

Canadian Lawyers International Human Rights

Submission of the Canadian Lawyers for International Human Rights (“CLAIHR”) to the United Nations Committee on the Elimination of Discrimination against Women on the Occasion of the Committee’s

Review of Canada’s 10th Report

Eighty-Ninth Session (7-25 October 2024), Geneva

Submitted: September 9, 2024

INTRODUCTION

CLAIHR is a non-governmental organization of lawyers, law students, legal academics, and other jurists, founded in 1992 to promote international human rights from a Canadian perspective through education, research, and advocacy. CLAIHR is committed to advocating for and defending fundamental human rights as enshrined in the Universal Declaration of Human Rights and other international and domestic human rights instruments.

CLAIHR makes this submission in advance of Canada’s review by the UN Committee on the Elimination of Discrimination against Women (“CEDAW Committee”) at the 89th Session, taking place in Geneva from 7 to 25 October 2024.

This submission assesses Canada’s progress on its international human rights commitments under the Convention on the Elimination of All forms of Discrimination Against Women (“CEDAW”) in the following areas: (1) Migrant Work (2) Industry-Driven Violence (3) Economic Justice, and (4) Political Participations. CLAIHR employs an intersectional, anti-racist, anti-colonial approach to these issues, recognizing that gender, race, Indigeneity, age, (dis)ability status, migration status and citizenship, and sexual orientation, gender identity, and gender expression are intersecting categories that impact one’s lived experience with discrimination and access to social and political life.

MIGRANT WORK

Canada’s Temporary Foreign Worker Program (“TFWP”) has been studied as a model of exploitative dependence given its facilitation of abuse of vulnerable migrant workers relying on employers for wages, employer-specific work permits, and the ability to remain in Canada and access housing, transportation, and other needs. The TFWP is primarily governed by the federal Immigration and Refugee Protection Act and accompanying regulations, while employment protection is regulated by the provinces.

While Canada has taken some steps to improve the TFWP, including a June 2024 pilot program allowing Caregivers access to permanent residence upon arrival in Canada and amending federal law to include protections in recruitment processes, the system remains rife with abuse. Women temporary foreign workers (“TFWs”) report unique harms of intense surveillance, sexual harassment, and unwanted pregnancies. Approximately 97% of women TFWs report the following: (1) that they operate in the caregiving economy where they experience numerous rights violations, including sexual harassment, 12-hour work shifts with no days off, and a devaluing of feminised labour; (2) that they experience racial discrimination whereby Black and dark-skinned women are hired as cooks and cleaners while lighter-skinned women are hired as nannies; and (3) that they suffer from poor mental health with little access to healthcare, as women are often separated from their families and children for years on end.

Some migrant women work as agricultural workers. There, women are subject to “long and unpredictable” hours in cold sorting rooms as well as physical violence and paternalistic employment abuse, including gender-separated living quarters, which prevents them from interacting with male co-workers.

Abuse of TFWs cannot be adequately addressed when provinces regulate employment laws disparately between different jurisdictions. Furthermore, working conditions lead to de facto abusive requirements – for example, Caregivers often do not have access to reliable transportation, thus living on the work premises may be one’s only housing option.

Recent discourse as a result of a housing and unaffordability crisis in Canada has led to blaming migrants for housing and employment shortages. In August 2024, Canada initiated further changes to the TFWP including refusing to

process applications for the Low-Wage Stream of the program in metropolitan areas with unemployment rates that are 6% or higher (with exceptions in food security, construction, and healthcare) so as to prioritize the hiring of domestic labour.

CLAIHR submitted a briefing to the Office of the Prosecutor's Policy on Slavery Crimes denouncing Canada's migrant labour regime as indicative of forced labour and slavery. Most recently, the UN Special Rapporteur on Contemporary Forms of Slavery reported that "the Temporary Foreign Worker Program serves as a breeding ground for contemporary forms of slavery, as it institutionalizes asymmetries of power that favour employers and prevent workers from exercising their rights".

