

**JOINT SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF  
DISCRIMINATION AGAINST WOMEN (CEDAW)**

**By**

**COLOUR OF POVERTY/COLOUR OF CHANGE  
METRO TORONTO CHINESE & SOUTHEAST ASIAN LEGAL CLINIC  
ONTARIO COUNCIL OF AGENCIES SERVING IMMIGRANTS and  
SOUTH ASIAN LEGAL CLINIC OF ONTARIO**

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**INTRODUCTION**

Colour of Poverty Campaign/Colour of Change Network (COP-COC) is a community initiative based in the province of Ontario, Canada, which is made up of individuals and organizations working to build community-based capacity to address the growing racialization of poverty and the resulting increased levels of social exclusion and marginalization of racialized communities across Ontario.

The Metro Toronto Chinese & South East Asian Legal Clinic (MTCSALC) is a Canadian NGO which is mandated to provide free legal services to low income members of Chinese and Southeast Asian communities in Toronto, Ontario. Apart from providing legal services, MTCSALC also engages in systemic advocacy to advance the rights of immigrants, racialized communities and other disadvantaged members of society. MTCSALC has ECOSOC consultative status at the UN.

OCASI - Ontario Council of Agencies Serving Immigrants is a council of autonomous immigrant and refugee-serving organizations in Ontario. Formed in 1978, it is a registered charity governed by a volunteer board of directors, and has 222+ member organizations across the province of Ontario. OCASI's mission is to achieve equality, access and full participation for immigrants and refugees in every aspect of Canadian life.

South Asian Legal Clinic of Ontario (SALCO) is a not-for-profit organization established to enhance access to justice for low-income South Asians in Toronto. Since 1999, SALCO has been working to serve the growing needs of South Asians in a culturally and linguistically sensitive manner. SALCO's mandate is to provide access to justice for low-income South Asians in the Greater Toronto area. This mandate includes direct legal service, legal education, law reform, and community development work. SALCO does a large volume of advocacy of gender based violence in Canada. As a specialty clinic funded by Legal Aid Ontario, SALCO provides advice, brief services and/or legal representation in various areas of poverty law.

MTCSALC, OCASI, and SALCO are founding Steering Committee members of Colour of Poverty - Colour of Change.

This joint submission on to CEDAW on Canada will focus on issues facing racialized women, immigrants, refugees and migrants in Canada, and in particular, the following issues:

- Racialized and gendered poverty in Canada;
- Conditional Permanent Residency requirements;
- Family sponsorship requirements;
- The Live-in Caregiver Program;
- Refugees from Designated Countries of Origin;
- Lack of access to child care tax benefits; and
- Immigration detention of women and children.

### **Comment on Racialized and Gendered Poverty in Canada**

Racialized persons living in poverty in Canada are more likely to be highly educated but underemployed than non-racialized persons living in poverty. Employment and Social Development Canada (ESDC) reported that racialized communities face higher levels of poverty; the 2006 census showed that the poverty rate for racialized persons in Canada was 22% compared to 9% for non-racialized persons.<sup>1</sup> Two-thirds of racialized persons living in poverty are immigrants, and a further 8% were non-permanent residents.<sup>2</sup> Despite higher education levels reported among immigrants, poverty rates have been rising among immigrants and falling among Canadian born. In Toronto, the number of racialized families living in poverty increased 362% between 1980 and 2000.<sup>3</sup>

Racialized women living in poverty outnumber men by a ratio of 52% to 48%.<sup>4</sup> Almost half of the population of racialized persons living in poverty are less than 25 years old, with 27% less than 15 years old.<sup>5</sup> With respect to employment, racialized women's participation in the labour force is lower, and they have a higher unemployment rate.<sup>6</sup> In addition, racialized women are paid significantly less than non-racialized men and women.<sup>7</sup> For example, in 2012, "racialized immigrant women earn only 48.7% of the employment income that non-racialized immigrant men earn, while racialized women as a whole earn 56.5% (\$25,204) of what white men earn (\$45,327)."<sup>8</sup>

It is important to note the growing inequities between racialized persons and non-racialized persons. The various social and economic indicators signify that the racialized persons,

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<sup>1</sup> Employment and Social Development Canada (2016). Snapshot of Racialized Poverty in Canada.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> Sheila Block, Canadian Centre for Policy Alternatives, *Ontario's Growing Gap: The Role of Race and Gender* (June 2010)

<sup>7</sup> *Ibid.*

<sup>8</sup> Galabuzi, GE, Casipullai A, and Go A. "The persistence of racial inequality in Canada." *The Toronto Star*. March 20, 2012.

