CLAIHR
Canadian Lawyers for International Human Rights
Juristes canadiens pour les droits internationaux de la personne

SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

Prepared for the Rapporteur's Official Country Visit to Canada

28 September – 9 October 2026

Submitted by:

Canadian Lawyers for International Human Rights (CLAIHR)

Submitted: March 16, 2026

Contact: info@claihr.ca

I. INTRODUCTION

Canadian Lawyers for International Human Rights (CLAIHR) is a federally incorporated non-governmental charitable organization comprising lawyers, law students, and legal academics working to promote international human rights within and in connection to Canada. CLAIHR submits this brief to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Ms. Ashwini K.P., in advance of her official country visit to Canada scheduled from 28 September to 9 October 2026.

This submission contains information from four prior reports (on three topics) previously submitted by CLAIHR and partners to UN and other international bodies that address interconnected patterns of racial discrimination in Canada that fall squarely within the Rapporteur's mandate under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and related instruments. The three areas of concern are:

- Canada's arms export practices and their contribution to the ongoing genocide against the Palestinian people in Gaza, a racially identified group, in violation of Canada's obligations under ICERD and the Genocide Convention (based on original report submitted to the UN Human Rights Committee for its review of Canada in March 2026);
- The systematic suppression of freedom of expression, assembly, and association in Canada as applied discriminatorily against Arab, Muslim, Palestinian, and pro-Palestinian communities, in violation of ICERD Article 5 and the ICCPR (based on original report submitted to the UN Human Rights Committee for its review of Canada in March 2026);
- The structural conditions of racial exploitation embedded in Canada's Temporary Foreign Worker Program (TFWP), which disproportionately subjects migrant workers from low- and middle-income countries – predominantly workers of colour. This includes the intersectional conditions of racial exploitation particularly affecting women and gender-diverse individuals embedded in Canada's Temporary Foreign Worker Program (TFWP). The conditions created by the TFWP meet international definitions of forced labour (based originally on CLAIHR's submission to the International Criminal Court Office of the Prosecutor in April 2024 and CLAIHR's report submitted to the UN Committee on the Elimination of Discrimination against Women for its review of Canada in September 2024.)

Each of these topics is summarized below. Each section is based on information contained in the corresponding source report(s). Citations are in the original reports, which are also attached to this document. This submission concludes with consolidated recommendations addressed to the Rapporteur for action during and following her visit.

II. CANADA'S ARMS EXPORTS AND COMPLICITY IN RACIAL VIOLENCE IN GAZA

Source Document: *"Exporting Violence: Canada's Arms Transfers and the Devastation of Civil and Political Rights in Gaza" – Submission to the UN Human Rights Committee's 145th Session, 26 January 2026, prepared by the International Human Rights Program (University of Toronto Faculty of Law), Canadian Lawyers for International Human Rights, and the Global Human Rights Clinic (University of Chicago Law School), endorsed by over 40 civil society organizations.*

A. Overview and Relevance to the Mandate

Palestinians in Gaza constitute a distinct national, ethnic, and racial group. The UN Independent Commission of Inquiry on the Occupied Palestinian Territory has found that Israel has "intentionally killed Palestinian civilians in Gaza" and that it has committed genocide against Palestinians in the Gaza Strip. The ICJ has found that Israel bears responsibility for apartheid through measures that physically and legally discriminate against Palestinians.

Canada's continued direct and indirect supply of arms to Israel makes Canada a contributing cause to racially targeted violence against Palestinians. Canada's arms exports directly enable a military campaign that has been described as genocidal by leading global civil society organizations and UN institutions.

B. Canada's Direct Arms Exports to Israel

In the three months immediately following 7 October 2023, as Israeli atrocities in Gaza escalated sharply, the Canadian government authorized new permits for military exports to Israel worth at least C$28.5 million (approximately US$20.8 million) — exceeding the total value of permits issued in the entire prior year, which had amounted to just over C$21 million.

