



CBSA and Gender-Based Violence

Recommendations on policies and operations

In the context of the Canada Border Services Agency's review of the immigration enforcement framework with a focus on the needs of victims of gender-based violence, the Canadian Council for Refugees (CCR) submits these recommendations for changes in the areas of both policy and operations. The recommendations were developed through a consultation with the CCR member organizations.

Scenarios presented below are illustrative only, and not exhaustive.

Cross-cutting recommendations

1. Adopt an overarching statement of principles and commitments

- Similar to the IRB Chairperson's Guideline 4, the CBSA should adopt guiding principles that will apply to all CBSA activities.
- A key principle should be "safety first, immigration enforcement later". CBSA should commit to meeting the protection and basic needs of victims of violence first, before moving to enforcement.
- The CBSA should share its principles and commitments with the general public. Information about the CBSA's efforts to serve people better may counter the negative perception of the CBSA and lead to more open communication with victims of violence.

2. Definition of gender-based violence

- Proposed definition: "violence directed against a person because of that person's perceived gender or violence that affects persons of a particular perceived gender disproportionately".

3. Anti-racism lens

- CBSA should apply a critical race lens in developing its policies on gender-based violence.
- CBSA should consult and collaborate with NGOs on the anti-racism lens.

4. Sexual Orientation and Gender Identity and Expression (SOGIE)

- The CBSA approach to gender-based violence should be informed by meaningful understanding of diverse sexual orientations and gender identities and expressions.

5. Training

- CBSA officers should receive meaningful ongoing training on:
 - Understanding of gender-based violence, in a culturally relevant perspective, taking into account migration-related issues.
 - Identification of human trafficking and how trafficking manifests in different settings
 - Using a trauma-informed approach to interviewing (this must be a serious approach, in consultation with expert NGOs, to culturally safe trauma informed practice, based on cycles of violence, power issues, the context forced-migration, and GBV intersectionalities)
 - Sensitivity and diversity
 - Collaboration with NGOs/community services
 - Non-violent crisis intervention training on an on-going basis
- Interpreters should receive similar training.
- CBSA officers should regularly attend community events e.g. CCR consultations, anti-trafficking or migrant workers events.

6. Community sector role

- CBSA should recognize the expertise of NGOs/ community service providers and collaborate with them to support to survivors. NGOs, particularly those who serve vulnerable migrants, have an integral role to play in providing practical and moral support to people who have been victims of gender-based violence, in assisting them to navigate immigration and other processes and in advocating for them.
- CBSA should develop the role of the Community Liaison Officer (CLO). There is a mixed experience so far but the role has the potential to be an effective mechanism. The CLOs should meet with and communicate with NGOs, learn about resources available and share that knowledge with CBSA officers. The CLOs should also facilitate NGOs in communicating with CBSA about clients.
- CBSA should have a discretionary budget that could be available to cover certain expenses incurred by NGOs in supporting a CBSA client.

7. Complaints mechanism

- There should be an independent body empowered to review complaints about CBSA actions.
- The complaints body should permit third party complaints – people who have experienced gender-based violence are not always in a position to pursue a complaint on their own behalf.

Areas for recommendations

8. Person presents themselves to the CBSA

What should be the response when someone who is out of status presents themselves to CBSA to try to regularize her situation, where there is possible gender violence?

Scenario: After enduring several years of abuse from her Canadian partner, a woman leaves her home and goes to a women's shelter. She has no status and no papers (her partner took them). She would like to report to the CBSA so that she can begin to regularize her situation.

Recommendations

- Adopt a policy recognizing that placing people in a situation where they lack status is part of gender-based violence. Women who may have been victims of violence should not be penalized for being without status.
- Amend the law so that CBSA officers have the power to immediately grant a person some provisional right to be in Canada (pending e.g. a TRP) and pause all enforcement activity.
- Introduce standard procedures for connecting with NGOs, such as a way for NGOs to contact CBSA about a client, and procedures for CBSA to refer people to NGOs when they are not already connected [see Community sector role above].
- Have a standardized process for referrals to IRCC for recourses such as TRPs for Victims of family violence or Victims of trafficking in persons.

9. Denunciations to CBSA

What should be the response when someone contacts CBSA to denounce a person without status in Canada (and that person might be their abusive partner or an abusive employer)?

Scenario: An abusive spouse contacts the CBSA to say that their spouse is in Canada without status. Based on tips provided by the spouse, the CBSA finds and arrests the woman.

Recommendations

- Adopt a policy on not using tips potentially from people who are attempting to use the CBSA as a tool in the control and oppression of others. Make the policy public to reduce the use of threats of denunciation to the CBSA by abusers.
- In cases where CBSA officers follow up on a tip and there are signs that the person is a victim of violence, have a standardized process for referrals to IRCC for recourses such as TRPs for Victims of family violence or Victims of trafficking in persons.
- Provide training to CBSA officers on recognizing signs of potential abuse.

10. Raids in a workplace

What should be the CBSA approach when conducting a raid in a workplace where people may be subject to gender-based violence? (Some obvious situations include massage parlour, but other workplaces, including caregivers in private homes, may be sites of trafficking in persons or other abuses involving gender violence).

