

Although section 97 was meant to supplement section 96 and bring the Act in line with Canada's international obligations under the International Convention Against Torture, a number of studies have shown that, in practice, the Refugee Protection Division (RPD) adjudicators often conflate sections 96 and 97 in a way that defeats claims of GBV.²⁸ RPD adjudicators fail to assess the gendered aspects of a claimant's fear of persecution for GBV, and will instead suggest that these women are fleeing from a generalized risk of crime.²⁹ For example, if a woman seeks refuge based on a fear of gang rape, RPD adjudicators may find that her fear is "generalized" in a particular country where both men and women are vulnerable to victimization by gangs. This perspective fails to consider the gendered aspects of rape.

Although the *Gender Guidelines* are meant to emphasize the gendered nature of certain claims, in reality, this is overlooked when refugee decisions on GBV are assessed. Section 97 and the "generalized risk" provision is used to negate legitimate claims made under section 96. Women who risk being returned to a country which fails to protect them from GBV are forced to craft their claims broadly so they can meet the definitional hurdle of belonging to a "particular social group" under section 96, but not so broadly that

²⁵ Immigration and Refugee Protection Act (S.C. 2001, c. 27), s 96.

²⁶ Ibid.

²⁷ Immigration and Refugee Protection Act (S.C. 2001, c. 27), s 97(b)(ii).

²⁸ Jamie Chai Yun Liew, "Taking It Personally: Delimiting Gender-Based Refugee Claims Using the Complementary Protection Provision in Canada," *Canadian Journal of Women and the Law* (2014).

²⁹ Ibid.

adjudicators misconceive their claim as one of generalized risk under section 97.³⁰ This unacceptable barrier has emerged as a result of the failure to clearly enumerate gender as a separate basis on which refugee status can be claimed, as well as a result of inadequate training for RPD adjudicators. To the extent that this in-built sexism mirrors deficiencies in original international asylum protections, crafted before gender protections were endemic to the UN system more generally, these have been to a significant extent mitigated by new developments in human rights' treaty protections and newer interpretations that recognize GBV as a stand-alone area of international concern. Canada has the opportunity to lead in this area of its domestic legal regime.³¹

The lack of training and understanding of gender by RPD adjudicators can also be seen in claims dealing with LGBTQ claimants. Like gender, "sexual orientation" is not an explicitly enumerated ground, but has been interpreted as falling under the "particular social group" category. Despite this, many LGBTQ claimants face significant hurdles in successfully claiming refugee status.³² In particular, bisexual males and females are often denied refugee status because RPD adjudicators do not believe their claims to be credible.³³ This troubling trend reflects a lack of understanding of the ways gender interacts with sex and sexual orientation. Further training of RPD adjudicators is necessary to better understand the gendered nature of acts of violence, such as rape targeting LGBTQ individuals. The *Gender Guidelines* must be revised to reflect this nuanced understanding.

The *Gender Guidelines* failure to support RPD adjudicators in assessing claims unique to women and LGBTQ claimants facing GBV results in two devastating consequences for survivors of GBV. Firstly, survivors of GBV face significant barriers in having their refugee claims recognized. Adjudicators have full discretion to define which GBV claims are "legitimate". Those claims that are more private in nature, such as a specific instance of domestic violence, are more likely to be seen as too specific to fall within the ambit of sections 96 or 97 general provision. Meanwhile, claims of GBV that are faced generally in a particular country, such as gang rape of women or forced marriages, are likely to be dismissed.³⁴ Similarly, claims brought by bisexuals and other sexual minorities who have faced violence are more likely to be seen as falling outside the scope of GBV and less

³⁰ Ibid.

³¹ *AT v. Hungary*, CEDAW/C/36/D/2/2003 (2005), para 9.3; *UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women CEDAW/C/GC/28* (2010). [GC 28], para 13; *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, CEDAW /C/GC/35 ([advance unedited version], 2017) at 35.

³² Nicole Laviolette, "Gender-Related Refugee Claims: Expanding the Scope of the Canadian Guidelines," *Oxford University Press* (2007).

