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OF DISCRIMINATION AGAINST WOMEN

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AMNESTY
INTERNATIONAL



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1. INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Committee on the Elimination of Discrimination against Women in advance of the review of Canada's eighth-ninth combined periodic reports on 25 October 2016.

Amnesty International recognizes that Canada has taken measures to advance women's rights and gender equality, both in Canada and globally. Canada is a party to multiple human rights conventions that guarantee the human rights of women and girls. Important domestic legal protections exist within Canada, including at the level of a constitutionally-entrenched guarantee of equality, which offers women a strong framework for protecting their rights. Canada has long championed initiatives at the UN that aim to bolster the protection of women's human rights and promote gender equality, including by bringing forward an annual resolution on violence against women at the UN Human Rights Council (and previously the Commission on Human Rights).

Despite these efforts, too many women and girls in Canada continue to experience gender-based violence and discrimination. Amnesty International is concerned that Canada has failed to implement previous recommendations issued by this Committee with regard to discrimination and violence experienced by Indigenous women and girls¹, as outlined in this Committee's previous review of Canada in 2008, and in the 2015 investigation² into violence against Indigenous women and girls in Canada. Amnesty International remains concerned that recommendations regarding the rights of migrant and refugee women also remain unimplemented. As such, Amnesty International has focused this briefing on its concerns about Canada's implementation of the Convention on the Elimination of All Forms of Discrimination against Women (the "Convention") as they relate to the rights of Indigenous, migrant, and refugee women and girls in Canada.

2. VIOLENCE AGAINST INDIGENOUS WOMEN AND GIRLS: ARTICLES 2(C) & 2(D)

Indigenous women and girls in Canada face a significantly heightened risk of violence compared to other women and girls in the country. Amnesty International has found³ that the discrimination and marginalization experienced by Indigenous women and girls in Canadian society pushes many into situations where they face a heightened risk of violence. Some men deliberately target Indigenous women, whether driven by racist and misogynist attitudes toward Indigenous women⁴ or simply calculating that social attitudes toward Indigenous women mean they are more likely to get away with crimes against Indigenous women.⁵ Discrimination against Indigenous women has also denied them access to services and supports necessary to escape violence. Amnesty International's research has concluded that police and government have long been aware of these patterns of violence but all too often have failed to take adequate or appropriate action.

A 2009 government survey concluded that violent assaults against Indigenous women and girls in the 10 Canadian provinces are at least 2.5 times more frequent than attacks on non-Indigenous women. The survey found higher rates of violence regardless of the relationship to the perpetrator: family violence, attacks by

¹ CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada* (Index: CEDAW/C/CAN/CO/7), paras 18, 22, 30, 34, 44, and 46.

² Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (Index: CEDAW/C/OP.8/CAN/1), 30 March 2015 (hereafter: *Report of the inquiry concerning Canada*), available at tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fOP.8%2fCAN%2f1&Lang=en

³ Amnesty International, *Canada: Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada* (Index: AMR 20/003/2004), 3 October 2004.

⁴ Commissioners A.C. Hamilton and C.M. Sinclair, *Report of the Aboriginal Justice Inquiry of Manitoba: The Deaths of Helen Betty Osborne and John Joseph Harper*, 1991.

⁵ See, for example, Transcript of trial, *R v Crawford, May 1996*, in Warren Goulding, *Just Another Indian: A Serial Killer and Canada's Indifference*, 2001, p.188.

community members, and assaults by strangers were all disproportionately high.⁶ Both Indigenous and non-Indigenous women in Canada are most likely to be killed by someone they know. However, a higher proportion of Indigenous victims were killed by an acquaintance than non-Indigenous victims (42% versus 35%). Acquaintances include casual acquaintances, close friends, colleagues, neighbours, and authority figures.⁷ In addition to the higher overall rate of violence, attacks on Indigenous women and girls are more violent, leading to high rates of serious injury. The best available government statistics suggest that the homicide rate for Indigenous women and girls in Canada is at least six times higher than the national average for all women in Canada.⁸

These statistics almost certainly underestimate the extent of violence against Indigenous women and girls. Inconsistent police practices may mean that the Indigenous identity of victims often goes unrecorded. There is a disproportionately high rate of long-term missing persons cases involving Indigenous women and girls, as well as suspicious deaths. Both are excluded in crime statistics. As well, a gulf of mistrust between Indigenous communities and the police leads to the underreporting of crimes against Indigenous people.

Despite government acknowledgement of high rates of violence against Indigenous women and girls, Canada has failed to institute adequate data collection procedures to create a better understanding of the violence experienced by Indigenous women and girls, help inform allocation of government funding, and measure the impact of government programs and policies. Until 2014 there were no official statistics on the number of missing and murdered Indigenous women and girls. There are still no national protocols and very little training to ensure police consistently and accurately record the Indigenous identity of victims of violent crime.⁹ Although the Royal Canadian Mounted Police (RCMP) issued reports in 2014 and 2015 on numbers of murders and disappearances of Indigenous women and girls, this reporting was incomplete and has since been discontinued. Statistics Canada has begun including police data on murders of Indigenous women and girls in its annual homicide report, but this excludes data on Indigenous women and girls who are missing, or whose deaths are considered suspicious.¹⁰

The vast majority of First Nations reserves across Canada do not have shelters for women escaping violence. At the time of writing, there were 39 federally funded shelters for First Nations women,¹¹ with funds allocated for the construction of five more across Canada by the end of 2019. Since some of the federally funded shelters serve multiple First Nations, the federal government asserts that 45% of First Nations are served by federally-funded shelters.¹² This claim is contested by Indigenous women's organizations. While Indigenous women may have access to shelters funded by the provincial and territorial governments, these shelters are often far from their home communities and many do not offer culturally-based programming for Indigenous women.¹³

Amnesty International is concerned that not enough is being done to address violence against Indigenous women and girls in the context of intensive and large-scale development of oil, gas and other resources across Canada. A growing number of studies, including research by Amnesty International, link the presence of large-scale development projects and associated labour camps, and associated strains on social services and infrastructure in host communities, with increased rates of violence against women, and violence against Indigenous women in particular.¹⁴

⁶ Shannon Brennan, *Violent victimization of Aboriginal women in the Canadian provinces, 2009*, Statistics Canada, 17 May 2011, available at www.statcan.gc.ca/pub/85-002-x/2011001/article/11439-eng.htm

⁷ Zoran Miladinovic and Leah Mulligan, *Homicide in Canada, 2014*, Statistics Canada, 25 November 2015.