In March 2024, the Canadian government announced it had ceased issuing new arms export permits to Israel since 8 January 2024. This assertion was later revealed to be false. Documents obtained by media confirmed that in February 2025, Canada issued two new permits for military exports to Israel worth a combined C$37.2 million (US$26.4 million). Further, researchers analyzing publicly available shipping and tax records have identified hundreds of shipments of military-related equipment from Canada to Israel between October 2023 and July 2025.

C. The 'US Loophole' and Indirect Arms Exports

A structural gap in Canada's export control regime poses a potentially greater problem than direct exports. Under reciprocal arrangements rooted in diplomatic agreements dating to the Hyde Park Agreement of 1941, almost all military goods and technology may move permit-free between Canada and the United States. This means that Canada has no legal mechanism to control or restrict the re-export of Canadian military goods from the United States to third countries such as Israel. The United States receives nearly half of all Canadian military exports and supplies approximately 70% of Israel's total arms imports.

Evidence of the scale of indirect transfers is substantial. In one transaction alone, announced on 13 August 2024, the US Secretary of State approved the sale to Israel of over 50,000 120mm high-explosive mortar cartridges worth US$61.1 million, purchased from a Canadian manufacturer. A recent report tracked 34 shipments from Canadian suppliers to US F-35 manufacturer Lockheed Martin between April 2024 and August 2025, with corresponding shipments bearing identical or similar shipping labels going from Lockheed Martin to Israel within days. The report further tracked 433 shipments of explosives transiting Canada from Polish state-owned manufacturer Nitro-Chem to US Army Ammunition Plants, with links to US-made munitions used by Israel in Gaza.

Canadian-made components are present in the F-35 Joint Strike Fighter, which Israeli forces have used in the bombardment of Gaza. Manufacturer Lockheed Martin has confirmed that

approximately C$3.2 million worth of Canadian components are in every F-35 manufactured. Canadian companies also supply parts for Boeing's F-15 fighter and the AH-64 Apache attack helicopter, both used by Israel in its operations in Gaza.

D. Racial Discrimination Dimensions

The racial dimensions of this issue are direct. The Palestinian population — subjected to what the Commission of Inquiry has found to be genocide on the basis of their national and ethnic identity — has been targeted with weapons to which Canada is a contributing supplier. As of 14 January 2026, the reported number of Palestinians killed in Gaza since 7 October 2023 reached 71,439, at least 20,179 of whom were children. In May 2025, of 59,000 violence-related deaths, an estimated 83% were civilians. These casualties are the product of a systematic campaign of racial targeting as confirmed by the UN's own investigative bodies.

In May 2025, the CERD Committee raised concerns under its early warning and urgent action procedure about "significant gaps in Canada's legal framework" for indirect arms exports, stating that such exports "would amount to breaches of the State party's obligations under the ICERD."

III. DISCRIMINATORY SUPPRESSION OF FREEDOM OF EXPRESSION, ASSEMBLY, AND ASSOCIATION IN RELATION TO PALESTINIAN SOLIDARITY

Source Document: *"Disproportionate and Discriminatory Restrictions on Freedom of Opinion, Expression, Association and Assembly in Canada in the Context of Palestinian Solidarity" – Submission to the UN Human Rights Committee's 145th Session, 2 February 2026, prepared by Canadian Lawyers for International Human Rights and Justice For All Canada.*

A. Overview and Relevance to the Mandate

Since October 2023, Canada has witnessed a rapid and serious erosion of the rights to freedom of opinion, expression, peaceful assembly, and association, applied in a discriminatory manner against Arab, Muslim, and Palestinian communities, as well as pro-Palestinian human rights defenders. These restrictions violate ICERD Article 5, which requires States Parties to guarantee the right to equal treatment before all organs administering justice, and to ensure that all persons, without distinction as to race, colour, or national or ethnic origin, have equal enjoyment of civil rights including freedom of thought, expression, assembly, and association.