³³ Sean Rehaag, "Sexual Orientation in Canada's Revised Refugee Determination System: An Empirical Snapshot," *Canadian Journal of Women and the Law* (2017).

³⁴ Constance MacIntosh, "Domestic Violence and Gender-Based Persecution: How Refugee Adjudicators Judge Women Seeking Refuge from Spousal Violence – and Why Reform is Needed," *Refuge* (2010).

legitimate.³⁵ In this way, Canada's refugee system creates more barriers for GBV claims to be recognized, which is antithetical to the intent of implementing the *Gender Guidelines*.

Additionally, survivors of GBV from countries where GBV is more widespread are more likely to be returned to their country of origin because of their differential access to the appeal process within the refugee system. Studies have shown that if a woman with a GBV refugee claim appeals an RPD decision dismissing her claim, she is likely to succeed. Such studies illustrate that serious errors are made in the initial RPD decision. However, it may not be feasible for many women to undergo the appeal process as they may lack the resources or knowledge to do so.³⁶ A system that returns asylum seekers to violence as a matter of routine is inefficient, ineffective, and must be examined in light of current knowledge and research, as well as in light of the stated values of the Canadian state in the international realm.

Recommendations

- Gender and sexual orientation should be written into the Act to ensure greater clarity and direction for RPD adjudicators.
- The *Gender Guidelines* must be revised to direct RPD adjudicators more explicitly regarding the intersections between gender and sexual orientation.
- RPD adjudicators must be trained to adopt a gender-based lens when assessing refugee claims.
- Further study is required to assess track judicial reviews of RPD decisions dealing with refugee claims based on GBV.

iii. Blanket Security Presumptions Fail to Account for How GBV Operates: Designated Country of Origin

Another way in which Canada's refugee system unwittingly perpetuates violence against women is through the "Designated Country of Origin" ("DCO") provisions. Under section 109 of the Act, the Minister of Immigration may designate a country as a one which meets the basic requirements of a democracy – a DCO. This creates a rebuttable presumption that the country is capable of resolving issues faced by asylum seekers from that country. Asylum seekers from a DCO bear the burden of demonstrating that their country of origin has failed to protect them. These individuals are also given less time than asylum seekers from other countries (between 30-45 days) to find and retain counsel, gather evidence, and detail the trauma of their cases before the IRB.

The issue with the DCO provisions is that the presumption of safety fails to account for how GBV operates. Violence against women remains widespread in many countries that appear stable and democratic. Often in cases of GBV, the state plays an indirect role in

³⁵ Ibid.

³⁶ Ibid.

facilitating violence.³⁷ For example, the police may systematically fail to respond to allegations of domestic abuse or rape, or their may be excellent black letter laws on the books, but authorities may be complicit in *perpetrating* gender based violence.

The presumption of safety further assumes that women who have faced GBV have access to necessary documents in male-dominated systems to rebut the presumption.³⁸ This may not be the case where the police, government officials or spouses refuse to supply women with documentation demonstrating the failure of the state to respond to their victimization. The fact that asylum seekers from DCOs are given less time to prepare for their IRB hearings than asylum seekers from other countries further exacerbates the issue of collecting evidence to rebut the presumption of safety.

Finally, the presumption of safety also assumes that women have the same mobility as men when travelling alone or with children.³⁹ Many women experiencing GBV face exceptional barriers when leaving their homes where they are experiencing domestic violence: for instance, they are subject to additional costs, or face the threat of physical and sexual abuse resulting from irregular entry. Despite these barriers, their claims are repeatedly held invalid and are deemed “safe” in their country of origin. For cases of GBV where the costs of returning to a violent domestic situation are exceptionally high, or where systemic barriers to accessing protection can be shown to exist, the presumption of safety should not apply.

Following a decision of the Federal Court, which found some of these measures discriminatory, the Liberal government promised to institute an “expert human rights panel” to determine DCO designations.⁴⁰ We note this pledge was not in Immigration Minister Ahmed Hussen’s mandate letter when appointed and as of August 2017, and no subsequent specifics of the proposed panel or process have been announced. This year, the RPD has notified those failed refugee claimants from DCOs whose decisions followed the 2015 Federal Court decision and who are not otherwise barred from appealing to the Refugee Appeals Division that they may file an appeal.⁴¹ For refugees whose access to resources and legal assistance is limited or who may already have left or been compelled to leave, this is an empty remedy.