⁸ Zoran Miladinovic and Leah Mulligan, *Homicide in Canada, 2014*, Statistics Canada, 25 November 2015.

⁹ Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada* (Index: Doc 30/14, OEA/Ser.LV/II), 21 December 2014, paras. 251-254; and S. James Anaya, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Addendum: The Situation of indigenous peoples in Canada*, UN Human Rights Council (Index: A/HRC/27/52/Add.2), 4 July 2014, para. 89.

¹⁰ Amnesty International, *New statistics on violence against Aboriginal people released*, 25 November 2015, available at www.amnesty.ca/blog/new-statistics-violence-against-aboriginal-people-released

¹¹ The federal government website states that there are 41 such shelters. Amnesty International has been informed that two of those shelters have in fact been closed. Indigenous and Northern Affairs Canada, 'Family Violence Prevention Programme,' 10 June 2016.

¹² Indigenous and Northern Affairs Canada, 'Family Violence Prevention Programme,' 10 June 2016, www.aadnc-aandc.gc.ca/eng/1100100035253/1100100035254

¹³ Sara Beattie and Hope Hutchins, *Shelters for abused women in Canada, 2014*, Statistics Canada, 2015.

¹⁴ See, for example, First Nations Women Advocating Responsible Mining, *Submission to Committee on the Elimination of Racial Discrimination, 80th Session*, January 2012; Conseil du statut de la femme Quebec, *Opinion - Women and Plan Nord: for Equality in Northern Development*, October 2012; Janis Shandro et al., *Ten Steps Ahead: Community Health and Safety in the Nak'ál Bun/Stuart Lake Region During the Construction Phase of the Mount Milligan Mine*, December 2014; Pauktuutit, *The impact of resource extraction on Inuit women and families in Qamani'tuaq, Nunuvut Territory: a qualitative assessment*, January 2014; Northern Health, *Understanding the*

Large-scale resource development projects in remote and northern communities rely on bringing in large numbers of workers from other regions to meet labour demands. Amnesty International's research in northeast British Columbia has revealed that for some resource sector workers, difficult working conditions can lead to a pattern of “blowing off steam” through drug and alcohol abuse, which in turn contributes to the prevalence of violence.¹⁵ Racist attitudes toward Indigenous peoples and misogyny, largely unaddressed by public officials and community members, have also made Indigenous women and girls the targets of distinct patterns of violence.

High wages for resource sector workers, and the large numbers of workers attracted to the region, have driven up local prices for essentials such as food and housing. The consequence is that those without access to resource sector wages—particularly Indigenous women and girls—are forced into economically precarious conditions where they experience food and housing insecurity. This insecurity is a concern in its own right and economic insecurity is also associated with increased risk of experiencing violence.

Decades of studies by government and civil society¹⁶ have repeatedly raised concerns over impacts of resource development projects on women and girls. Yet, while the project assessment and approval process in Canada is intended to weigh potential harm against the social benefits of a proposed project, the key tool in this process, the impact assessments carried out under federal, provincial and territorial environmental legislation, largely ignore the specific pattern of impacts that development projects have on women and girls, particularly Indigenous women and girls.¹⁷ Analysis of the distinct impacts on people of all genders, in particular women and girls—which is a requirement of Canadian government-supported overseas development assistance—is not required as part of the decision-making process domestically and has rarely been part of the environmental impact assessment process.¹⁸

In 2014 and 2015, separate investigations by this Committee and by the Inter-American Commission on Human Rights (IACHR) concluded that the federal and provincial governments had failed to take reasonable and adequate precautions to prevent violence against Indigenous women and girls.¹⁹ The reports of the two investigations specifically referred to the failure to address underlying factors putting Indigenous women and girls at risk, including discrimination, social and economic marginalization, and inadequate access to safe, affordable housing. This Committee's report concluded that Canada was responsible for a “grave violation” of the rights of Indigenous women and girls by failing to take adequate precautions to prevent violence.²⁰

On 1 September 2016, the National Inquiry into Missing and Murdered Indigenous Women and Girls commenced. The national inquiry is set to conclude by the end of 2018. Amnesty International and other civil society partners have long called for such an inquiry and welcomed its announcement. However, Amnesty International is concerned that the inquiry's Terms of Reference²¹ do not explicitly state that policing policies and practices will be thoroughly examined, and they direct families with case-specific questions back to the same policing system that has failed to thoroughly investigate their loved ones' death or disappearance.²² These gaps in the Terms of Reference are particularly troubling in view of the continued

State of Industrial Camps in Northern BC: A Background Paper, Version 1, 17 October 2012; and Clarice Eckford and Jillian Wagg, *The Peace Project: Gender Based Analysis of Violence against Women and Girls in Fort St. John – revised*, The Fort St. John Women's Resource Society, February 2014.

¹⁵ *Out of Sight, Out of Mind: Gender, Indigenous Rights and Energy Development in Northeast British Columbia, Canada* (Index: AMR 20/4872/2016), Amnesty International, November 2016; Northern Health, *Understanding the State of Industrial Camps in Northern BC: A Background Paper*, Version 1, 17 October 2012; and Clarice Eckford and Jillian Wagg, *The Peace Project: Gender Based Analysis of Violence against Women and Girls in Fort St. John – revised*, The Fort St. John Women's Resource Society, February 2014.