[https://www.thestar.com/opinion/editorialopinion/2012/03/20/the\\_persistence\\_of\\_racial\\_inequality\\_in\\_canada.html](https://www.thestar.com/opinion/editorialopinion/2012/03/20/the_persistence_of_racial_inequality_in_canada.html)

particularly women, and particularly racialized immigrant women, are more likely to be marginalized from the mainstream society as evident from the increased likelihood of being low-income and living in poverty. It is within this context that the Committee should examine discrimination faced by racialized women in Canada.

### Recommendation

We ask that the Committee recommend the following to Canada to take specific measures to address the growing poverty experienced by racialized women. Such measures include:

- The collection and use of disaggregated data, on the basis of race, gender, disability, immigration status, sexual orientation, gender identity, to measure the effectiveness of Canada's economic policies on women from marginalized communities;
- Require all provinces to introduce mandatory employment equity legislation to level the playing field for all women in the labour market and to ensure all women have an equal opportunity to succeed.

### Relevant Articles of CEDAW

- **Article 2** – State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
  - (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
  - (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- **Article 3** - States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

### **Conditional Permanent Residence**

Since its introduction by the Federal government in October 2012, the conditional permanent residence policy has been heavily criticized by women's organizations and immigrant rights activists. The policy requires sponsored spouses, who are in a relationship of two years or less with their sponsor and who have no children in common with their sponsor at the time they submit their sponsorship application, to cohabit with their sponsor for two years from the day on which they receive their permanent resident status in Canada. If they do not remain in the relationship, the sponsored spouse's status could be revoked. There are two exceptions to this requirement: first, if the sponsor dies, and; second, if there are evidence of abuse or neglect.

The conditional permanent residence requirement has been criticized for increasing racialized immigrant women's vulnerability to domestic violence, as women made up 59% of all sponsored

spouses in the family class in 2014.<sup>9</sup> Women are still the primary victims of domestic violence, representing 70% of all family violence victims in police-reported incidents in 2013.<sup>10</sup> The requirement further tips the power imbalance in favour of the sponsor, who may use a number of tactics to control and inflict violence against their spouse including controlling information related to the sponsored spouse's immigration status, threatening to deport the sponsored spouse, or instilling fear in the sponsored spouse that there would be severe immigration consequences if she seeks help from service providers or the police. If children were born after the application of the requirement, fears of deportation and separation from their children will also influence the sponsored spouse to remain silent about any domestic abuse.

The exception to this requirement is also ineffective in addressing the vulnerability of sponsored spouses to domestic violence for a number of reasons. First, newcomers face language barriers and may not be able to access information regarding this exception. They may be completely dependent on their abusive spouse for information regarding their rights. Second, even if the sponsored spouse requests this exception, she would still have the burden of proving that there has been abuse or neglect. Examples of accepted evidence that the abused sponsored spouse must provide include court documents, letter or statement from a domestic abuse service, family clinic or medical doctor, sworn statement, photographs or affidavit from a friend or family member. Gathering evidence is onerous and time-consuming, and it is even more difficult when it involves proving emotional or psychological abuse. Further the evidential burden risks re-victimizing the sponsored spouse. The process of requesting an "abuse exemption" often has the effect of re-traumatizing women. The conditional permanent residence requirement is discriminatory against women as it has a greater adverse effect on women who make up the majority of sponsored spouses. The requirement gives greater power to the sponsor to intimidate the sponsored spouse and infringe on her freedom of movement and rights within their marriage.

### Recommendation

We ask that the Committee recommend the following to Canada:

- Repeal the conditional permanent residence requirement immediately and apply it retroactively to all sponsored spouses who are subject to the requirement.

### Relevant Articles of CEDAW

- **Article 2** – State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
  - (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
  - (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

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<sup>9</sup> Citizenship and Immigration Canada. "Section 5: Gendered-Based Analysis of the Impact of the *Immigration and Refugee Protection Act*". 2015 Annual Report to Parliament on Immigration.

<http://www.cic.gc.ca/English/resources/publications/annual-report-2015/index.asp#5>

<sup>10</sup> Statistics Canada. Family violence in Canada: A statistical profile, 2013. <http://www.statcan.gc.ca/daily-quotidien/150115/dq150115a-eng.htm>

- **Article 3** - States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.
- **Article 9 (1)** – States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
- **Article 15(1)** – States Parties shall accord to women equality with men before the law.
- **Article 15(4)** – States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.
- **Article 16** - States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
  - (a) The same right to enter into marriage;
  - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
  - (c) The same rights and responsibilities during marriage and at its dissolution.