Recommendations

Canada must ratify the International Convention on the Protection of All Migrant Workers and Members of Their Families. Migrant workers should have access to all international human rights that apply to them, but Canada's failure to ratify this text denies migrant women workers' access to further rights and remedies. CLAIHR echoes the recommendation of the UN Special Rapporteur on Contemporary Forms of Slavery and further encourages Canada sign the ILO Labour Inspection (Agriculture) Convention, 1969 (No. 129) and the ILO Domestic Workers Convention, 2011 (No. 189).

Status should be regularized for all migrant workers. Recognizing that a preponderance of women in the Caregiver program, which allows for paths to permanent residence, access to this process should be made more accessible including imposing a six-month limit on processing applications in a backlogged system.

Canada must adopt a comprehensive, gender-sensitive monitoring system to ensure employers respect the rights of women migrant workers and have access to remedies in line with CEDAW General Recommendation No 26.

INDUSTRY-DRIVEN VIOLENCE

On March 5, 2024, CLAIHR filed an application for judicial review in respect of Canada's export approvals for arms, ammunition, implements or munitions of war to Israel, after the beginning of the Israel-Hamas conflict. CLAIHR argues that these issued permits violate international humanitarian law and international human rights law; perpetuate "serious acts of violence against women and children"; and undermine peace and security. Canada adopted a motion to cease future arms exports to Israel on March 18, 2024, but the hundreds already authorized since October 2023 remain unaddressed. UN Women reports that as of 18 August 2024, "[a]bout 70 per cent of those killed are said to be women and children".

CLAIHR fully endorses the joint submission of the International Human Rights Program at the University of Toronto Faculty of Law and Global Human Rights Clinic at the University of Chicago Law School to this Committee, which illustrates Canada's failure to meet its human rights commitments, including under CEDAW, as it relates to women's human rights in Gaza and the disproportionate impacts on women's access to maternal and reproductive healthcare.

Canada continues to police Wet'suwet'en Land Defenders who are predominantly women. After passing the Coastal Gas Link ("CGL") Pipeline without the consent of Wet'suwet'en Hereditary Chiefs, many Indigenous women have protested to defend their land. They report violence and discrimination by the Royal Canadian Mounted Police (RCMP), and private security forces including threats, harassment, sexist remarks, intimidation, and more. Not only is Canada profiting from environment-exploiting fossil fuels passed without the Free, Prior, and Informed Consent of the Wet'suwet'en People, it continues to violate the basic rights to freedom of assembly, and freedom from gender-based discrimination of Wet'suwet'en women. All the while, wildfires ravage Canadians' homes and land under the ever-looming threat of climate catastrophe, a crisis which disproportionately impacts on women and gender-diverse people.

Canada has an obligation to ensure that corporations under its jurisdiction, including those incorporated, headquartered, or with a principal place of business in Canada, do not violate the human rights that Canada is treaty-bound to respect and protect. Overseas, numerous reports document human rights violations connected to the global operations of Canadian corporations, including forced labour, land grabbing, and environmental destruction. Women are often subject to horrific sexual violence by mine security guards alongside other forms of physical violence such as beatings and killings. Indigenous women face repression and violence for protesting Canadian

mining companies. The UN Special Rapporteur on the Rights of Indigenous Peoples recently reiterated his “concern that Indigenous Peoples around the world are suffering negative, sometimes devastating consequences from Canadian extractive industries.”

Recommendations

Canada must cancel and suspend all permits to export or broker military goods or technology destined for Israel that were issued or active after 7 October 2023 and deny all applications for exports of these goods received or assessed after 7 October 2023.

Canada must immediately stop all transfer of military goods or technology to Israel through third states – including where the military goods and technology are integrated into larger systems in a third state – until such time as Israel ceases to violate international law.

Canada must suspend all permits and approvals for the Coastal GasLink pipeline in the unceded territories of the Wet’suwet’en People.

Canada must stop its practice of policing Indigenous Land Defenders, including through the use of court injunctions against blockades through which Indigenous women exercise their right to protest the CGL Pipeline, and drop criminal charges against those arrested for violating these injunctions. Further, Canada must remove all remaining discriminatory provisions of the Indian Act that affect indigenous people and their descendants.