¹⁶ See, for example, Northern Health, *Population Health and Oil and Gas Activities: A Preliminary Assessment of the Situation in North Eastern BC*, 10 January 2008, available at prrd.bc.ca/board/meetings/agenda/documents/rd/cfour011008.pdf; and BC Ministry of Health, *Identifying Health Concerns relating to oil and gas development in northeastern BC: human health risk assessment - phase 1 compendium of submissions*, Fraser Basin Council, 30 March 2012, available at www.health.gov.bc.ca/library/publications/year/2012/Identifying-health-concerns-HHRA-Phase1-Compendium.pdf

¹⁷ See Amnesty International, *Open Letter to Justin Trudeau and Christy Clark: Site C Dam and the Human Rights of Indigenous Peoples in the Peace Valley* (Index: TG AMR 20/2902/2015), 18 November 2015.

¹⁸ Linda Archibald and Mary Crnkovich, *If Gender Mattered: A Case Study of Inuit Women, Land Claims and the Voisey's Bay Nickel Project*, November 1999.

¹⁹ *Report of the inquiry concerning Canada*, CEDAW/C/OP.8/CAN/1, 30 March 2015; and Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada* (Index: OEA/Ser.L/V/II. Doc.30/14.), 21 December 2014.

²⁰ *Report of the inquiry concerning Canada*, CEDAW/C/OP.8/CAN/1, 30 March 2015, para. 214.

²¹ Indigenous and Northern Affairs Canada, 'Terms of Reference,' www.aadnc-aandc.gc.ca/eng/1470422455025/1470422554686

²² Other shortcomings of the terms of reference include the failure to explicitly authorize the Commissioners to subpoena and compel production of documents.

complicity of certain law enforcement officials in violence against Indigenous women. In October 2015, Quebec's provincial police force suspended eight officers accused of abuse of power and sexual assault against Indigenous women in the town of Val-d'Or. The allegations involve women who were coerced or forced to perform sexual acts with uniformed police officers—one allegedly inside a police station.²³ Minister of Indigenous and Northern Affairs Carolyn Bennett has publicly stated that policing is covered in the national inquiry.²⁴ Amnesty International now looks to the federal, provincial and territorial governments to live up to that assurance.

Concrete actions to end violence against Indigenous women and girls in Canada must not be delayed until the conclusion of the national inquiry. Recommendations from the British Columbia provincial inquiry, and the investigations by this Committee and the IACHR, and the federal government's own studies of the issue²⁵ have yet to be implemented and can form the basis for a plan of action to be implemented alongside the national inquiry.

Over many years, Amnesty International has worked alongside the Native Women's Association of Canada, affected families and many other organizations and activists, in calling for a comprehensive and coordinated national response that meets Canada's international human rights obligations through addressing all aspects of the prevention, investigation and prosecution of violence against First Nations, Inuit and Métis women and girls. In June 2016, the federal government announced plans to create a federal strategy on gender-based violence.²⁶ Amnesty International welcomes this announcement. However, given that it only covers areas under federal jurisdiction, the organization is concerned that it falls short of Canada's commitment under the UN Secretary-General's UNiTE initiative to enact a truly national plan of action covering areas under federal, provincial and territorial jurisdictions and including special provisions addressing the disproportionate levels of violence experienced by Indigenous women and girls.

RECOMMENDATIONS

Amnesty International recommends that the Canadian authorities:

- Ensure the National Inquiry into Missing and Murdered Indigenous Women and Girls has the explicit authority to examine the actions of federal, provincial, and municipal police forces and to authorize the reopening of police investigations.
- Ensure the National Inquiry into Missing and Murdered Indigenous Women and girls examines the impact of resource development on the safety and well-being of Indigenous women and girls.
- Ensure the National Inquiry into Missing and Murdered Indigenous Women and Girls leads to the adoption of specific measures to address the needs of Indigenous women and girls within a comprehensive national action plan on violence against women and girls.
- Establish mechanisms to ensure independent review of unsolved cases of missing and murdered Indigenous women and girls where there is evidence that police have mishandled these investigations, whether through bias or error.
- Require that reviews and approvals of resource development projects, and other decision-making and programming processes, be informed by gender-based analysis including an intersectional analysis of the specific impacts on Indigenous women and girls.
- Work with Indigenous peoples to ensure substantive equality in access to all government services and programs, including culturally-relevant programs to prevent violence, ensure the safety of Indigenous women and girls, and support Indigenous violence survivors.

²³ Allan Woods, 'Quebec Probes Alleged Police Abuse of Aboriginal Women,' *The Toronto Star*, 23 October 2015.

²⁴ 'MMIW inquiry must be vigilant when it comes to police, families say,' *CBC*, 3 August 2016.

²⁵ See, for example, 'INVISIBLE WOMEN: A CALL TO ACTION: A Report on Missing and Murdered Indigenous Women' in *Canada Report of the Special Committee on Violence Against Indigenous Women*, March 2014.

²⁶ Status of Women Canada, 'Federal Strategy on Gender-Based Violence,' www.swc-cfc.gc.ca/violence/strategy-strategie/index-en.html

3. DISCRIMINATION IN THE INDIAN ACT: ARTICLES 2D & 2F

The *Indian Act* is the legislative regime that has been imposed on First Nations people to regulate their individual and collective relationship to the Canadian government. Under the *Indian Act*, the federal government maintains a registry of “Status Indians.” Some rights and benefits are based directly on this registered status. Although the concept of status was imposed on First Nations, it has also taken on a symbolic and personal importance for many First Nations women and men and impacts how they are perceived and treated in Indigenous and non-Indigenous society.²⁷

In its current iteration, Canada’s regime for transmission of status under the *Indian Act* perpetuates gender discrimination by arbitrarily denying status to certain descendants of women who themselves were previously refused status under the Act solely on the basis of gender. This discrimination has broad implications, and this Committee has listed the discriminatory provisions of the *Indian Act* as one of multiple factors that “cannot be separated from the current violence against aboriginal women and the continued and increased vulnerability of aboriginal women to such violence.”²⁸

Prior to 1985, the *Indian Act* directly and explicitly discriminated against First Nations women by taking status away from women who married non-status men while, in contrast, leaving the status of men who “married out” unchanged and granting status to the women they married. The Native Women’s Association of Canada has said of these discriminatory provisions that, “[f]or 100 years, First Nations women who married non-Indians were banished from their communities, barred from their families and stripped of their legal rights as Indians.”²⁹ Until 1985, the *Indian Act* also made the transmission of status to descendants dependent on the male line, so children would only have status if their fathers did.