Women fleeing violence continue to be punished by the unreasonable timelines inherent

³⁷ Rupaleem Bhuyan, Adriana Vargas & Margarita Pintin-Perez, “Fleeing Domestic Violence from a “Safe” Country?: Refugee Determination for Mexican Asylum-Seekers in Canada,” *Refuge* (2016).

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ 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>

⁴¹ Immigration and Refugee Board of Canada, 2017. “Federal Court Decision Impacting the Rights to Appeal to Refugee Appeal Division.” Online: <http://www.irb-cisr.gc.ca/Eng/NewsNouv/NewNou/2015/Pages/craupd.aspx>

in the DCO regime and the presumption that their country is “safe”.

Recommendations

- The presumption of safety for women who have survived GBV should not apply, regardless of their country of origin.
- Timelines for individuals coming from DCO countries should be the same as individuals from other countries.

iv. Blanket Security Presumptions Fail to Account for How GBV Operates: The Safe Third Country Agreement

Similar to the DCO provisions, the Safe Third Country Agreement with the United States of America is based on a presumption of safety; namely, that the United States is capable of resolving refugee and asylum claims and thus, any incoming asylum seekers to Canada, subject to certain narrow exceptions, are presumed to already be safe.

The Canadian Council for Refugees (CCR), Amnesty International (AI) and the Canadian Council of Churches (CCC) have joined an individual litigant in Federal Court to launch a legal challenge of the Safe Third Country Agreement. They have called for the immediate suspension of the Agreement, which has purportedly denied access to almost all refugee claimants from the United States who present themselves at official border crossings. The parties further identify the ways in which standards in immigration and refugee policy in the United States are subpar with those in Canada, where the intent is to uphold standards consistent with its international obligations. These standards result in inconsistent recognition of gender-based asylum claims.

The Safe Third Country Agreement is particularly troublesome for asylum seekers fleeing GBV who have no choice in which route of escape they are offered. Marginalized women who are unable to incur the steep costs ensuring their safety in migration, are in the hands of smugglers and traffickers. Even if these women have friends and supports in Canada who can assist them in resettlement, they may still have to return to the United States, where they have no means for recourse. As a result, those women who cross the Canada-US border are forced to do so through irregular means, increasing their risk of experiencing violence and trafficking. Additionally, given the current conduct of officials in the United States, it may no longer be accurate to say that women fleeing GBV are “safe” upon arrival there.

Recommendations

- The Safe Third Country Agreement should be abandoned effective immediately and information regarding legal routes of entry should be communicated broadly.

v. How Immigration Regulations Punish Survivors of GBV for Non-Disclosure

The requirement that all status-seeking applicants disclose all relatives for examination perpetuates violence towards women. Regulation 117(9)(d) of the *Immigration and Refugee Protection Regulations* requires that applicants for permanent residency (“PR applicants”) disclose all relatives on their initial application so that those relatives may be examined.⁴² For refugee claimants, this disclosure is required on their statement of claim. Undisclosed relatives are ineligible to be sponsored in the future. The only way to enable a permanent resident to sponsor an undisclosed relative is to make a humanitarian and compassionate grounds (“H&C”) application for an exception.

This regulation disadvantages female survivors of GBV by ignoring the circumstances that may prompt non-disclosure. For instance, to avoid the involvement of abusive family members whom they fear, female survivors of GBV may choose not to disclose any family members. The decision not to disclose violence to governmental officials could also be influenced by the power differential between a female applicant and immigration officials, and women’s learned deferential attitude towards such figures.

In the Clinic’s experience, non-disclosure is often incidental to, or the result of, either a miscommunication, or failure to understand expectations and consequences, or pressure from external forces. The Clinic has also worked with women who have not disclosed all of their relatives because of misinformation provided by immigration consultants and community services assisting with the completion of forms. These mistakes on forms, even where the error is made at the direction of individuals holding themselves out as professionals, are difficult to correct and can jeopardize a woman’s ability to sponsor their relatives in the future. Female survivors of GBV may want to reconcile with abusive family members or may seek to sponsor other relatives that they failed to initially disclose because they risked alerting abusive family members of their whereabouts. To prevent these women from sponsoring family members at a later point in their lives runs contrary to key fundamental objectives of Canadian immigration law including family reunification, and unduly punishes women facing GBV.