The pattern documented below is not incidental. Civil society research analyzing events between 2021 and 2025 found that Palestine-related demonstrations comprised approximately 10% of protests in Canada but accounted for 37% of police interventions, notwithstanding the fact that 96% of pro-Palestinian protests were assessed as peaceful. This research also revealed that the crackdown on protests was part of high-level strategic planning by Canadian federal agencies, costing taxpayers millions of dollars, in an effort to neutralize human rights defenders' ability to mobilize in support of Palestinian rights.

No comparable pattern of State repression has been documented with respect to pro-Israel expression and assembly. Pro-Israel groups have been able to freely exercise the full extent of their rights to free opinion, expression, assembly, and association. This asymmetry is a form of racially discriminatory treatment and anti-Palestinian racism that falls squarely within the Rapporteur's mandate.

B. Criminalization of Political Speech

Canadian law permits law enforcement to designate offences as "hate-motivated," carrying enhanced sanctions. Since October 2023, this designation has been applied, improperly and discriminatorily, to political speech expressing support for Palestinians or criticism of Israel's military actions.

In November 2023, eleven activists in Toronto were criminally charged – with suspected hate-motivated mischief – for placing posters critical of the CEO of a major bookstore chain on the store's windows and splashing paint on the sidewalk. Police applied the hate designation on the basis that the bookstore was targeted "because they are perceived to be Jewish." In fact, the CEO chairs the HESEG Foundation for Lone Soldiers, an organization that funds tuition for people who serve in the Israeli military. The speech targeted the CEO's institutional affiliation and political conduct, not her religion or ethnicity. The prosecutor subsequently dropped most charges, concluding they could not meet the prosecutorial threshold. Nevertheless, at least three of those charged were suspended from employment at York University, and at least one individual lost both jobs at two universities when their contracts were allowed to expire.

In Alberta, Calgary police applied a "hate motivation" designation when charging a protest leader for the offence of Causing a Disturbance. The charged conduct consisted of leading a crowd in the chant "From the River to the Sea, Palestine will be free." Prosecutors subsequently stayed the charges for lack of reasonable prospect of conviction. Courts in Ontario, the Netherlands, and Germany have found this phrase to constitute legally protected speech. Canadian legal scholars have concluded that criminal prosecution for this phrase would constitute "a gross overreach of the criminal law."

In February 2025, activist and author Yves Engler was charged with criminal harassment and indecent communication for publicly responding to social media posts by a pro-Israel influencer and spent five days in jail. Two charges connected to this incident were dropped; however, Engler was ultimately convicted on charges related to an email campaign directed at an investigator — a precedent that criminalizes communications to public officials in connection with the exercise of freedom of expression.

Ontario's Solicitor General further exacerbated this environment in an open letter to Toronto Police Service in January 2026, calling for more aggressive enforcement of hate-motivated offences at pro-Palestinian protests. He even unsuccessfully filed for a court injunction to prevent a pro-Palestinian rally in Toronto in March 2026. The rally ultimately went ahead peacefully with a single arrest – of a counter-protestor charged with assault of a human rights defender.

C. Disproportionate and Violent Policing of Protest

The policing of pro-Palestinian protest in Canada has been marked by excessive force, military-style raids, and punitive responses disproportionate to the nature of the conduct involved.

The arrests of the Toronto bookstore activists took the form of unannounced home raids in the middle of the night — involving arresting people in bed, handcuffing family members, and knocking doors off their hinges. A policing expert estimated the operations cost hundreds of thousands, if not millions, of dollars. Similarly, the family home of a 26-year-old school teacher who organized a five-minute highway disruption was subjected to a military-style raid at 5:30am. The family, of Palestinian origin, indicated the tactics reminded them of Israeli military raids in the West Bank.

In November 2025, protestors attending an event featuring former Israeli military soldiers were forcibly removed by police, resulting in multiple hospitalizations including a concussion and other bodily injuries. One of the Israeli soldiers present physically removed protestors from the premises but was not arrested or charged for assault. That same month, a City of Toronto snowplow driver drove through a crowd of pro-Palestinian protestors on the sidewalk. No charges were laid.