Following a UN Human Rights Committee finding that the status provisions of the *Indian Act* were discriminatory,³⁰ in 1985 the federal government introduced amendments known as ‘Bill C-31.’ As a result of these amendments, women would no longer lose status because of whom they married. Furthermore, the reforms enable women to pass status to their children on the same basis as men. The reforms also restored status to many women and their descendants. Following the 1985 amendments, over 114,000 women and their descendants regained status.³¹

Critically, however, the 1985 legislative changes also created different categories of status that grant equal access to benefits and services, but unequal ability to pass on status. Under the 1985 reforms, the federal government arbitrarily determined that individuals with only a single status parent can only pass on status to their own children if their children’s other parent also has status. This “second generation cut-off” rule was applied going forward to all children born after 1985 and retroactively to all children of people regaining status. Among other effects, this meant in practice that grandchildren of disenfranchised women were rarely eligible to regain status.

As a result of a legal challenge in British Columbia,³² the federal government introduced further amendments to the *Indian Act* in 2011. Under the new amendments, all grandchildren of women who had lost status by marrying out are now eligible for status, provided they or one of their siblings was born since 1951.³³ However, individuals eligible to obtain Indian status because of the latest amendments still cannot pass status on to their own children born before 1985 unless the other parent has status. This is a restriction

²⁷ Pamela D. Palmetter, *Presentation to the Standing Committee on Aboriginal Affairs and Northern Development Re; Bill C-3 – Gender Equity in Indian Registration Act*, 20 April 2010.

²⁸ *Report of the inquiry concerning Canada*, CEDAW/C/OP.8/CAN/1, 30 March 2015, para. 129. This Committee consequently urged Canada to make amendments to eliminate discrimination under the Indian Act.

²⁹ Native Women’s Association of Canada, *Aboriginal Women, Self-Government, and the Canadian Charter of Rights and Freedoms in the Context of the 1991 ‘Canada Package’ on Constitutional Reform*, 1991, p. 14.

³⁰ *Sandra Lovelace v. Canada*, Communication No. R.6/24 (Index: A/36/40), 1981, para. 166.

³¹ Library of Parliament, *Indian Status and Band Membership Issues*, February 2003.

³² *Mclvor v. Canada (Registrar of Indian and Northern Affairs)* (Index: BCCA 153), 2009.

³³ Library of Parliament, *Legislative Summary of Bill C-3: Gender Equity in Indian Registration Act*, 15 November 2010.

that does not apply to status Indians of parallel generations who, because they trace their descent from the male line, were not affected by the disenfranchisements of the past.³⁴

In 2015, the Quebec Superior Court found the continued inequalities *Indian Act's* status provisions unjustifiably violate the right to equality. Following the 2015 federal election, the government of Canada withdrew its appeal of this case on 22 February 2016. However the decision currently has effect only in the province of Quebec, and Parliament has until 3 February 2017 to make amendments to comply with the ruling.³⁵ Meanwhile, a discriminatory legislative regime remains in effect in Canada.

In a supplemental submission to the UN Human Rights Committee in which Canada requested that the Committee suspend consideration of the case of *Sharon McIvor and Jacob Grismer v. Canada*, the federal government stated that it will "... work to eliminate known sex-based discrimination in the registration provisions of the *Indian Act*, and will work with First Nations to develop the necessary legislative changes."³⁶ However, previous reforms of the *Indian Act* have been piecemeal, and it remains to be seen whether a comprehensive reform will result from the forthcoming amendments. In the meantime, Canada has continued its opposition to a petition before the Human Rights Committee that alleges that the status provisions of the *Indian Act* violate multiple articles of the *International Covenant on Civil and Political Rights*.³⁷

RECOMMENDATIONS

Amnesty International recommends that the Canadian authorities:

- Ensure the status registration regime introduced under s 6(1)(a) of the 1985 *Indian Act* and re-enacted by the *Gender Equity in Indian Registration Act* (Bill C-3) is amended so as to entitle registration to those persons previously ineligible solely as a result of the preferential treatment accorded to Indian men over Indian women born prior to 17 April 1985, and to patrilineal descendants over matrilineal descendants, born prior to 17 April 1985; and
- Work with First Nations' women's organizations to ensure that promised reforms to the *Indian Act* eliminate any other sex discrimination in accessing recognition of status under the *Indian Act*.

4. REFUGEES AND MIGRANTS

This Committee has previously noted the particular vulnerability of immigrant women to violations of the Convention. During its last review of Canada, this Committee expressed concern about the impact of social assistance cuts on immigrant women.³⁸ Amnesty International has a number of further concerns about ongoing discrimination against refugee and migrant women in Canada.

³⁴ For detailed analysis of the 2010 amendments, see: National Aboriginal Law Section, Canadian Bar Association, *Bill C-3: Gender Equity in Indian Registration Act*, National Aboriginal Law Section, Canadian Bar Association, April 2010.

³⁵ *Descheneaux c. Canada (Procureur Général)* (Index: QCCS 3555), 2015.