Recommendations

- The federal government should repeal section 117(9)(d) of the Act.
- More resources must be made available to assist migrants with filling out their forms to prevent misinformation. Funding should be provided to NGOs and government programs to that end.

⁴² Immigration and Refugee Protection Regulations (S.C. 2002, c. 227), s 117(9)(d).

vi. In Search of Humanitarian & Compassionate Grounds

Section 25(1) of the Act allows foreign nationals who are ineligible to apply for an immigration class, to apply for permanent residence based on humanitarian and compassionate considerations.⁴³ Female survivors of GBV are often compelled to bring H&C applications as last resort applications when they are ineligible for an immigration class. This situation may arise in cases where, for instance, spousal sponsorship relations have broken down due to abuse; live-in caregivers' employment relationships have become abusive, exploitative or no longer viable for employees; or their claims do not meet the gender-biased standards required for a successful refugee determination.

Despite their frequent use, H&C considerations can be extremely disadvantageous to survivors of GBV. A successful H&C applicant must demonstrate that they face hardship in their country of origin and that they are established in Canada. Both requirements place an undue burden on female survivors of GBV.

By requiring that applicants demonstrate hardship, the Immigration and Refugee Board "will not assess risk factors such as persecution, right to life, cruel and unusual treatment or punishment."⁴⁴ As a result, women must reframe their experiences of violence as mere hardships, despite the fact that doing so obscures the life-threatening danger faced by survivors. For instance, a woman escaping domestic violence must focus on the 'hardship' she experienced in her country of origin through a lack of support, rather than explicitly describing the oppression and violence she faced. Violence is an independent wrong that violates human rights.⁴⁵ To summarize, this approach to women's rights belongs to an earlier era, now surpassed in other areas of inetrantaionl rights' protections:

[W]hile women's enjoyment of human rights were formally guaranteed, these protections were compromised to the extent that women's experiences could be said to be different from the experiences of men. Thus, when women were detained, tortured, and otherwise denied civil and political rights in the same fashion as men, these abuses were clearly seen as violations of human rights. Yet when women were raped in custody, beaten in private, or denied access to decision-making by tradition, their differences from men rendered such abuses peripheral to core human rights guarantees.⁴⁶

⁴³ Immigration and Refugee Protection Act (S.C. 2001, c. 27), s 25.

⁴⁴ Canada, Citizenship and Immigration Canada (CIC), "Humanitarian and Compassionate Grounds," (2017) available at <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/after-apply-next-steps/refusal-options/humanitarian-compassionate-grounds.html>.

⁴⁵ *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, CEDAW /C/GC/35 ([advance unedited version], 2017) at 35.

⁴⁶ Kimberlé Crenshaw, *Gender-Related Aspects of Race Discrimination, Background Paper submitted to the Expert Group Meeting on Gender and Racial Discrimination*, Background Paper U.N. Doc. EGM/GRD/2000/WP. 1 (Zagreb, Croatia, 2000)at 2.

To frame violence as 'hardship' is to diminish the gravity of the danger these women would face if they returned to their country of origin.

It is often extremely difficult for women who have experienced GBV to prove establishment. For instance, women who are discouraged from seeking employment by spouses as a result of cultural or patriarchal beliefs may not be considered economically established if their spousal relationship deteriorates and they are left economically vulnerable. Similarly, women whose spousal sponsorship application failed may not have even acquired the authorization to work, further limiting their capacity to become economically independent and established.

Moreover, abusive relationships frequently involve the isolation of survivors by their abusers. This isolation is encompassing especially where survivors of GBV are newcomers to Canada who face language and cultural barriers and are separated from their families and social supports in their country of origin. A woman who has been isolated by her abuser is unlikely to be able to demonstrate consistent employment or involvement in the community. For mothers, isolation and lack of establishment is further exacerbated by the fact that women are disproportionately responsible for childcare, which often requires prolonged periods at home. H&C applicants are also unable to increase their establishment during the processing of an H&C application as applicants are not entitled to apply for work permits until their application is approved, which can take months, or even years.