Violence has extended across provinces. In British Columbia, Indigenous and human rights organizations called for accountability for excessive force used by police at a railway blockade. In Edmonton, police used tear gas and batons against students, hospitalizing an activist, during the dismantling of a pro-Palestinian encampment at the University of Alberta. In Ottawa, police choked and forced individuals to the ground peacefully protesting at an arms show. In Montreal, riot police used tear gas at McGill University against a crowd of demonstrators. A direct account

received by CLAIHR and JFAC described the deployment of tear gas at a Montreal protest in November 2025, followed by police locating three demonstrators who had disengaged and were in an alley providing medical assistance to a colleague; police assaulted them, causing concussions, broken ribs, and partial loss of finger function. An officer stated, “this is what happens when you protest.”

Ottawa bylaw enforcement has repeatedly issued significant fines to activists using megaphones at protests calling for a ceasefire, contrary to the view expressed by the UN Human Rights Committee in General Comment No. 37 that participants in peaceful assemblies should be permitted to use such equipment. Toronto, Vaughan, and Brampton have enacted “bubble zone” bylaws restricting protests near community institutions, with fines of up to C$5,000. In January 2026, Toronto police used this bylaw for the first time to restrict protest at an event by a former Israeli soldier known for inciting violence online.

D. Discrimination and Censorship in Public Institutions

The suppression of pro-Palestinian expression in Canadian public institutions has been systematic and documented across levels of government, universities, and workplaces.

Legislative Institutions

Member of Provincial Parliament (MPP) Sarah Jama was formally censured by the Ontario Legislature for refusing to remove her keffiyeh, resulting in the denial of her ability to vote, participate in committee proceedings, or table motions and petitions. She was also expelled from her political party’s caucus and censured by the Legislature, preventing her from participating in debates. Other members have been removed from the Ontario legislature for wearing the keffiyeh, and individuals have been denied access to the legislature to meet with elected officials while wearing it.

Academic Institutions

Suppression of pro-Palestinian speech and academic freedom in Canadian universities is documented through numerous specific instances:

- York University condemned a student union Statement of Solidarity with Palestine as “inflammatory,” demanded retraction, and threatened sanctions against student union executives;
- Toronto Metropolitan University (TMU) condemned a letter signed by law students calling for action in response to the attack on Gaza, characterizing it as expressing “sentiments of Antisemitism and intolerance.” An external review by a retired judge concluded the students’ words did not breach the student code of conduct. Some signatories had job offers rescinded and faced calls to be blacklisted from the legal community;
- McGill University sought an injunction to halt the ratification of a student union Policy Against Genocide in Palestine and restricted an event hosting UN Special Rapporteur Francesca Albanese, coupled with reported threats of disciplinary action against the student organizers;
- The University of Manitoba suspended the president of the Nursing Students’ Association over social media posts criticizing Israeli military actions, a decision overturned by a disciplinary panel;
- The University of Ottawa suspended a resident physician over pro-Palestinian social media posts;
- Queen’s University removed physicians from medical school residency placement decisions based on concerns about their signatures on a petition calling for a ceasefire and an end to the occupation;
- A British Columbia government minister intervened in the operations of a community college, resulting in the termination of a teacher, despite an investigation concluding

that his speech was “not clearly outside the bounds of protected expression.” The same minister subsequently resigned from cabinet after making anti-Palestinian racist remarks, describing pre-1948 Palestine as “a crappy piece of land with nothing on it”;

- A 17-year-old honours student in Montreal was suspended for posts on her private social media account criticizing Israel’s policies.

Government and Workplace Discrimination

The Public Prosecution Service of Canada threatened investigation and disciplinary action against employees who signed the TMU pro-Palestinian letter or who were among more than 600 legal professionals who signed a letter in support of the student signatories. The Ontario Ministry of the Attorney General adopted a policy requiring TMU students to sign an attestation that they were not signatories to the letter before being considered for employment. The British Columbia Civil Liberties Association condemned this policy’s “chilling impact on constitutionally-protected freedom of expression.” The Sports Dispute Resolution Centre of Canada failed to renew the contract of a mediator solely because he had co-signed two open letters calling on Canada’s second-largest pension fund to divest from companies in illegal Israeli settlements.