Canada must urgently meet its obligations to support climate action globally, including by addressing the gendered impacts of the climate crisis; recognizing the link between the climate crisis and gender-based violence; centring women and gender-diverse communities, and especially Indigenous people, in its climate policy; and phasing out fossil fuels and support the transition to clean, renewable energy.

Canada must fully commit to and ratify regional human rights mechanisms, including the Belém do Pará Convention, (Inter American Convention on the Prevention, Punishment, and Eradication of Violence against Women) which Canada stated in 2018 it would ratify.

Canada must regulate corporations by:

Adopting binding measures to ensure that Canadian corporations do not violate human rights in their operations outside of Canada and exercise human rights due diligence; and

Making access to public support conditional on businesses preventing negative impacts on human rights in their overseas operations and withdrawing support if the company fails to do so.

Canada must provide an effective remedy when corporations violate human rights by:

Investigating credible allegations of human rights violations and prosecuting cases in a gender-sensitive and trauma-informed manner;

Passing legislation recognizing a civil cause of action based on human rights law, affirming parent company liability, and ensuring that Canadian courts provide a venue for cases brought against Canadian corporations;

Ensuring that impecunious victims can bring actions without posting a bond for costs and paying the defendant’s fees; and

Making legal aid available to individuals who want to bring civil actions.

ECONOMIC JUSTICE

Women and gender-diverse people in Canada continue to experience significant levels of poverty and homelessness, with woman and girls comprising the large majority of Canadians living in poverty and Indigenous women, racialized women, women with disabilities, and gender diverse, Two-Spirit, trans, and non-binary people experiencing disproportionate levels of economic inequality. One study found that Canada had done little to address income gaps along gender and race lines, and that these inequalities remain entrenched in the labour market, particularly for racialized women. As the cost-of-living and inflation rises to crisis levels across Canada, the basic

costs of housing, groceries, and transportation have become unaffordable for low- and even middle-income Canadians. This is true despite increasingly record-level profits in the retail food industry, which have more than doubled since before the COVID-19 pandemic (e.g., Canadian food retailers earned \$2.4 billion in 2019 compared to almost \$6 billion in 2022).

The gender pay gap continues to pose a barrier to women's equality across Canada despite Canada's ratification of multiple human rights instruments recognizing pay equity as a fundamental human right. In 2022, Canadian-born women employed either full- or part-time employment earned on average 9.2% less than their male counterparts. On a global scale, Canada's gender wage gap is the 7th largest of the 38 countries in the Organisation for Economic Co-operation and Development ("OECD") and the World Economic Forum ranked Canada 36th of 146 countries on its Global Gender Gap index, dropping from 24th place in 2021. The gender pay gap substantially increases for Indigenous women, Black women, racialized women, immigrant and migrant women, women with disabilities, women with lower levels of education, elderly women, and 2SLGBTQIA+ and gender non-conforming people. For example, in 2022, when compared with Canadian-born men, wage gaps were largest for immigrant women who landed as adults (21%) and Indigenous women (20%). Women also experience a gender pension gap in Canada, with women earning an estimated 83 cents for every dollar a man earns in retirement income (i.e., a 17% gap). Moreover, the gender pension gap stood at 15% in 1976, indicating a stagnation in the gap despite measures taken to increase women's equality in the labour market.

Women's inequality continues to be fuelled by the occupational segregation of women into jobs that are precarious, temporary or part-time, low-paid, non-unionized, and undervalued. Women occupy a disproportionate role in the care economy both in the workplace and the home, with approximately 56% of all female workers employed in the "5 Cs" professions - caring, clerical, catering, cashiering, and cleaning – all largely underpaid caring professions that were on the frontlines of the pandemic. The impact of the COVID-19 pandemic on women and their work, especially racialized and migrant women, and gender-diverse workers cannot be overstated. Women workers in caring and service jobs were part of the hardest hit sectors of the pandemic, with 2.8 million women losing their jobs or working less hours by 2021 than before the pandemic, especially among those with children until 12 years, and many facing disproportionate exposure to COVID-19 in jobs at the forefront of the pandemic, with little or no access to sick leave. Women also faced increased childcare and eldercare responsibilities and exposure to violence in the home, requiring many to leave the labour market and further exacerbating existing inequities.