If H&C applications are to have any significance as a compassionate measure, surely, they must take into consideration how experiences of GBV necessitate special consideration. Where GBV is found, one would think humanitarian and compassionate reasons would compel easier access, not further restrictions.

Recommendations

- A broader, gender-based assessment of 'hardship' is required. For claimants who have experienced GBV, terminology of 'hardship' should be eliminated.
- Claimants who have experienced GBV should be exempt from having to satisfy the establishment requirement.
- An assessment of risk should be included as a relevant consideration for H&C Applications.
- H&C applicants should be able to apply for an open work permit once their claim is submitted.

vii. How the Caregiver Program Enables Employers to Exploit Survivors of GBV⁴⁷

Canada has had labour migration programs for live-in or home-based caregivers since the 1950s.⁴⁸ The program was most recently restructured in November 2014. The restructuring maintained most of the elements of the earlier Live-in Caregiver Program, which marginalized migrant caregivers and introduced new changes that created further risks of exploitation.

Migrant caregivers can only enter Canada through labour migration programs which restrict their labour market mobility. They are only able to work in Canada on “tied work permits”, which only allow them to work for the employer named on the work permit, doing the specific job listed on the work permit, at the location identified on the work permit, and for the time period identified on the work permit.⁴⁹ Any work that is done outside those parameters is “undocumented” work which can render a migrant worker deportable and/or can make them ineligible for future work or permanent immigration to Canada. Changing jobs is possible but it can take 6 to 9 months to get a new work permit, during which time the worker cannot legally be employed. This policy of tied work permits forces workers either to remain in abusive or exploitative jobs or be forced into undocumented work in order to survive and become economically independent. Migrant workers have been calling for open work permits or regional or sectoral work permits for years to end these exploitative practices.

Migrant caregivers are also typically required to pay thousands of dollars in predatory recruitment fees—even though Canada’s temporary labour migration programs expressly require employers to pay all costs of recruitment, and laws in various provinces render so-called “recruitment fees” illegal. The fees are typically amount to two years’ salary in the workers’ home countries.⁵⁰

The combination of these tied work permits and recruitment fees places migrant caregivers and migrant workers in general in an extremely precarious position which employers often exploit through wage theft, extremely long work hours, and excessive work demands that go beyond their work permits. Migrant caregivers are also often subject to sexual harassment and assault. The frequency of this latter issue has led the Clinic to develop a specialized clinical program in advice for precarious workers who

⁴⁷ This section draws on Fay Faraday, “Profiting from the Precarious: How recruitment Practices Exploit Migrant Workers” *Metcalfe Foundation* (2014).

⁴⁸ *Permanent Status on Landing : Real Reform for Caregivers*, Joint Submissions by Caregivers Action Centre, Caregiver Connections Education and Support Organization CCESO, Eto Tayong Caregivers (ETC), GABRIELA Ontario, Migrant Workers Alliance for Change, Migrante Ontario and Vancouver Committee for Domestic Workers and Caregivers Rights (April 6, 2018) available at 3.

⁴⁹ Fay Faraday, “Profiting from the Precarious: How recruitment Practices Exploit Migrant Workers” *Metcalfe Foundation* (2014).

⁵⁰ *Ibid* note 23 at 10.

face economic coercion and sexualized violence and enhancement.

Under the Live-in Caregiver Program that existed from 1990 to 2014, all migrant caregivers who completed two years of live-in care work with temporary migration status were eligible to apply for permanent residence.

The Caregiver Program as amended in 2014 did not address the tied work permits or recruitment fees, but placed caps on how many caregivers can apply for permanent residence in any year, removing what had been a guaranteed pathway to permanent status in Canada.⁵¹ While the number of caregivers who can ultimately apply for permanent residence is capped at 2,750, caregivers working with children and 2,750 caregivers working with people with high medical needs, there is no cap on the number of caregivers who are eligible to work with temporary status in Canada each year. As a result, no individual caregiver knows in advance whether she will have an opportunity to apply for permanent residence or not. This forces women to stay in abusive work relationships and exploitative environments in order to complete their two years' work as quickly as possible, with the hope of applying for PR status.