### **The Family Sponsorship for Parents, Grandparents and Older Children**

Since 2011, the Federal Government introduced a number of policy changes that restrict family sponsorship for parents, grandparents and older children and increased the financial burden of families who seek to reunite with their parents and grandparents. The changes include:

- Increasing the minimum necessary income requirement to LICO + 30%;
- Lengthening the period for demonstrating the minimum necessary income from one to three years;
- Extending sponsorship undertaking from 10 years to 20 years;
- Lowering the maximum age of dependents from 22 to 18 years of age;
- Implementing a cap on the number of family class sponsorship applications for parents and grandparents; and
- Introducing the Super Visa for parents and grandparents which requires the purchase of a minimum of \$100,000 medical coverage for each sponsored parent/grandparent.

The changes to family sponsorship however disproportionately affect racialized immigrant women as they are more likely to live in poverty and work in low-wage precarious employment. Racialized people are more likely to live in poverty (22%) compared to non-racialized persons (9%), and racialized women living in poverty outnumbered men by a factor of 52% to 48%.<sup>11</sup>

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<sup>11</sup> Employment and Social Development Canada (2016). Snapshot of Racialized Poverty in Canada.

The increase in the financial requirement and restriction of family sponsorship of parents and grandparents place racialized immigrant women in jeopardy of gender-based violence. Both MTCSALC and SALCO have assisted clients who are victims of domestic violence wanting to sponsor their parents and grandparents but could not due to the increasingly restrictive barriers. The ability to sponsor family members is an important strategy for women to build their own network and support, which in turn, decreases their vulnerability to gender-based violence as they will become less socially isolated and emotionally dependent on their abusive partner. A larger family support system would also help women who have children to escape domestic violence or an abusive marriage. Women are still the primary caregiver of children, and the lack of affordable childcare encourages financial dependency on their partners, even those who are abusive. With a larger family support system that can assist with childcare, women would then have the ability to seek financial independence and leave an abusive relationship.

The financial condition is out of reach for many racialized immigrant women, who on average make significantly less than the minimum necessary income plus 30%. As a result, racialized immigrant women are more reluctant to leave their abusive spouse when that spouse's income is relied upon to boost the household income in order to meet the financial eligibility to sponsor parents and grandparents. They are then exposed to greater risk of abuse as the husbands may exploit their vulnerability with their financial dominance. The family sponsorship requirements are therefore discriminatory against women as it has a disproportionate effect on women than men, especially for women who are trapped in an abusive relationship and working in low-wage precarious employment

#### Recommendation:

We ask that the Committee recommend the following to Canada:

- Repeal the financial requirement and remove the cap on the number of family class sponsorship applications for parents and grandparents.

#### Relevant Articles of CEDAW

- **Article 2** – State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
  - (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
  - (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
  - (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- **Article 3** - States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

- **Article 11(2)** – In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
  - (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.

### **The Live-in Caregiver Program**

Racialized migrant women overwhelmingly represent the caregivers who enter Canada through the Live-in Caregiver Program (LCP). The power imbalance between caregivers and their employers vastly favours the employers which in turn increases caregivers' risk of employer abuse including physical, emotional and sexual violence. Unfortunately, the changes to the LCP introduced by the Federal Government in 2014 do not come close to addressing caregivers' risk of gender-based violence by their employers.

Although the requirement to reside in the employer's home was amended to provide caregivers the right to live outside of their employer's home, in reality, caregivers may not be able to access this option since many of them are paid minimum wage and thus, are unable to afford to live independently. Furthermore, since the caregiver's status is tied to one employer, the employer can exert pressure on the caregivers to live in their home, or else risk losing their status. Tying the caregiver's status to one employer creates a situation that promotes gender-based violence, as caregivers would fear losing their status and deportation if they speak out on any abuse they suffer at the hands of their employer.

Under the LCP, caregivers may apply for permanent residency after working full-time for two years. However, the previous Federal Government restricted the number of applications that would be accepted each year. This cap on applications for permanent residency place caregivers in a precarious situation as it lengthens the time they have to wait for permanent residence status even though they have fulfilled the requirements, and increases the period of separation between the caregivers and their family in their home country. It also encourages caregivers to remain silent if they experience any violence from their employers for fear that they will lose the opportunity to apply for permanent residency because their initial application was not accepted within the cap. The LCP is discriminatory against racialized migrant women, who make up the majority of the caregivers under the LCP. It contravenes their right to employment as well as their freedom of movement.

