



Universal Periodic Review – United Nations Submissions

Background on the Barbra Schlifer Commemorative Clinic

The Barbra Schlifer Commemorative Clinic (the “Clinic”) is the only clinic of its kind in Canada. Since 1985, the Clinic has provided legal representation, counselling and language interpretation to over 60,000 women who have experienced all forms of violence. Currently, we assist more than 4,000 women each year. We work in over 200 languages, provide a variety of innovative counselling services and are a go-to organization for community mobilization, public legal education/information, law reform activities, and legal representation for gender-based violence (GBV). The Clinic consults broadly with all levels of government on policy or legislative initiatives.

The Clinic works with some of Canada’s most vulnerable and marginalized women. As a result, we have first-hand experience with the successes and failures of Canadian human rights law and policy. We routinely advocate for legal reform and government action to address the gaps in Canada’s implementation of international human rights commitments. Our work has included making submissions to the UN Special Rapporteur on Violence Against Women, the United Nations Working Group on People of African Descent, the United Nations Working Group on Violence Against Women, Canada Border Services Agency, and Status of Women Canada.

The Clinic appreciates the opportunity to remind the Canadian government of its duty to respect and comply with its human rights obligations. Referencing recommendations found in the HRC 11th Session Report of the Working Group in the Universal Periodic Review (“11th Session Report”) and the HRC 24th Session Report of the Working Group in the Universal Periodic Review (“24th Session Report”), our submissions highlight areas where we see gaps in Canada’s implementation of human rights.

11th Session Report Recommendation 16 & 24th Session Report Recommendation 128.26 – Closely monitor the situation of disadvantaged groups such as women,

migrant workers, women prisoners, and victims of trafficking.

a. *Women Prisoners and Criminalized Women*

The Clinic routinely sees women survivors of GBV penalized as they try to create safety in their lives or cope with trauma, either as a direct result of their efforts to seek state protection or as a consequence of the lives they lead as a result of violence. The systemic nature of this problem in Canada is evident in the 86 percent of federally sentenced women who report being victims of physical abuse and the 68 percent who report being sexually abused.¹

Criminalization occurs as domestic violence legislation and law enforcement have become both increasingly punitive and gender neutral in their interpretations of mandatory charging policies for domestic violence cases and abstain from mandated primary aggressor analysis in investigations. Women are also frequently charged with drug-related offences. The justice system's response fails to account for coercive, abusive relationships and trauma-related mental health and addiction struggles.² Despite recent changes to Canada's laws regarding prostitution, the Clinic has seen vulnerable and marginalized sex workers remain subject to over-policing and the over-enforcement of regulatory offences. The lack of a gender-based analysis within the criminal justice system fails to account for the context in which many women experience violence. While Canada has launched a Federal GBV initiative, we have seen specific cases where the Due Diligence principal – with respect to protection from GBV in international law – has been breached by the police, immigration officials, and court systems. CEDAW's most recent Concluding observations on the 8th and 9th periodic reports ("CEDAW CO") of Canada released in 2016 called for Canada to promote such rights by taking steps that included taking legislative measures necessary to give full effect to Convention rights and promote their judiciability³. The same concluding observations recommended Canada repeal mandatory minimum sentences for minor, non-violence drug-related offences⁴. Judges around the country have been ruling mandatory minimum sentences unconstitutional with little serious responsive legislative action. In one such case a young indigenous single mother with a history of poverty, homelessness and sexual abuse who was facing

¹ Canada, Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2014-2015* (Ottawa: Office of the Correctional Investigator, 2015) at 49.

² Margaret Beare, Law Enforcement and Policy Branch, *Women and Organized Crime* (Department of Public Safety Canada, 2010) at 19-26 and 54-59.

³ United Nations: Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada* (United Nations, November 2016). Online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/03/PDF/N1640203.pdf?OpenElement> at para 9.

⁴ *Ibid* at para 45.

3 ½ years in prison for drug trafficking.