The promise to process PR applications within six months does nothing to alleviate the suffering caused by the uncertainty that female temporary foreign workers face for two years, during which time they are separated from their family members and support systems.⁵² Also, although caregivers can now choose to “live out” of their employer’s home—a very positive development in law—the Canadian Union of Public Employees (CUPE) found that caregivers cannot exercise this “choice” due to their low wages and their dependence on their employers for immigration status.⁵³

In February 2018, the Canadian government announced that the current migrant Caregiver Program would end in November 2019. As a result, individuals applying under these programs must meet permanent residence requirements before the expiry date (i.e. two years of employment across a four-year period). There have been reassurances from the IRCC that the government is “committed to continuing to have a pathway to permanent residence for caregivers.”⁵⁴ However, no further details on the future of the program have been disclosed, resulting in some “confusion”, “frustration”, and “anxiety”⁵⁵ for caregivers who have arrived in Canada potentially relying on the current program requirements.

⁵¹ Government of Canada. 2016. “Live-in caregivers.” Online: <http://www.cic.gc.ca/ENGLISH/work/caregiver/index.asp>.

⁵² 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>.

⁵³ *Ibid.*

⁵⁴ <http://usa.inquirer.net/10936/canada-caregivers-urge-better-labor-policy-amid-program-review>

⁵⁵ <https://www.thestar.com/news/immigration/2018/02/05/canadas-immigration-program-for-migrant-caregivers-under-review.html>

Recommendations

- The federal government should grant live-in caregivers permanent residence on arrival in Canada.
- The federal government should adopt the proposal to develop a permanent immigration system for caregivers that have been advanced collectively by migrant caregiver organizations across Canada.⁵⁶
- The federal government should end the practice of issuing work permits that tie migrant workers to a single employer. Instead, migrant workers should be issued open, regional, or sectoral permits.

b) The Violent Impact of Migration

Along with the violence perpetuated by Canada's refugee and immigration policies and procedures, the impact of migration to Canada is itself a source of violence towards women. Female migrants are subjected to suspicion based on fraudulent sponsorship, criminalization, and exploitation through their involvement in (coerced) sex for survival, and low levels of support.

i. Freedom from GBV met with Fears of Fraud⁵⁷

Effective May 3, 2017, the conditional permanent resident scheme, which required that some sponsored spouses and partners live with their sponsor in order to retain their PR status, was removed. Since that time, the Clinic has seen a rise in the number of cases where sponsored spouses and partners who leave the relationship due to abuse and violence are investigated for fraudulent misrepresentation of their marriage. To penalize women for leaving abusive situations is antithetical to Canada's continued claim to gender equality. Additionally, fraud investigations could have the perverse effect of discouraging women from leaving abusive relationships out of fear that they will erroneously be found guilty of fraud and deported. Sensitivity towards and an awareness of GBV is necessary. Once it is determined that the spouse left the relationship because of GBV, fraud investigations should cease.

Considering that abuse and violence can play a role in sponsorship breakdown where marginalized women are sponsored into the country, we propose that the government

⁵⁶ *Permanent Status on Landing : Real Reform for Caregivers*, Joint Submissions by Caregivers Action Centre, Caregiver Connections Education and Support Organization CCESO, Eto Tayong Caregivers (ETC), GABRIELA Ontario, Migrant Workers Alliance for Change, Migrant Ontario and Vancouver Committee for Domestic Workers and Caregivers Rights (April 6, 2018) available at 3.

⁵⁷ This section derives from Deepa Mattoo, "Race, Gendered Violence, and the Rights of Women with Precarious Immigration Status" (November 2017) Created as a part of the Community Leadership in Justice Fellowship of Law Foundation of Ontario.

should also investigate sponsoring spouses who abuse and abandon their partners abroad. The government should advise individuals abandoned by Canadians who misrepresented their intention to sponsor of their rights and the supports available to them at the time of arrival in Canada. Additionally, the government should also lift the 5 year sponsorship ban on sponsored spouses where domestic violence is found to exist.