Recommendations

- Introduce standard procedures on identifying potential victims of violence and conducting interviews appropriately. Such interviews should not take place on the premises of the employer, where victims are likely to be too afraid to speak openly. Interviews should take place in a setting where they can feel safe, in the presence of an NGO and/or lawyer, and with professional interpretation.
- Provide training to CBSA officers on how abuse may take place in the workplace and on interviewing workers in a way in which they may feel safe to speak about abuse. The approach should be humble and non-threatening.
- Amend the law so that immigration violations committed as a result of victimization are not counted as violations.
- Have a standardized process for CBSA officers to make referrals to IRCC for recourses such as TRPs for Victims of family violence or Victims of trafficking in persons.
- Introduce standard procedures for connecting with NGOs when raids reveal potential gender-based violence.

11. Referrals from the police

What should be the response when the police contact the CBSA about a person found without status in the context of family violence?

Scenario: Police are called in response to a situation of spousal violence. The husband is arrested on charges of violence against his wife. The police discover that the woman has no status in Canada and alert the CBSA.

Recommendations

- Introduce standard procedures for CBSA officers to make referrals to IRCC for recourses such as TRPs for victims of family violence or Victims of trafficking in persons.
- Introduce standard procedures for connecting with NGOs when arrests reveal potential gender-based violence.

12. Intersection with justice systems

Persons who are victims of gender-based violence are often negatively affected by various aspects of the justice system, which may intersect with the CBSA.

- In cases of intersection between the justice and immigration systems, CBSA should liaise proactively with the justice system when necessary to defend the rights of victims of gender-based violence.
- CBSA officers should liaise with local child protection authorities concerning gender-based violence where a child is either a witness or is harmed in the process. This is also important in cases of sponsorship breakdown, detention, and/ or execution of removal orders where a child custody issue presents itself.
- Adopt policies and procedures recognizing that abusive former partners may use legal processes such as Hague Convention complaints to pursue their abuse, and prohibiting CBSA complicity in such cases.

13. Visiting women's shelters and other community spaces

What policy should CBSA have on contacting and entering women's shelters, schools, religious spaces and other community spaces?

Recommendations

- Adopt a policy prohibiting visits by CBSA officers to such spaces without prior agreement with the institution.

14. Arrivals at Ports of Entry

What should be the response of CBSA when they encounter someone entering the country who may be subject to gender-based violence?

Scenario: A trafficked domestic worker enters Canada with a valid visa, accompanied by her employer. The CBSA does not speak to the domestic worker separately or screen for human trafficking.

Recommendations

- Have a standardized procedure for trained officers to interview the worker with an interpreter, separately from the employer. If allegations are made, the case is referred to NGOs, law enforcement and CBSA investigation.
- Have a standardized process for CBSA officers to make referrals to IRCC for recourses such as TRPs.
- Where the person does not complain about their situation, provide information in various languages on recourses, so that a person who was afraid to speak up at the POE can later reach out (e.g. information about the anti-human trafficking hotline). The document should not be threatening for the employer, should they see it.

15. Detention

What changes to policy and operations are needed in relation to gender-based violence in the areas of:

- Decisions to detain
- Treatment of people in detention
- Conditions imposed and respect of conditions

Scenarios: a) A person makes a refugee claim. The CBSA officer interviewing them suspects them of being trafficked and decides to detain them (on the basis that the trafficker will control them). b) A person is released under conditions of staying with someone – she subsequently leaves that person’s home, because she is being abused there, and thus is found in violation of conditions and is put back into detention.

Recommendations

- Amend the law to remove risk of being trafficked from factors in favour of detention.
- Amend the law (or at a minimum adopt policy) to exclude detention in cases of people who have suffered gender-based violence. If necessary use alternatives to detention.
- Alternatives to detention (if used) should be in a suitable setting where victims of violence will receive appropriate support, e.g. with an NGO experienced in the specific situation of the person. Victims of violence should not be referred to alternatives to detention where they will be in the same place as people that may be threatening to them.
- Ensure ready access to NGOs and counsel for any victims of gender-based violence who are detained.
- Amend the law to allow a person to breach conditions where necessary to escape abuse.

16. Removals

What changes to policy and operations are needed in relation to gender-based violence in the areas of:

- Staying removal when a person may be eligible for the TRP for victims of family violence or for victims of trafficking in persons.
- Staying removal when there are issues of child custody to be resolved.
- Staying removal when a parent who has suffered gender-based violence will be unable to take her children with her due to custody arrangements.
- Collaborating with a victim of gender-based violence on departure arrangements, where she is ready to leave Canada but wishes to do so in a dignified way and after sorting out her affairs.
- Interviews with CBSA when arranging removal or as part of PRRA process.

Recommendations

- Amend the law to provide greater discretion to CBSA to stay removals.
- Amend the law so that CBSA officers have the power to immediately grant a person some provisional right to be in Canada (pending e.g. a TRP).
- Provide clear guidelines to CBSA officers on situations in which a removal should be stayed, including where a person may be eligible for a TRP or has an immigration process (such as H&C) pending, when issues of child custody need to be determined, when a child would be separated from a parent, etc. A stay of removal should also be granted to enable victims of violence to access the services that they are entitled to as victims of crimes in Canada (health care and mental health support, etc., filing a complaint with authorities, etc.)



- Provide clear guidelines to CBSA officers about staying removal in cases where the person would return to gender-based violence, taking into account the gaps in the IRPA scheme that denies access to a PRRA to some people who may be at risk – for example a woman who made a refugee claim with her spouse /partner, where her risks of violence were not raised.
- Provide clear guidelines to CBSA for ensuring that victims of gender-based violence who wish to return are able to do so in safety and dignity, with adequate time to make their arrangements before departing.

January 2021