The Clinic is currently engaged in a national three-year project funded by Status of Women Canada to study the criminalization of women and make recommendations on our findings. The government of Canada should ensure that any findings and recommendations from this project are implemented as appropriate.

b. Migrant Workers

Women can and have been victims of labour trafficking. They are frequently recruited by traffickers who extort large sums of money from potential migrants to bring them to Canada with promises of employment.⁵ Once in Canada, victims of labour trafficking face abuse at the hands of traffickers and employers who take advantage of their precarious immigration status, poverty, isolation, limited employment options and claims of unpaid “debts”.⁶ Migrant and non-status women who are unable to obtain or retain work permits or social insurance numbers are often underpaid and overworked in poor, unsafe and abusive conditions.⁷ Due to language barriers, lack of information and fear of deportation, women in these situations do not access health, legal or labour services. Moreover, the avenues available for them to attain status are often inaccessible or inadequate.

c. Live in Caregivers

The Live-in Caregiver program introduced by the previous government in November 2014 placed caps on applications for permanent residence, removing the guaranteed pathway to permanent status in Canada.⁸ The promise to process applications for permanent residency (“PR applications”) within six months does nothing to alleviate the suffering caused by family separation; women temporary foreign workers are still required to maintain two years of employment before making PR applications.⁹ Moreover, though caregivers now have the option to “live out”, the Canadian Union of Public Employees (CUPE) found that caregivers cannot exercise this “choice” to “live

⁵ *Ibid.*

⁶ *Supra* note 20 at 133, 138-140.

⁷ *Supra* note 20 at 140.

Migrant Workers Alliance for Change “Submissions to Changing Workplaces Review” (2015) Online: <http://www.migrantworkersalliance.org/wp-content/uploads/2015/11/Submissions-from-MWAC-re-Changing-Workplace-Review.pdf> at 4.

⁸ Government of Canada. 2016. “Live-in caregivers.” Online: <http://www.cic.gc.ca/ENGLISH/work/caregiver/index.asp>.

⁹ 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>.

out” due to low wages and their dependence on employers for immigration status.¹⁰

In our work at the Clinic, we see the pathways to human trafficking that are opened when predators exploit the precarious status of caregivers who have been dismissed by their putative employers or who have tried to protect themselves from the sexual or labour exploitation of an employer by “going underground.”

11th Session Report Recommendation 25 - Give appropriate attention to end discrimination against the Arab and Muslim communities in Canada, including racial and religious profiling.

a. Zero Tolerance for Barbaric Cultural Practices Act

In 2015, the former government passed the *Zero Tolerance for Barbaric Cultural Practices Act* criminalizing the participation in and support of forced marriage. The government’s statements focussed on the need to “protect women” from polygamy and forced marriage dubbed “barbaric cultural practices”. However, criminalization can become a tool to further target and over-police racialized communities. Survivors of GBV are discouraged from coming forward when disclosing that they have experienced forced marriage or trafficking will mean criminal sanctions or deportation for their families. While prevention is important, our path-breaking work on the issues of forced marriage and honour-based violence through the Clinic’s “Outburst!” grassroots program for young Muslim women demonstrates that a multi-sectoral approach coupled with an intersectional education strategy is the most effective preventative tool.

b. Religious Dress

In Canada, debates about the niqab rely on a damaging discourse that claims to protect women’s “right to choose” while simultaneously imposing discriminating policies robbing women of this choice. The Clinic was one of three interveners in *NS*, a case involving a Muslim woman’s right to testify about sexual assault while wearing a niqab.¹¹ In addition, the Clinic sponsored Outburst!, which engaged multimedia campaigns on the issue of Muslim women’s rights. The Clinic also presented depositions to the Quebec General Assembly against *Bill 94*, which required women wearing the niqab to unveil when working in the public service.¹² The Clinic was also active in challenging the

¹⁰ *Ibid.*

¹¹ *R v NS*, 2012 SCC 72. See also Barbra Schlifer Commemorative Clinic, 2012. “Media Release.” (December 20, 2012). Online: <http://schliferclinic.com/womens-rights-supreme-court-releases-n-s-decision>.

¹² Bill n°94: An Act to establish guidelines governing accommodation requests within the Administration and certain institutions, February 24, 2011. Online: <http://www.assnat.qc.ca/en/travaux->

government's barring of niqabs at the citizenship oath ceremony, advocating through UN Reporting mechanisms,¹³ and later in the case of a woman who challenged the government at Federal Court.¹⁴ As it stands, Quebec is debating Bill 62 which seeks to ban face coverings for provincial public sector employees and citizens seeking their services.

11th Session Report Recommendation 33 - Adopt CEDAW recommendations to criminalize domestic violence, ensure victims effective access to protection, reinforce prosecution of perpetrators. Take measures to help effective access to justice for victims of domestic violence

11th Session Report Recommendation 36 - Adopt further measures to ensure accountability of the police for their proper, sensitive, and effective conduct in cases of violence against women

24th Session Report Recommendation 128.83 - Prevent/punish all forms of violence against women and girls, particularly indigenous women and girls.

a. Experiences of Sexual Assault Survivors in the Justice System

Sexual assault is a gendered crime: the vast majority of victims are women, and nearly all perpetrators are men.¹⁵ While sexual assault affects women of all backgrounds and identities, young, immigrant, indigenous, disabled, and poor women are especially vulnerable.