While CLAIHR welcomes the recent establishment of Canada's Pay Equity Act for federally-regulated employees, implementation has been slow and resulted in little practical impact on the realities of women workers to date. Furthermore, Canada has failed to implement proactive pay equity legislation as well as robust pay transparency legislation in every province and territory in Canada, measures known to assist in closing the wage gap.

Recommendations

Canada must take all measures necessary to narrow the gender wage gap, including by:

Adopting effective, enforceable and proactive pay equity and pay transparency legislation in all federal, provincial, and territorial jurisdictions;

Integrating all of Canada's ratified human rights commitments, including under CEDAW, and ILO Conventions on fundamental principles and rights at work;

Implementing the recommendations of the Employment Equity Task Force Report;

Adopting skills training and incentives for women to work in non-traditional professions, and measures to achieve substantive equality and eliminate occupational segregation labour market;

Raising parental benefits, including for additional caregivers, to promote redistribution of care work in the home; and

Investing in the care economy, including through the establishment of a basic income program.

Canada must intensify efforts to provide affordable and accessible housing, transportation, childcare facilities, and food, particularly in Indigenous communities, including by taking measures to regulate and stabilize the retail food sector.

POLITICAL PARTICIPATION

Canada's global ranking of the proportion of women in national parliaments has declined from 16 in 1997, to 52 in 2021, to 64 today. Women currently comprise 30% of MPs in the Canadian Parliament, well behind most comparable democracies. Contributing to this is Canada's existing electoral system – the single member plurality electoral system (“SMP”), or more commonly, the first-past-the-post voting system (“FPTP”) – a highly disproportional method of translating votes into legislative seats.

Canadians have long recognized and debated the flaws of its FPTP system, which is known to exacerbate the existing lack of gender parity and women's representation in the system. The FPTP system discriminates directly against women and also creates and contributes to women's disadvantage by failing to account for systemic barriers in the existing electoral system. Effectively, the substantive equality rights of women are undermined by Canada's FPTP electoral system on an ongoing basis. The current system also undermines Canada's obligations under Art. 7 of CEDAW, which requires Canada to take steps to eliminate discrimination to ensure equal rights to vote and participate in government, the conduct of public affairs, and the public service.

In 2015, Prime Minister Justin Trudeau vowed that the 2015 federal election would be the last one using the FPTP voting system, however no steps to replace that system have since been taken. In fact, the Canadian government is defending an ongoing legal challenge to the provisions of the Canada Elections Act that establish the FPTP system, where the claimant argues that the system is contrary to constitutionally-protected voting and equality rights of Canadians. Expert evidence in the matter established that “the percentage of women in Parliament, although slowly increasing over time, is still too low” and that “society's systemic sexism – gendered behaviour and the acceptance of male overrepresentation” is the “primary barrier” to the election of women in parliament. The court of first instance accepted that “countries with proportional representation systems tend to elect a somewhat higher percentage of women than those with SMP systems” and that parties seem to be “more amenable to female candidates where they will attain seats in direct proportion to their votes”. While the court ultimately denied the application, it is currently under appeal (scheduled to be heard in late 2024).

The Special Committee of the House of Commons on Electoral Reform recognizes that there are numerous proportional representation (“PR”) systems options for Canada that would uphold Canadian values of representation and also enable Parliament to accurately represent the will of voters (contrary to FPTP). PR countries significantly outperform FPTP or SMP countries on the election of women and research shows that PR rules contribute to women's representation by incentivizing parties to present balanced slates.

Recommendations

Canada's electoral system must centre gender parity, including women and underrepresented groups.

Canada must undertake an overhaul of the electoral system, eliminating the FPTP and moving to a PR system that ensures gender parity and greater women's representation.

Canada must achieve substantive equality and gender parity in all public institutions, including Parliament and the provincial legislatures.

Canada must ensure actualization of constitutionally recognized rights of effective representation and meaningful participation for all women.