Recommendations

- The federal government should lift the 5-year sponsorship ban for sponsored spouses in where abuse is disclosed.
- The federal government should also indefinitely suspend the 3-year sponsorship undertaking where abuse is disclosed.
- Sponsored spouses and conjugal partners should be advised of their rights and the supports available to them at the time of arrival in Canada.
- In cases of abuse, the federal government should thoroughly investigate sponsoring spouses who abuse and abandon spouses/partners abroad.

ii. Sexualized Subjects: The Criminalization of Trafficked Women and Sex Work Migrants

Along with being suspected of fraud, female migrants are also criminalized as a result of the refugee and immigration system, which leads to economic hardship and exposes them to an increased risk of trafficking or a need to engage in so-called survival sex.

In recent years, the federal and provincial governments in Canada have been investing significant funds into initiatives to: investigate and prosecute trafficking offences, provide services for those who have experienced trafficking, and to educate service providers as well as the public about trafficking. Canada's response to human trafficking is framed primarily through the criminal law. However, in the Clinic's experience, the immigration and labour migration system implemented under Canada's Temporary Foreign Worker Program creates conditions of economic coercion which lead to the criminalization and marginalization of women through the policing of trafficking and women's inevitable exposure to sex work.

As outlined above, working class women migrating to Canada for work are employed on tied work permits. They cannot work for any employer or perform other jobs that are not listed on their permits and they are often subject to predatory recruitment fees. Although sex work is decriminalized in Canada, female migrants arriving on a work permit cannot receive a permit to engage in sex work. Any migrant woman with temporary status who engages in sex work –including a woman who is trafficked– is performing undocumented work and risks detention and deportation. This has the perverse impact of disincentivizing female migrants from reporting rapes, assaults, or thefts if they are

engaged in sex work as they may find themselves detained and deported for engaging in undocumented work.

Because they are undocumented, female migrants who have been trafficked into sex work, or who engage in sex work, are at high risk of being deported and also have limited access to social services, such as healthcare. Even though various cities have declared themselves as “sanctuary cities”⁵⁸ and have thereby committed to providing social services without inquiring about migration status, undocumented women face a real fear of being asked about their migration status, being unable to show documentation that will allow them to access services, and having their non-status information shared with border services.

At the same time, municipal anti-trafficking initiatives have increased by-law enforcement with respect to massage and holistic health centres, which are environments where migrant women engaged in sex work are frequently employed. These targeted by-laws serve to criminalize already marginalized women.

Recommendations

- Amend the *Immigration and Refugee Protection Act* to guarantee protection to survivors of trafficking. Canada also needs to offer adequate support to trafficked persons and faster access to permanent residence.⁵⁹
- Increase access to information about Temporary Residence Permits (TRPs) to victims of human trafficking and streamline applications for Permanent Residence.
- Enable women who are migrant workers to arrive with permanent residence upon arrival in Canada.
- End the practice of issuing tied work permits. Migrant workers should have open work permits, or at least regional or sectoral work permits.

iii. The “Canadian Dream” Turned Nightmare: Female Migrants Lack Access to Economic, Social, and Legal Supports

As mentioned, one reason why female migrants may choose to engage in survival sex work is because of their precarious economic situations. Female migrants are more likely than male migrants or their Canadian counterparts to be unemployed or underemployed.⁶⁰ This may be especially the case for women facing GBV who are isolated by their abusers. For those women who are engaged in the TFW program, they

⁵⁸ For example: Toronto, Hamilton, London, and Montreal.