It is well established that sexual assault is vastly underreported and under-prosecuted.¹⁶ Women who choose to report assaults face an insensitive and sometimes hostile criminal justice system that we have heard described as daunting, isolating, overwhelming and re-traumatizing. Pervasive rape myths, poor communication with Crown Prosecutors and Victim Services and a lack of access to legal advice and information before and

[parlementaires/projets-loi/projet-loi-94-39-1.html](http://www.parlementaires/projets-loi/projet-loi-94-39-1.html). See also: Quebec's Bill 60, the "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests" is one of Canada's most visceral and infamous of such debates. Available at: <http://www.nosvaleurs.gouv.qc.ca/medias/pdf/Charter.pdf>.

¹³ Amanda Dale, "The Intersection of Race and Gender in the Matter of the Canadian State's Ban on Facial Coverings During the Course of Citizenship Oaths", 2012. Online: http://schliferclinic.com/wp-content/uploads/2012/09/CERD_Citizenship_Ban_Schlifer.pdf .

¹⁴ *Ishaq v. Canada (Citizenship and Immigration)*, 2015 FC 156.

¹⁵ Shana Conroy and Adam Cotter, "Self-Reported Sexual Assault in Canada, 2014" (2017) Juristat Online: <http://www.statcan.gc.ca/pub/85-002-x/2017001/article/14842-eng.pdf>

¹⁶ Ontario, *It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment March 2015* (Toronto: Government of Ontario, 2015).

Supra note 6.

during the court process, cause women to feel ousted from the process and unprepared to give evidence at trial or face cross-examination.

We commend the Ontario government's implementation of a provincial Sexual Violence Action Plan to stop sexual violence and harassment in 2015.¹⁷ The Clinic is committed to serving and supporting our clients while advocating for law reform and systemic transformation. We are active in changing the conditions that threaten women's safety, dignity and equality. We believe that by working together, we can change the social conditions that generate and perpetuate violence against women.

b. Indigenous women in the justice system

The Federal government has failed to implement policies that meaningfully and substantively address the experiences of indigenous women who are disproportionately survivors of violence. With respects to the rights and equal inclusion of indigenous women, the Committee on the Elimination of Discrimination Against Women has repeatedly called on Canada to implement a number of remedial policy and legal reforms. These have included ensuring that indigenous women's organizations are included in a nation-to-nation relationship with the federal government with respect to any women's issue¹⁸, and removing all discriminatory provisions from the Indian Act that affect indigenous women and their families¹⁹.

c. Cyberbullying

The Federal Government's Status of Women Committee's March 2017 Report identifies Cyber violence as a tool of gender-based violence which both contributes to violence against women and girls in the offline world and stands as a unique form of dominance and control exercised by men and boys over women and girls.²⁰ In 2015, the previous federal government passed Bill C-13 *Protecting Canadians from Online Crime Act* as a penal response to cyberviolence.

While discussions around cybercrime should be encouraged, a gender-neutral approach to cyber violence is inappropriate. Women who seek our support report numerous instances of rape photos being used to extort ongoing sexual favours and protect abusers from women reporting or seeking assistance. In some cases, racialized forms of sexual

¹⁷ Ontario, *It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment March 2015* (Toronto: Government of Ontario, 2015).

¹⁸ *Supra* note 3 at para 21.

¹⁹ *Ibid* at para 13.

²⁰ Canada, Parliament, House of Commons, Standing Committee the Status of Women, *7th report: Taking Action to End Violence Against Young Women and Girls in Canada*, 42nd Parliament, 1st Session (March 2017) at 32.

violence involve “stripping” observant women of religious garb and shaming them into excommunication from their communities. Cyber violence can also be used to intimidate a woman starting family or civil court proceedings against an abuser. Like any other form of violence, cyber violence exacerbates unequal power relations and extends the control of abusers over women who continue to experience violence long after fleeing abusive situations. Any conceptualization of this issue as “cyberbullying” trivializes the problem and erases its gendered nature and the role it plays in a patriarchal society.

11th Session Report Recommendation 27 & 24th Session Report Recommendation 128.80 – Ensure effective implementation of CEDAW.