Border Control and Arbitrary Detention

Former UN Special Rapporteur on the Occupied Palestinian Territory, Professor Richard Falk, and his wife, former UN Special Rapporteur on the Right to Food, Hilal Elver, were detained by Canadian border agents in Toronto for four hours on Professor Falk’s 95th birthday and questioned about his opinions on Israel and Palestine, ostensibly to assess whether they were “a threat to the national security of Canada.” The Irish band Kneecap, known for its Palestinian solidarity, was also prevented from entering Canada.

E. Failure by Public Officials to Uphold a Rights-Enabling Environment

A significant number of public officials and political leaders have made statements that demonize pro-Palestinian expression, conflate it with terrorism, and create conditions of impunity for further repression. Ontario Premier Doug Ford referred to pro-Palestine protests as “hate rallies.” Vancouver Mayor Ken Sim equated a rally in support of Gaza with the “glorifying of indiscriminate violence, including the murder, kidnapping, and rape of innocent Israeli civilians.” Toronto Mayor Olivia Chow initially characterized a protest as a “rally to support Hamas.” Ontario’s Solicitor General, Michael Kerzner, described pro-Palestinian protests as “mob intimidation and harassment.” Ontario legislature member Lisa MacLeod posted an epithet for a chokehold alongside language suggesting violence be used against pro-Palestinian protestors. Ontario Premier Ford disparaged MPP Sarah Jama by claiming she had a “well-documented history of antisemitism” and supports the “rape and murder of innocent Jewish people” — statements without evidentiary basis and calculated to delegitimize a racialized elected official.

In April 2024, Canada’s House of Commons passed a unanimous motion condemning antisemitism and rejecting the idea that Jewish Canadians are responsible for Israeli government actions. No motion has been passed condemning anti-Palestinian racism, or the many documented acts of violence and discrimination against Palestine supporters, such as the case of a man arrested after threatening protestors with a nail gun. This asymmetry in institutional responses reinforces the discriminatory treatment of Palestinian, Arab, and Muslim communities in Canada.

Canada has formally endorsed the International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism and published a federal handbook promoting its use across Canadian institutions. Antisemitism and Holocaust scholars, as well as civil society organizations including Human Rights Watch, have rejected this definition on the basis that its examples conflate legitimate criticism of Israel’s policies and the ultranationalist Zionist movement with antisemitism. Institutionalization of this definition across Canadian public bodies contributes

directly to the chilling of legitimate Palestinian solidarity and the amplification of anti-Palestinian racism.

IV. RACIAL EXPLOITATION IN CANADA'S TEMPORARY FOREIGN WORKER PROGRAM: FORCED MIGRANT LABOUR AS A FORM OF CONTEMPORARY RACIAL DISCRIMINATION

Source Documents: *"Forced Migrant Labour" – Submission by Canadian Lawyers for International Human Rights (CLAIHR) to the International Criminal Court Office of the Prosecutor, 30 April 2024.*

Submission of 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

A. Overview and Relevance to the Mandate

Canada's Temporary Foreign Worker Program (TFWP) is a state-regulated system through which migrant workers from low- and middle-income countries (LMICs) — predominantly workers from Mexico, Guatemala, Jamaica, and other countries of the Global South — are admitted to Canada to perform labour that Canadians are deemed unavailable to supply. In 2017, Canada hosted 550,000 temporary foreign workers, who accounted for 15.5% of national employment in agriculture, forestry, fishing, and hunting sectors. The structural conditions of this program create systemic vulnerability to conditions of forced labour as defined under the International Labour Organization Forced Labour Convention, 1930 (No. 29), ratified by Canada in 2011.

The TFWP's disproportionate impact on workers of colour from LMICs is not incidental. It reflects and perpetuates racialized patterns of labour exploitation, intersecting with race, national origin, language, gender, and immigration status. The Rapporteur's mandate under ICERD encompasses discrimination in access to work and to just and favourable conditions of employment (Article 5(e)(i)), and the exploitation of migrant workers through racially structured programs constitutes precisely this form of discrimination. The UN Special Rapporteur on Contemporary Forms of Slavery, during his 2023 visit to Canada, explicitly linked the TFWP to "contemporary forms of slavery."