#### Recommendation:

We ask that the Committee recommend the following to Canada:

- Grant permanent residence status to live-in caregivers upon arrival in Canada; and
- Allow caregivers to work for any employer and not tie their status to one employer.

#### Relevant Articles of CEDAW

- **Article 2** – State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
  - (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
  - (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- **Article 3** - States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.
- **Article 11** – States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
  - (a) The right to work as an inalienable right of all human beings;
  - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
  - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
- **Article 15(4)** – States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and freedom to choose their residence and domicile.

## Designated Country of Origin

In 2012, the Government of Canada passed Bill C-31, the “*Protecting Canada’s Immigration Act*” which overhauled the refugee determination system. Bill C-31 brought in the discriminatory two-tier refugee determination system which made it difficult for refugees from “designated countries of origin” (DCO) to receive a full and fair hearing of their claim’s merits. There are currently 42 countries on the DCO list.<sup>12</sup>

Refugees from DCOs will have their claims processed faster than other asylum claimants not from DCOs. The hearing will occur within 30 or 45 days from the day their claim is referred to the Immigration and Refugee Board (IRB). Typically, refugee claimants are permitted to apply for a work permit once their claims have been referred to the Refugee Protection Division of the IRB. However, claimants from DCOs are ineligible to apply for a work permit until their claim is approved by the IRB or their claim has been in the system for more than 180 days and no decision has been made.

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<sup>12</sup> Citizenship and Immigration Canada (2016). Designated Countries of Origin. <http://www.cic.gc.ca/english/refugees/reform-safe.asp>

The Government of Canada claimed that the aim of the DCO policy is to deter abuse of the refugee system by people who come from countries generally considered safe. Yet, the policy is discriminatory against women because it assumes that there are certain countries that are “safer” for women than others. Violence against women occurs everywhere, irrespective of borders. The DCO policy however places an unfair burden on women who are victims of violence and domestic abuse as well as those who are victims of violence because of sexual orientation and gender identity, from DCO countries as they have less time to prepare their claim. The shortened timeframe also increases the vulnerability of victims of violence who find it difficult to relay their experiences in general. It also results in more unrepresented claimants and a higher number of abandoned claims<sup>13</sup>. The extra pressure to attest to the violence they experienced in their home country within a shorter timeframe results in the re-victimization of the claimant. The stricter eligibility requirement to apply for a work permit also discriminates against women from DCOs as it contravenes their right to work.

### Recommendation

We ask that the Committee recommend the following to Canada:

- Repeal the DCO policy and provide the same right to a fair hearing to all refugee claimants irrespective of their country of origin.

### Relevant Articles of CEDAW

- **Article 2** – State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
  - (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
  - (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
  - (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- **Article 3** - States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.
- **Article 11** – States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
  - (a) The right to work as an inalienable right of all human beings;
  - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment.

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<sup>13</sup> UNHCR Submission on Bill C31 – Protecting Canada’s Immigration System Act (2012). <http://www.unhcr.ca/wp-content/uploads/2014/10/RPT-2012-05-08-billc31-submission-e.pdf>

- **Article 15(4)** – States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and freedom to choose their residence and domicile.

### **Canada Child Tax Benefit**

The Canada Child Tax Benefit (CCTB) was enacted in 1989 as part of Canada’s commitment to eradicate child poverty by providing a tax-free monthly payment to families to help with the cost of raising children. To qualify for the CCTB, the applicant must have regular immigration status in Canada. People who are not a Canadian citizen, permanent resident, protected person or temporary resident are excluded from this benefit.

The eligibility criteria disproportionately affects women with irregular immigration status even if they have children who are born in Canada. People with non-status or irregular immigration are particularly vulnerable as they are more likely to be low income, under-employed or living in poverty. Thus, the CCTB would be particularly helpful to racialized women without status and who are struggling to provide for their children while residing in Canada, given that they tend to be more likely to live in poverty and are not eligible to receive any neither income supports nor access to any social and economic support programs.