The Federal Government has committed to addressing GBV and championing gender equality in all aspects of society. However, the government has persistently failed to effectively incorporate international law and treaties that support the rights of women. As raised in the last CEDAW periodic report on Canada released in 2016, there was persistent concern that the government had not fully implemented the Convention or taken the legislative measures necessary for its effectiveness and justiciability, even while acknowledging that it will do so within a dualist model.²¹

11th Session Report Recommendation 43 – Fully implement legislation prohibiting discrimination in employment and the labour market.

11th Session Report Recommendation 44 – Take the necessary measures to end discrimination against women in workplaces and employment and ensure equal remuneration for work of equal value.

24th Session Report Recommendation 128.150 – Take steps to reduce employment gap among immigrants.

a. Gender Wage Gap

The Gender Wage Gap is a persistent barrier to women’s equality and ability to be free of violence. Financial dependency and economic vulnerability are prevalent among our clients. The Clinic knows that there is no justice when choices have to be made between exercising rights or finding housing, childcare and sufficient food. Currently, women continue to make 66.7 cents for every dollar earned by men.²² Racialized women earn a

²¹ United Nations: Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada* (United Nations, November 2016). Online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/03/PDF/N1640203.pdf?OpenElement> at 3.

²² Statistics Canada. 2011. “Average female and male earnings.” Online: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2020102>

mere 53.4 cents on the dollar.²³ A 2015 UN Human Rights report raised concerns about “the persisting inequalities between women and men” in Canada, including the “high level of the pay gap” and its disproportionate effect on low-income women, visible minority women, and indigenous women.²⁴ The gender wage gap exacerbates the effects of GBV. Inequitable earnings perpetuate the unequal power dynamics between abusers and their victims, and women are often forced to remain in dangerous situations because of financial pressures. Overwhelmingly, women’s financial worth is negatively impacted by separation and divorce, particularly where GBV and children are involved.²⁵ As a result, in addition to rectifying the gender wage gap in Canada, targeted employment supports for women experiencing GBV are also necessary.²⁶ Additionally, the gendered wage gap reveals and communicates to society more generally the relative valuing of the genders. Undervaluing women exemplifies and maintains women’s subordinate position materially, contributing to a generalized vulnerability to violence and marginalization.

11th Session Report Recommendation 57 – Increase efforts to enhance the protection of the human rights of migrants.

24th Session Report Recommendation 128.3 – Further promote and protect migrants, in particular undocumented and irregular migrants.

24th Session Report Recommendation 128.147 – Ensure the protection of refugees, migrants, and members of their families in full compliance with international standards.

24th Session Report Recommendation 128.148 – Take necessary measures to prevent cruel and discriminatory treatment against asylum seekers, migrants and refugees, and ensure compliance with the principle of non-refoulement

a. *Countries that Otherwise Appear Democratic*

Women fleeing GBV are particularly affected by policy decisions that deem certain countries “safe”, known as the Designated Country of Origin provisions (DCO). Gender-

²³ Canadian Centre for Policy Alternatives, “Ontario’s Racialized Gap Persists: Study” (June 2, 2010). Online: <https://www.policyalternatives.ca/newsroom/news-releases/ontarios-racialized-gap-persists-study>.

²⁴ United Nations Office of the High Commission for Human Rights. 2015. “Concluding observations on the sixth periodic report of Canada.” Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F6&Lang=en

²⁵ See for example, Anna Aizer. 2010. “The Gender Wage Gap and Domestic Violence,” *American Economic Review* 100(4).

²⁶ See for example Government of Ontario. 2016. “Gender Wage Gap Strategy Consultation.” Online: <https://www.ontario.ca/page/gender-wage-gap-strategy-consultation>

based violence remains widespread in countries that appear stable and democratic. Presuming any country is “safe” for all its citizens fails to account for the complex realities of women experiencing GBV. Women fleeing these situations are restricted by extremely tight timelines to find and retain counsel, gather evidence, and present their traumatic cases to the Immigration and Refugee Board (the “IRB”).