B. Structural Vulnerabilities in the TFWP

The TFWP is governed primarily by the federal Immigration and Refugee Protection Act, with employment protection regulated by the provinces. Employers submit applications to Employment and Social Development Canada (ESDC) for Labour Market Impact Assessments (LMIAs). Work permits under the TFWP are typically tied to a single employer, creating conditions of extreme structural vulnerability.

Employer-tied permits mean that migrant workers who cannot legally work elsewhere have no practical alternative but to comply with the employer's terms and conditions, regardless of whether those conditions are lawful or safe. As one migrant worker described: "The employer has full rights over your life, to call you at any moment, at any second, one hour in advance and tell you you have to be here and work in two hours. What do you do? You can't get another job so you tend to comply."

Within the Low-Wage stream, employers may pay less than the provincial or territorial median hourly wage. In the Seasonal Agricultural Worker Program (SAWP) — a sub-stream reserving seasonal agricultural positions for workers from Mexico and participating Caribbean countries — employers have discretion to terminate workers and have them removed from Canada within 24 to 48 hours. Because the program is seasonal, workers are structurally disincentivized from

asserting rights or filing complaints, as doing so could jeopardize their chance of being invited to return in subsequent seasons.

Employers in the TFWP routinely provide housing and basic services, creating a situation of near-total dependency. Workers who are required to live on their employer's premises and who lack access to Canadian social services are rendered isolated, immobile, and dependent. Approximately 44% of cases documented in a 2021 survey by the Migrant Rights Network found that five to ten migrant workers shared one house. During the COVID-19 pandemic, this dramatically increased transmission risk; a number of migrant farmworkers in Ontario died from COVID-19.

Women Temporary Foreign Workers 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.

C. ILO Indicators of Forced Labour in the Canadian Context

The ILO's Special Action Programme to Combat Forced Labour has identified indicators of forced labour, noting that even a single indicator may, in some circumstances, establish forced labour. Multiple indicators are systematically present in Canada's TFWP:

- Abuse of vulnerability: Workers who arrive in Canada are sometimes not informed they will be housed in overcrowded conditions. Employers control access to housing, food, and pay, creating full dependency.
- Deception: The West Coast Domestic Workers' Association documented in 2014 that a common form of deception involves informing migrant workers of dangers arising from not having proper immigration documents, making workers more reliant on exploitative employers.
- Restriction of movement: In 2014, the BC Human Rights Tribunal found that African migrant workers in a remote area of British Columbia had no money or transportation to leave and were completely at the mercy of their employers (Balikama v. Khaira Enterprises, 2014 BCHRT 107).
- Threats and intimidation: The threat of deportation is systematically used to prevent workers from raising complaints. In 2014, Belizean migrant workers accused McDonald's Canada of requiring them to sign non-disclosure agreements regarding alleged abuses. At least one worker was fired after online communications complaining about conditions were tracked.
- Debt bondage and wage withholding: McDonald's Canada workers reported deductions of almost half of their paychecks to cover rent for a shared apartment, along with withholding of pay for "expenses."
- Abusive conditions: The UN Special Rapporteur on Contemporary Forms of Slavery found during his 2023 Canada visit that migrant workers worked excessive hours without access to overtime pay, in contravention of ILO standards.
- Retention of identity documents: Multiple cases in Canada have documented employers confiscating and holding workers' passports.
- Physical and sexual violence: Female migrant domestic workers face gender-based violence with little recourse due to language barriers, fear of reprisal, and inability to navigate the foreign legal system.

D. Racial Discrimination in the Structure and Application of the TFWP

Migrant workers in Canada's TFWP are drawn almost exclusively from LMICs — principally Mexico, Guatemala, Jamaica, and other Caribbean and South/Southeast Asian countries. The program concentrates workers of colour in the most precarious, low-wage, and isolated sectors of the Canadian economy, under conditions that would be intolerable and legally actionable if applied to Canadian citizens or permanent residents. This structural concentration constitutes racial discrimination in the enjoyment of the right to just and favourable conditions of work under ICERD Article 5(e)(i).