⁵⁹ <http://ccrweb.ca/sites/ccrweb.ca/files/ccr-regs-comments-may-2015.pdf>

⁶⁰ Maryam S Rezazadeh a& Michael L Hoover, “Women’s Experiences of Immigration to Canada: A Review of the Literature,” *Canadian Psychology* (2018).

may engage in long hours of work with little pay.⁶¹ Without proper access to legal information and union representatives, these women continue to endure violence in the workplace and are left economically dependent on employers and abusers.⁶²

Outside of the labour market, female migrants are also vulnerable in terms of access to social supports. There is a lack of access to information on their legal rights and recourse, as a result of isolation and/or language barriers. Newcomer women in situations of violence also sometimes fall through the cracks as settlement organizations lack awareness and training on GBV and the particular vulnerabilities and problems the women face.⁶³ This is particularly troublesome given that recent migrants face high levels of intimate partner violence (IPV) and are less likely to use social and health resources for survivors of IPV because they fear reprisal from their partners.

It is imperative that women entering Canada are provided with adequate social and legal supports to ensure their protection from GBV. NGOs, women's organizations, and settlement organizations should be provided with sufficient funding and training resources to address the needs of this highly marginalized and vulnerable group. Particularly in the case of refugees and asylum seekers who have fled their country of origin on the basis of GBV, we must ensure that the risks that these women take in travelling to Canada in pursuit of the "Canadian Dream" of safe haven, are not made in vein.

Recommendations

- Increase funding and support for NGOs and settlement organizations to specifically recognize and respond to issues of GBV for migrants on arrival and after settlement.
- Conduct studies on the impact of gender on the well-being of asylum seekers, immigrants and refugees to assess areas for improvement on an ongoing basis.

3. The Disconnect Between Rhetoric and Reality on the International Stage

Although Canada has a history of and continues to present itself as a leader in women's rights and refugee and immigration matters, there are significant gaps in Canada's immigration policies, resulting in margined migrants and sponsored spouses falling through the cracks.

⁶¹ Chantal Robillard et al., "'Caught in the Same Webs' – Service Providers' Insights on Gender-Based and Structural Violence Among Female Temporary Foreign Workers in Canada," *International Migration & Integration* (2018).

⁶² *Ibid.*

⁶³ *Ibid.*, note 51.

It is our submission that the Minister of Immigration must fulfill his obligation under section 94(2)(f) to report a comprehensive gender-based analysis of the impact of the Act to Parliament.⁶⁴ Although recent reports have purported to conduct a gender-based analysis, the Clinic's daily work in representing women, as well as its research contained herein, evidences that these analyses are far from comprehensive. Merely reporting statistics on the rates of female migrants is insufficient. The Act requires a gender-based *analysis*, not just on the rates of migrants, but also on the *impact* of the Act. The government must examine how Canada's refugee and immigration policies disproportionately impact and disadvantage individuals through a gendered lens. This impact and disadvantage should not be restricted to women, as gender is a broad concept that includes LGBTQ individuals and others who refuse to conform to social norms associated with each sex.

Canada's international obligations as well as its obligations under section 15 of the *Charter of Rights and Freedoms* necessitate gender-based policies.

Recommendations

- The *Gender Guidelines* must be reviewed and updated to reflect a more comprehensive understanding of gender
- The Minister must fulfill his obligation under the Act to conduct a gender-based *analysis*.
- Official rhetoric on gender equality and human rights must be put into practice by reforming the refugee and immigration system to better address GBV.

Conclusion

As a final thought, we note with concern that policies regarding violence against women are 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 the social location of victims of violence, i.e. women, is rendered invisible. This is also reflected in the penalization women experience when they are required by intersecting and contradictory programs and eligibility requirements to, in effect, give up their families, social supports, and sometimes their children.

Migrant women who have survived GBV overcome significant barriers and challenges in search of safety. At the same time however, it is important to recognize that while many women come to Canada seeking safe haven from GBV, Canadian women too experience

⁶⁴ Immigration and Refugee Protection Act (S.C. 2001, c. 27), s 94(2)(f).

GBV. Canada's obligation to protect women who have survived GBV applies at home *and* abroad. Meaningful policy change that adopts a gender-based analysis is necessary to actualize safety and gender equality.

Gender-based plus 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 plus 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 in efficient and effective programs and services that are responsive to the realities of women's lives. A gender-based analysis of Canada's migration policies identifies how these policies can create barriers to the determinants of safety for migrant women. 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. It must be emphasized that, as the Clinic sees daily, women's and LGBTQI migration is fuelled and conditioned, primarily by violence.

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