Following a decision of the Federal Court that found these measures discriminatory, the current government promised to institute an “expert human rights panel” to review DCO designations.²⁷ As of August 2017, no specifics of the proposed panel or process have been announced. Starting this year, the IRB has notified failed claimants from DCOs whose decisions followed the 2015 Federal court decision that they may appeal their decision.²⁸ For refugees, whose access to resources and legal assistance is limited or who may have already been compelled to leave, this is an empty remedy.

a. Safe Third Country Agreement with the United States

The Canadian Council for Refugees (CCR), Amnesty International (AI) and Canadian Council of Churches have joined an individual litigant in Federal Court to launch a legal challenge of the Safe Third Country Agreement.²⁹ They have also called for the immediate suspension of the Agreement because it has resulted in almost all refugee claimants from the United States being denied access to Canada and immediately returned.³⁰ The characterization of the United States as a “safe” third country has disproportionately affected women fleeing GBV who are unable to gain asylum in Canada by virtue of their port of entry. The CCR/ AI further identifies ways in which the United States fails to meet international and Canadian human rights and legal standards in its immigration and refugee policies, including inconsistent recognition of gender-based asylum claims.³¹ Canada is experiencing a dramatic increase in irregular border crossings from asylum seekers who are unable, by virtue of the Safe Third Country Agreement, to enter Canada through official channels.³² As stated the Canadian Council for Refugees, “[t]his Agreement encourages desperate people to take desperate measures

²⁷ 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>

²⁸ 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>

²⁹ Canadian Council for Refugees, “Legal Challenge of Safe Third Country Agreement Launched” (July 2017). Online: <http://ccrweb.ca/en/media/legal-challenge-safe-third-country>

³⁰ Canadian Council for Refugees, “Safe Third Country Agreement must be suspended” (June 2017). Online: <http://ccrweb.ca/en/media/safe-third-country-agreement-must-be-suspended>

³¹ *Ibid.*

³² Kate McKenna, “Montreal’s Olympic Stadium used to house surge of asylum seekers crossing from U.S.” *CBC News*, August 2, 2017. Online: <http://www.cbc.ca/news/canada/montreal/olympic-stadium-houses-asylum-seekers-1.4231808>.

which may put their safety and even their lives at risk”.³³

24th Session Report Recommendation 128.146 - Revise the legal provisions on mandatory detention of migrants and asylum seekers.

a. Immigration Detention

The Federal Government announced on August 15, 2016 that there would be wide-ranging changes to Canada’s immigration detention policies.³⁴ It remains unclear how and when these changes will be implemented. While there has been a decrease in numbers, children are still being detained by immigration authorities. Immigration detention disproportionately affects racialized people and minorities, who make up a majority of detainees.³⁵ By law, children and youth should not be held in immigration detention.³⁶ Canada has ratified the *United Nations Convention on the Rights of the Child* which insists that the best interests of the child always be a primary consideration and that detention must be a “last resort”.³⁷ Pregnant women are also being detained in Canada, and some have been forced to give birth while in immigration detention.³⁸ Despite knowledge of their legal responsibilities and of the harms experienced by detained children, Canada Border Services Agency (“CBSA”) detains children with their families. The UN Special Rapporteur on the Human Rights of Migrants has condemned the detention of children³⁹. A 2016 report by AI also called for the end of the detention of children. Children who are separated from their parents because of their parents’ immigration detention suffer potentially grave mental health consequences.⁴⁰ To that end, the University of Toronto’s International Human Rights Program argues the best interests of children should be a primary consideration in all detention-related decisions

³³ *Supra* note 15.

³⁴ 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>

³⁵ Stephanie Silverman and Petra Molnar. 2016. “Everyday Injustices: Barriers to Access to Justice for Immigration Detainees in Canada,” *Refugee Survey Quarterly* 35 (1): 109-

³⁶ As per Art. 37 of the *United Nations Convention on the Rights of the Child* (1577 UNTS 3, 20 Nov.1989 (entry into force: 2 Sep. 1990. Section 60 of *Immigration and Refugee Protection Act (“IRPA”)* affirms “as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.

³⁷ *Ibid.*

³⁸ Amnesty International. 2014. “Canada Submission to the United Nations Human Rights Committee.” 112th Session of the Human Rights Committee, London. Online: <https://www.amnesty.org/en/documents/amr20/1806/2015/en/>

³⁹ Francois Crepeau. 2016. “Any Detention of Migrant Children is a Violation of their Rights and Must End. Online: <https://theconversation.com/any-detention-of-migrant-children-is-a-violation-of-their-rights-and-must-end-64985>

⁴⁰ 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>.

that affect children, including the detention of mothers.⁴¹

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⁴¹ Hanna Gros, *Invisible Citizens: Canadian Children in Immigration Detention* (University of Toronto Faculty of Law: International Human Rights Program, 2017) at 30-32