Canada has also not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, creating a gap in international legal protection.

V. CONSOLIDATED RECOMMENDATIONS TO THE SPECIAL RAPPORTEUR

Drawing from all four source documents, CLAIHR requests that the Special Rapporteur take the following actions during and following her official visit to Canada.

A. Regarding Canada's Arms Exports and Racial Violence in Gaza

1. Formally call on Canada to close the US loophole in its military exports regime by imposing export controls, including re-export controls, on all military goods and components that may ultimately reach Israel, consistent with Canada's obligations under ICERD and the Genocide Convention.
2. Recommend that Canada introduce mandatory human rights due diligence legislation for the arms sector that explicitly addresses indirect transfers and supply chain contributions to racially targeted violence.
3. Call on Canada to ensure full transparency in its arms export regime, including by publicly communicating risk assessments in export permit approval decisions, consistent with Canada's obligations under ICERD to eliminate racial discrimination in all its forms.
4. Recommend that Canada take immediate steps to comply with its obligations under the Genocide Convention, including by ceasing all direct and indirect arms transfers to Israel, given the findings of the UN Commission of Inquiry and the International Court of Justice regarding genocide against Palestinians.

B. Regarding Discriminatory Suppression of Palestinian Solidarity

5. Formally urge Canada to end discriminatory and disproportionate policing of pro-Palestinian protests and to conduct independent investigations into documented incidents of excessive force, including those in Vancouver, Edmonton, Montreal, Ottawa, and Toronto.
6. Call on Canada to review and rescind its federal handbook endorsing the IHRA Working Definition of Antisemitism, widely discredited by antisemitism scholars, civil society organizations, and Human Rights Watch in that it conflates protected political expression with antisemitism, contributing to anti-Palestinian racism.
7. Recommend that Canada establish binding guidance to prevent public officials and political leaders from making statements that conflate pro-Palestinian expression with terrorism, antisemitism, or support for violence, consistent with the 2021 Joint Declaration on Politicians and Public Officials and Freedom of Expression.
8. Call on Canada to repeal or substantially revise "bubble zone" bylaws that disproportionately restrict pro-Palestinian expression and protest, and to ensure that

sound amplification equipment at peaceful assemblies is not penalized through bylaw enforcement.

9. Urge Canada to ensure that university and public institution policies on free expression are applied equally to pro-Palestinian and pro-Israeli expression, and to provide appropriate remedies for students, academics, employees, and public officials who have been disciplined, censured, or dismissed for protected expressions of Palestinian solidarity.
10. Call on Canada to review the use of border control powers in connection with Palestinian solidarity, including the arbitrary detention of Professor Richard Falk and his wife, and to ensure that entry decisions are not made on the basis of political expression.

C. Regarding Forced Migrant Labour and the TFWP

11. Recommend that Canada reform the Temporary Foreign Worker Program to eliminate employer-tied work permits, which create the conditions of structural coercion that the ILO identifies as indicators of forced labour, and to ensure all migrant workers have open work permits and access to permanent residency pathways.
12. Call on Canada to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, closing the international legal protection gap that leaves TFWP workers without binding recourse under international law.
13. Urge Canada to substantially strengthen enforcement of employment standards, occupational health and safety laws, and anti-trafficking provisions as applied to migrant workers, including through increased unannounced inspections and employer accountability mechanisms.
14. Recommend that Canada develop migrant worker-specific legal aid, language access services, and complaint mechanisms that do not require disclosure to immigration authorities, enabling workers to assert their rights without fear of deportation.
15. Call on Canada to commission and publicly release an independent study of the extent to which forced labour conditions as defined by ILO Convention No. 29 are present in the TFWP, with particular attention to the intersecting vulnerabilities of race, national origin, gender, and immigration status.
16. Urge Canada to adopt a victim-centered, gender-responsive, intersectional approach in all law and policy reform related to migrant labour, consistent with the CEDAW Committee's General Recommendation No. 26 on women migrant workers, which identifies the compounding of gender discrimination with xenophobia and racism as a primary driver of harm.
17. Urge Canada to 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.