There may also be a multitude of reasons for why women with irregular immigration status remain in Canada. They may be waiting for removal but the Canada Border Services Agency is unable to secure a travel document for them. They may have children who are born in Canada, and separation is not an option. They may be waiting for their application for permanent residence status on humanitarian and compassionate grounds to be processed, which currently takes 36 months according to the IRCC’s estimate. Often, women without status, but who have lived in Canada for an extended period, are paying taxes despite the fact that they cannot benefit from the various tax benefits and credits such as the CCTB. As previously noted, almost half of the population of racialized persons living in poverty is young and are less than 25 years old, with 27% less than 15 years old. If the goal of the CCTB is to eradicate child poverty in Canada, it should be made available to all families who are residing in Canada regardless of their immigration status. The current eligibility requirement of the CCTB is discriminatory against racialized immigrant women, who are disproportionately affected since they are still the primary caregivers of children.

### Recommendation

We ask that the Committee recommend the following to Canada:

- Expand the CCTB eligibility requirement by basing it solely on residency and not immigration status.

### Relevant Articles of CEDAW

- **Article 2** – State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
  - (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- **Article 3** - States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.
- **Article 11(2)** – In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
  - (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.
- **Article 13** – States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:
  - (a) The right to family benefits.

### **Detention of Women and Children**

The Government of Canada launched an aggressive campaign against “irregular arrivals” in 2012. Irregular arrivals include people who arrived in Canada without identification and whose identity cannot be confirmed. The Government of Canada claimed that the policy was necessary as it was “an unacceptable risk to release into Canadian communities individuals whose identities have not been determined and who could potentially be inadmissible on the grounds of criminality or national security.”<sup>14</sup>

Designated irregular arrivals who are 16 years of age or older are subjected to mandatory detention until a final positive decision is made by the Immigration and Refugee Board of Canada (IRB) on their refugee claim or until they are ordered release by the IRB or the Minister of Public Safety. Immigration detainees may be held indefinitely even if they have committed no crime. A review of the person’s detention will occur within 14 days of that person being detained, and every six months thereafter.

People without regular immigration status may also be detained for other reasons such as being a flight risk. In 2015, women and girls made up 18% of immigration detainees.<sup>15</sup> By the time they left detention in 2015, women and girls had spent collectively 23,611 days in detention on the ground that they were “unlikely to appear”.<sup>16</sup>

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<sup>14</sup> Immigration, Refugee and Citizenship Canada (2012). Backgrounder – Protecting our Streets and Communities from Criminal and National Security Threats.

<sup>15</sup> Canadian Council for Refugees (2016). Immigration detainees in 2015 by the numbers.

<sup>16</sup> *Ibid.*

Although, irregular arrivals under the age of 16 years old are not subjected to mandatory detention, they may still be detained. In 2015, 82 children had immigration detention reviews with the majority of them being detained because they were deemed a flight risk.<sup>17</sup> Approximately one-third of the children detained were refugee claimant children.<sup>18</sup> Essentially, the mandatory detention policy forces detained parents to choose to keep their children with them in detention or send them to foster care. Immigration detention has a disproportionate effect on women with children. As women are still the primary caregivers of children, mothers who are detained would feel an additional pressure when deciding whether to have their children remain with them in detention or to send them to foster care, both decision ultimately results in a life of instability and uncertainty and is profoundly harmful for children<sup>19</sup>.

Some immigration detainees are held in maximum security prisons in the criminal justice system as opposed to an immigration detention facility. Even if the detainees are held apart from the general prison population, they are subject to the same inhumane conditions including frequent lockdowns of the facility and the accompanying trauma and loss of access to basic necessities. The maximum security jails are typically located a great distance from population centres, making it more difficult for immigration detainees to connect with legal representatives and with family and support networks outside.<sup>20</sup> Some women detainees are held in prisons that are meant for male populations and do not have the infrastructure to support women. Women are left isolated without the same access to services as their male counterparts.

### Recommendation

We ask that the Committee recommend the following to Canada:

- Repeal the mandatory detention requirement for irregular arrivals;
- Shorten the time period of detention review to ensure that people are not being held indefinitely; and
- Provide an alternative to detention in situations which would result in entire families being detained.

### Relevant Articles of CEDAW

- **Article 2** – State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
  - (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
  - (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- **Article 3** - States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the

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<sup>17</sup> Canadian Council for Refugees (2016). Children in Immigration Detention in 2015.

<sup>18</sup> *Ibid.*

<sup>19</sup> “No life for a child: A roadmap to end immigration detention of children and end family separation”. (2016). University of Toronto. [http://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf](http://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf)

<sup>20</sup> Concluding observations on the sixth periodic report of Canada. (2015) United Nations Human Rights Committee

exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

- **Article 15(1)** – States Parties shall accord to women equality with men before the law.