³⁶ *Second Supplemental Submission (Revised) of the Government of Canada on the Admissibility and Merits of the Communication to the Human Rights Committee of Sharon McIvor and Jacob Grismer*, Communication No. 2020/2010, 28 June 2016, para. 17, available at povertyandhumanrights.org/2016/06/mcivor-v-canada-2016

³⁷ *Second Supplemental Submission (Revised) of the Government of Canada on the Admissibility and Merits of the Communication to the Human Rights Committee of Sharon McIvor and Jacob Grismer*, Communication No. 2020/2010, 28 June 2016, paras 22-23, available at povertyandhumanrights.org/2016/06/mcivor-v-canada-2016; Canada successfully requested that consideration of the application be suspended until after forthcoming legislative reforms. In its communication to the Human Rights Committee requesting this suspension, Canada submitted that "if the Committee chooses to proceed in considering the admissibility and merits of the communication, then Canada continues to rely on its previous submissions, that the communication is inadmissible."

³⁸ CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada* (Index: CEDAW/C/CAN/CO/7), 7 November 2008, para. 13.

4.1 MIGRANT DOMESTIC WORKERS: ARTICLE 11

Under the federal government's Live-in Caregiver Program (LCP), established in 1992, predominantly female³⁹ workers were brought to Canada to care for children, the elderly, and people with disabilities in the private homes of Canadian citizens.⁴⁰ In 2014, 23,174 caregivers participated in this program,⁴¹ driven by socioeconomic opportunities in Canada and the possibility of subsequently acquiring permanent resident status. Caregivers were required to complete two years of professional experience within four years to obtain permanent residency.⁴² Under the LCP, caregivers were brought to Canada on terms that created a significant power imbalance between employers and employees—such as a requirement for caregivers to live with their employers—which left them open to exploitation and abuse while at the same time facing barriers to accessing justice.⁴³ In October 2014, Canada announced significant changes to the LCP to address conditions such as the live-in requirement.⁴⁴ Following these changes, caregivers are now hired through the Temporary Foreign Workers Program (TFWP).⁴⁵ Although these reforms have eliminated the live-in requirement specific to caregivers, they have failed to address underlying concerns that leave women migrant workers, and especially caregivers, at particular risk of rights violations.

Before the 2014 reforms, caregivers were required to live with their employer. Despite generally having their own bedroom, many caregivers experienced repeated intrusions by employers into their personal space, including requests to work after regular work hours.⁴⁶ The live-in requirement resulted in significant restrictions on personal autonomy, including the ability to choose when to leave the house, leaving some caregivers isolated and feeling dependent on their employers.⁴⁷ Although the 2014 reforms eliminated the live-in requirement, many caregivers continue to reside with their employers, either because they are unable to afford separate accommodation and transportation or their employer's preference is for live-in care.

When caregivers live with their employers and face restrictions on their personal liberties, they are in an unequal power relationship and vulnerable to abuse. Some caregivers have reported being intimidated, threatened with termination of employment, having property or pay withheld, or experiencing violence at the hands of their employers.⁴⁸ Like migrant workers in other sectors, caregivers are newcomers to Canada and may not have knowledge of their rights or where to seek support.⁴⁹ In April 2015, the British Columbia Human Rights Tribunal awarded damages in a case involving a caregiver who was held as a “virtual slave” in a hotel where her employer sexually assaulted her and subjected her to other abuses.⁵⁰

Like other migrant workers, many caregivers remain tied to their employers by their closed work permit, and face a waiting time of several months to obtain permission to change their employer.⁵¹ Consequently, employers have significant power in these employment relationships that can be leveraged in an abusive manner by using the threat of loss of a work permit to their advantage.⁵² The reliance on closed work permits may make women migrant workers targets for sexual violence.⁵³

³⁹ An estimated 95% of Caregivers under the LCP were women. See Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity*, Metcalf Foundation, 2012, p. 36.

⁴⁰ Canadian Union of Public Employees, *Fact Sheet: Temporary Foreign Workers Program and the Live-in Caregiver Program*, 8 January 2015.

⁴¹ Government of Canada, 'Facts & Figures 2014: Immigration Overview - Temporary Residents, Temporary Foreign Worker Program work permit holders by program, 2005 to 2014.'

⁴² Alia Dharssi, 'Trudeau urged by workers to drop stringent migrant rules so they aren't trapped with one employer,' *The National Post*, 29 October 2015.

⁴³ Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity*, Metcalf Foundation, 2012.

⁴⁴ Canadian Union of Public Employees, *Fact Sheet: Temporary Foreign Workers Program and the Live-in Caregiver Program*, 8 January 2015.

⁴⁵ Association des Aides Familiales du Québec, *Enjeux et Problématiques des Aides Familiales Immigrantes*, 2015.

⁴⁶ Elsa Galerand, Martin Gallié & Jeanne Ollivier Gobeil in collaboration with PINAY and the Service aux collectivités of UQAM, *Domestic Labour and Exploitation: the Case of the Live-in Caregiver Program in Canada (LCP)*, January 2015, pp. 13-14. The live-in requirement also blurred the distinction between paid and unpaid work, and caregivers have reported being asked to do “favours” for their employers without extra remuneration. See Ethel Tungohan, 'After the Live-in Caregiver Program: Filipina Caregivers' Experiences of Graduated and Uneven Citizenship,' *Canadian Ethnic Studies* (Index: 47:1, 2015), pp. 93, 95.

⁴⁷ Elsa Galerand et al., in collaboration with PINAY and the Service aux collectivités of UQAM, *Domestic Labour and Exploitation: the Case of the Live-in Caregiver Program in Canada (LCP)*, January 2015, pp. 13-14.

⁴⁸ Ontario Women's Justice Network, *Rights and Protections for Live-in Caregivers under the Ontario Employment Protection for Foreign Nationals Act*, 2013.

⁴⁹ Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity*, Metcalf Foundation, 2012, p. 5.

⁵⁰ *PN v. FR and another (No. 2)*, 2015 BCHRT 60.

⁵¹ Association des Aides Familiales du Québec, *Enjeux et Problématiques des Aides Familiales Immigrantes*, 2015.

⁵² Jamie Chai Yun Liew and Pinky Paglingayen, 'Making the Invisible Visible,' Submission to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, 30 May 2016, p. 2. The Committee on Economic, Social, and

Women migrant workers may be at particular risk of violence due to their isolation from families and communities, language barriers, and the nature of their work; figures on levels of violence experienced by women migrant workers, including caregivers, are not available.⁵⁴ Women migrant workers, including caregivers, may be reluctant to quit employment when they experience harassment, exploitation or abuse because of fears they may not secure another position, or because they cannot afford to be without income while they try to find work and secure a new work permit.⁵⁵

Barriers to accessing permanent residency status have increased pressure on migrant domestic workers to remain in abusive employment situations because they do not want to jeopardize their path to permanent residency.⁵⁶ The 2014 changes to the LCP increased pressures on caregivers hoping to qualify for permanent status by removing the guaranteed pathway to permanent residency for workers who complete two years of work over a four-year period and introducing quotas and more stringent requirements.⁵⁷

Recent reforms have also failed to address the actions of recruitment agencies that may disproportionately affect caregivers. Despite being illegal in certain provinces, caregivers are routinely charged exploitatively high fees by recruitment agencies, sometimes equivalent to an entire year's pay.⁵⁸ Many caregivers borrow money in order to pay these fees, and as a result, arrive in Canada significantly indebted.⁵⁹ These caregivers sometimes have to begin to pay off debt immediately, and some recruiters have exploited their precarious situation. Recruiters sometimes place migrant workers in abusive working situations after having initially misrepresented the nature of the work to be performed in Canada.⁶⁰

Women migrant domestic workers continue to face multiple barriers to having their rights respected, protected and fulfilled. Caregivers often lack adequate information about their rights, and government legal support can prove ill-adapted to the complexity of migrant worker cases, which straddle both employment and immigration law.⁶¹ Recent reforms to the TFWP, including workplace inspections and the introduction of a confidential "tip line" to report abuses by employers, have been largely unsuccessful because migrant workers fear losing their employment if they report rights violations.⁶²

On 19 September 2016, the House of Commons Standing Committee on Human Resources, Skills, and Social Development and the Status of Persons with Disabilities issued a report containing a number of recommendations for reforms to the TFWP. These recommendations included eliminating employer-specific work permits to reduce employee abuses, reviewing current monitoring and enforcement mechanisms, and facilitating access to permanent residence for certain migrant workers.⁶³

RECOMMENDATIONS

Amnesty International recommends that the Canadian authorities:

Cultural Rights has also observed that the continued tying of work permits to specific employers leaves temporary foreign workers "vulnerable to exploitation." *Concluding observations on the sixth periodic report of Canada*, E/C.12/CAN/CO/6, 23 March 2016, para. 27.

⁵³ Fay Faraday, 'TFW program allows employers to target vulnerable women for sexual abuse and violence,' ThinkPol, 2 April 2015.

⁵⁴ Cecilia Benoit et. al., *Issue Brief: Sexual Violence Against Women in Canada*, Status of Women Canada, December 2015, p. 19.

⁵⁵ Jamie Chai Yun Liew and Pinky Paglingayen, 'Making the Invisible Visible,' *Submission to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities*, 30 May 2016, p. 2.

⁵⁶ Caregivers' Action Centre, *Brief before the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities*, 1 June 2016, pp. 3-4.

⁵⁷ Debra Black, 'New rules for federal live-in caregivers program,' *The Toronto Star*, 28 November 2014.

⁵⁸ Recruitment fees for caregivers appear to be high relative to many other temporary foreign workers. Some caregivers have reported fees of C\$7,000-8,000, and one caregiver reported paying as much as C\$12,000. In contrast, Guatemalan workers in the agricultural sector have reported fees ranging from C\$1,350-2,500. Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity*, Metcalf Foundation, 2012, pp. 33-34.

⁵⁹ Caregivers' Action Centre, *Brief before the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities*, 1 June 2016, p. 5.

⁶⁰ Caregivers' Action Centre, *Brief before the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities*, 1 June 2016, p. 5.

⁶¹ Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity*, 2012, Metcalf Foundation, pp. 96-97, in which the author recommends the establishment of an independent government agency to act as a Migrant Worker Advocate in Ontario. In 2007, the province of Alberta established the Temporary Foreign Worker Advisory Office to act as a legal information and referral service for migrant workers. However, similar offices do not exist in all provinces, and the office does not itself provide advocacy services.

⁶² Testimony of Dr. Ethel Tungohan, Assistant Professor of Political Science, York University before the *Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, Evidence, 42nd Parl, 1st Sess* (16 May 2016), p. 19.

⁶³ Temporary Foreign Worker Program, *Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, 42nd Parl, 1st Sess*, September 2016, pp. 32-34, 3.

- Allow caregivers to move freely between employers by offering open work permits, thereby improving working and living conditions and reducing the risk of abuse.
- Ensure limits on numbers of caregivers able to obtain permanent residency do not put workers at risk of exploitation and abuse.
- Ensure that caregivers who experience human rights violations have effective access to justice, including legal aid.

4.2 IMMIGRATION DETENTION: ARTICLES 2(D), 2(F) & 12

Contrary to this Committee's recommendations,⁶⁴ Canada's immigration detention regime has inadequate protections for pregnant women and women detained with their children. The stated policy of the Canada Border Services Agency (CBSA) is to only detain pregnant women and children as a last resort.⁶⁵ Due to the shortcomings of CBSA statistics,⁶⁶ it is unclear to what extent this policy is implemented. No systematic screening mechanism exists to identify people with specific protection needs who should only be detained as a last resort.⁶⁷

Women are regularly detained with their children. In 2015, at least 82 children were detained for an average length of 23 days.⁶⁸ These figures do not include the unknown number of children who accompany their detained mothers but are not for legal purposes considered detained, including children born in Canada who hold Canadian citizenship.⁶⁹ Detained women often choose to keep their children with them, rather than release their children to the care of a public guardian. The Immigration and Refugee Board has considered that the best interests of these children are not a relevant factor in detention reviews of adults. This narrow interpretation of the *Immigration and Refugee Protection Regulations* was invalidated after a 2016 legal case.⁷⁰ However, it remains to be seen whether this legal development will effectively curb Canada's practice of routinely detaining women with their children.

Women are treated differently according to the province and facility in which they are detained.⁷¹ In certain detention facilities, women are left to raise their children alone, and fathers are held separately and allowed only limited opportunities for visits.⁷² In one study, parents in one centre reported an insufficient number of beds in the mother-child section, and in another centre, multiple families shared a room.⁷³ Parenting is particularly difficult for detained women with infants due to strict rules and insufficient accommodation in detention facilities.⁷⁴

⁶⁴ CEDAW, *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women* (Index: CEDAW/C/GC/32), 14 November 2014, para. 34, states: "As a general rule, pregnant women and nursing mothers, who both have special needs, should not be detained."

⁶⁵ Immigration, Refugees and Citizenship Canada, *ENF 20: Detention*, Operational Manual, 22 December 2015, p. 19.

⁶⁶ See Delphine Nakache, *The Human and Financial Cost of Detention of Asylum-Seekers in Canada*, UNHCR, 2011, p. 35.

⁶⁷ Delphine Nakache, *The Human and Financial Cost of Detention of Asylum-Seekers in Canada*, UNHCR, 2011, p. 80. The Minister of Public Safety and Emergency Preparedness has been urged to create such a frontline screening tool for CBSA officers to accurately identify groups in need of specific protection. See Faculty of Law, International Human Rights Program, "We have no rights": *Arbitrary Imprisonment and Cruel Treatment of Migrants with Mental Health Issues in Canada*, University of Toronto, 2015, p. 101.

⁶⁸ Canadian Council for Refugees, *Immigration detention statistics 2015*, p. 1.

⁶⁹ Canadian Council for Refugees, *Immigration detention statistics 2015*, p. 1.

⁷⁰ Following this settlement, a 24 August 2016 order on consent by the Federal Court confirmed that the best interest of children were a relevant factor in detention reviews of adults. See *B.B. and Justice for Children and Youth v. the Minister of Citizenship and Immigration*, 24 August 2016, Federal Court Docket IMM-5754-15, available at: <http://ccrweb.ca/sites/ccrweb.ca/files/bbjfcymci-order-justice-hughes-august-2016.pdf>. As part of the settlement, the CBSA has issued instructions to its hearing officers to bring this order on consent to the attention of Immigration and Refugee Board members during detention reviews. See "Instructions from CBSA to its Hearing Officers, Distributed by CBSA on 29 August 2016", available at: <http://ccrweb.ca/sites/ccrweb.ca/files/bb-cbsa-instructions-aug-2016.pdf>

⁷¹ In Canada, approximately 70% of detained migrants are held in immigration holding centres in Montreal, Toronto, and Vancouver. Other detainees are held in provincial facilities intended for criminal populations. Faculty of Law, International Human Rights Program, "We have no rights": *Arbitrary Imprisonment and Cruel Treatment of Migrants with Mental Health Issues in Canada*, University of Toronto, 2015, p.14.

⁷² Rachel Kronick, *The detention of migrant children and families in Canada: advocacy, policy and lived experience*, Thesis submitted to McGill University in partial fulfilment of the requirements of the degree of Masters of Science in Psychiatry, November 2014), pp. 83-84.

⁷³ Rachel Kronick et al., 'Asylum-Seeking Children's Experiences of Detention in Canada: A Qualitative Study', in *American Journal of Orthopsychiatry* (Index: 85:3), p. 289.

⁷⁴ Rachel Kronick, *The detention of migrant children and families in Canada: advocacy, policy and lived experience*, Thesis submitted to McGill University in partial fulfilment of the requirements of the degree of Masters of Science in Psychiatry, November 2014, p. 94. The

Inadequate protections for pregnant women and women with children are compounded by broader failings of Canada's immigration detention regime, which contains insufficient safeguards against arbitrary detention. While CBSA decisions to detain migrants are subject to review by the Immigration and Refugee Board, a statistical analysis has revealed substantial variations in detention review results among different geographic regions, as well as among board members.⁷⁵ Furthermore, there is currently no upper time limit for immigration detention⁷⁶ and, in the context of the case of an individual held for over seven years in immigration detention, the UN Human Rights Council's Working Group on Arbitrary Detention considered that Canada violated the prohibition on arbitrary detention under international law.⁷⁷

Canada's immigration detention regime has long suffered from significant accountability gaps with often deadly consequences.⁷⁸ Since 2000, at least 15 people have died while in the custody of the CBSA and its predecessor agency⁷⁹ and, since March 2016 alone, three people have died in circumstances that have raised concerns as to the adequacy of measures to ensure the health and safety of detainees, including mental health care.⁸⁰ This crisis has led to calls by human rights groups for increased oversight for Canada's immigration detention regime,⁸¹ and has provoked hunger strikes by detainees.⁸² In response, Canada's Minister of Public Safety and Emergency Preparedness announced a C\$138 million overhaul of the immigration detention regime.⁸³ The Minister's announcement includes certain laudable objectives, including increasing the availability of alternatives to detention, avoiding detaining children, and improving health and mental health services to detainees.⁸⁴ However, details of the plan remain undeveloped, and the Minister has not called for ending the detention of pregnant women or women with their children.

RECOMMENDATIONS

Amnesty International recommends that the Canadian authorities:

- End the practice of detaining pregnant women and women with their children.
- Ensure that promised reforms to the immigration detention regime are undertaken swiftly and effectively guarantee that immigration detention is undertaken as a measure of last resort and for limited periods of time only.

4.3 FAMILY REUNIFICATION: ARTICLES 2(F) & 5(A)

Canada's immigration system fails to adequately respond to the needs of separated family members due to long processing times and restrictive interpretations of family member eligibility, including through the excluded family member rule, which may disproportionately impact women. This rule is a provision of the *Immigration and Refugee Protection Regulations* that establishes a lifetime bar to family reunification for family members initially omitted from permanent residence applications.⁸⁵ Introduced in 2002 as a mechanism to combat intentional misrepresentation, the rule's rigidity fails to account for the wide range of factors that can lead applicants to omit family members in immigration applications. Women can be

author of this study interviewed multiple parents in immigration holding centres who described the difficulties of parenting due to strict rules, such as a prohibition on letting children out of their sight. One woman described the difficulties of using bathrooms, as she was required to carry her baby with her in a car seat despite having been told not to lift her following a caesarean section procedure.

⁷⁵ End Immigration Detention Network, *Indefinite, Arbitrary and Unfair: the Truth about Immigration Detention in Canada*, June 2014.

⁷⁶ Stephanie Silverman and Petra Molnar, 'Everyday Injustices: Barriers to Access to Justice for Immigration Detainees in Canada,' *Refugee Survey Quarterly* (Index: 35:1), 2016, p. 116.

⁷⁷ Working Group on Arbitrary Detention, *Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session (22 April–1 May 2014)* (Index: A/HRC/WGAD/2014/15), UN Human Rights Council, 2014, para. 25.

⁷⁸ Faculty of Law, International Human Rights Program, 'We Have No Rights': Arbitrary imprisonment and cruel treatment of migrants with mental health issues in Canada,' University of Toronto, 2015, pp. 79-81.

⁷⁹ Ashifa Kasam, 'Immigrant deaths expose 'legal black hole' of Canada's detention system,' *The Guardian*, 17 May 2016.

⁸⁰ Nicholas Keung, 'Healthcare providers urge Ontario to end immigration detention,' *The Toronto Star*, 17 May 2016; and End Immigration Detention Network, *No justice for Abdurrahman, who died mysteriously in immigration detention*, 15 July 2016.

⁸¹ British Columbia Civil Liberties Association, et al. "Human rights groups react to news of another death in immigration detention," News Release, 8 March 2016.

⁸² Colin Perkel, "Ralph Goodale Shows No Signs of Meeting Immigration Detainees on Hunger Strike," *The Canadian Press*, 21 July 2016.

⁸³ Jim Bronskill, "Government to rebuild immigration detention facilities in Vancouver, Laval," *The Globe and Mail*, 15 August 2016.

⁸⁴ Ralph Goodale, *Statement by the Honourable Ralph Goodale, Minister of Public Safety and Emergency Preparedness, on Immigration Detention*, Public Safety Canada, 19 July 2016.

⁸⁵ *Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 117(9)(d).

especially at risk of being affected by this rule because social pressures or fear of violence can dissuade women from mentioning children born to unmarried partners. A woman may also omit a child born while the immigration application is being processed in order not to delay the processing, with the belief that a newborn child will be permitted to follow shortly after the family arrives in Canada.⁸⁶ In addition to the excluded family rule, long processing times of applications can contribute to the breakdown of marriages.⁸⁷

RECOMMENDATIONS

Amnesty International recommends that the Canadian authorities:

- Amend s. 117(9)(d) of the *Immigration and Refugee Protection Regulations* to eliminate the “excluded family member rule.”
- Allocate sufficient resources to visa offices to reduce processing times for family class applications.

5. CANADA’S HUMAN RIGHTS OBLIGATIONS: ARTICLES 2(A), 2(F) & 3

Canada’s approach to implementing its international human rights obligations has long been inadequate, hindering its ability to implement this Committee’s recommendations on eliminating discrimination against women. This problem has been repeatedly raised by multiple UN treaty bodies, including this Committee, which in 2008 recommended that Canada establish “an effective mechanism aimed at ensuring accountability and the transparent, coherent and consistent implementation of the Convention throughout its territory in which all levels of government can participate.”⁸⁸

Canada’s federalist system of governance distributes constitutional authority between two levels of government: national and provincial/territorial. This division of powers means that the implementation of any human rights obligation or UN recommendation may require cooperation of both levels of government.

There is no system that brings these governments together in a transparent and politically accountable manner to oversee and ensure implementation of Canada’s international human rights obligations on the basis of meaningful engagement with Indigenous peoples and civil society. There has been no meeting of ministers responsible for human rights in the country since 1988.

RECOMMENDATIONS

Amnesty International recommends that the Canadian authorities:

- Convene periodic meetings of federal, provincial, and territorial ministers responsible for human rights, and initiate a process of law, policy, and institutional reform that ensures effective, transparent, and politically accountable implementation of Canada’s international human rights obligations, including those relating to eliminating discrimination against women and girls.

⁸⁶ For case studies, see Canadian Council for Refugees, *Families Never to be United: Excluded Family Members*, 2008, p. 2; and Nicholas Keung, ‘Rule keeping refugees’ dependents away draws fire,’ *The Toronto Star*, 22 August 2016.

⁸⁷ Canadian Council for Refugees, *We need Express Entry family reunification*, available at ccrweb.ca/en/express-entry-family-reunification

⁸⁸ CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada* (Index: CEDAW/C/CAN/CO/7), 7 November 2008, para. 12.

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CANADA

SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, 65TH SESSION, 24 OCTOBER TO 18 NOVEMBER 2016

Amnesty International submits this briefing to the United Nations (UN) Committee on the Elimination of Discrimination against Women (the “Committee”) in advance of the review of Canada’s eight-ninth combined periodic reports.

In this submission, Amnesty International presents some its concerns about Canada’s implementation of the Convention on the Elimination of All Forms of Discrimination against Women (the “Convention”) with a focus on human rights violations experienced by Indigenous, refugee and migrant women and girls in Canada.