D. Cross-Cutting Recommendations

18. Include in her visit to Canada dedicated consultations with Arab and Palestinian communities, Muslim organizations, migrant worker organizations (including organizations of agricultural workers from Mexico, Jamaica, and the Caribbean), and civil society organizations working on anti-Palestinian racism.
19. Urge Canada to develop a comprehensive National Action Plan on Anti-Racism that explicitly names anti-Palestinian racism as a form of racial discrimination requiring dedicated governmental attention, institutional accountability, and disaggregated data collection.

20. Call on Canada to bring its arms export regime, civil liberties framework, and labour migration policies into conformity with ICERD, the ICCPR, the Genocide Convention, and ILO Conventions.

VI. CONCLUSION

Canada's self-image as a global champion of human rights is inconsistent with the patterns of racial discrimination documented in this submission. Canada exports weapons that contribute to a genocide while concealing the true scope of those exports from the public. Canada systematically suppresses the civil liberties of its Arab, Muslim, and Palestinian communities and pro-Palestinian human rights defenders while permitting equivalent expression and assembly by others. Canada operates a labour migration system that structurally exploits workers of colour from the Global South under conditions that international law recognizes as forced labour.

These are not isolated policy failures. They are patterns that reflect structural and systemic racial discrimination against specific communities in domains ranging from foreign policy and arms exports to domestic civil liberties and labour regulation.

The Rapporteur's visit to Canada represents a critical opportunity to name these patterns, hold Canada publicly accountable, and use the leverage of the Special Procedures mandate to advance concrete, enforceable changes. CLAIHR is available to provide additional information, documentation, and expert testimony to support the Rapporteur's work.

Submitted respectfully,

Canadian Lawyers for International Human Rights (CLAIHR)
Info@claihr.ca

March 16, 2026

Source Documents

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Exporting Violence: Canada's Arms Transfers and the Devastation of Civil and Political Rights in Gaza" – Submission to the UN Human Rights Committee's 145th Session, 26 January 2026, prepared by the International Human Rights Program (University of Toronto Faculty of Law), Canadian Lawyers for International Human Rights, and the Global Human Rights Clinic (University of Chicago Law School), endorsed by over 40 civil society organizations	14
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EXPORTING VIOLENCE: CANADA'S ARMS TRANSFERS AND THE DEVASTATION OF CIVIL AND POLITICAL RIGHTS IN GAZA

Submission to the United Nations Human Rights Committee's 145th Session on the Occasion of the Committee's Periodic Review of Canada

27 January 2026

Prepared By:

International Human Rights Program, University of Toronto Faculty of Law
Canadian Lawyers for International Human Rights
Global Human Rights Clinic, University of Chicago Law School

Endorsed by:

Above Ground, a project of MakeWay
Canadian Council of Muslim Women (CCMW)
Canadian Friends Service Committee (CFSC)
Canadian Muslim Public Affairs Council (CMPAC)
Canadian Network on Corporate Accountability (CNCA)
Canadian-Muslim Civil Liberties Association (CMCLA)
Canadians for Justice and Peace in the Middle East (CJPME)
Canadians United Against Hate/Canadiens Unis Contre la Haine
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Feminist Alliance for International Action (FAFIA)
International Centre of Justice for Palestinians - Canada (ICJP)
International Justice & Human Rights Clinic, Peter A. Allard School of Law, University of British Columbia
John Humphrey Centre for Peace and Human Rights (JHC)
Just Peace Advocates/Mouvement Pour Une Paix Juste
Justice For All Canada
Lawyers' Rights Watch Canada (LRWC)
Mennonite Church Canada Palestine and Israel Network
Ottawa Healthcare Professionals for Palestine (OHCP4P)
Oxfam Canada
Oxfam-Quebec
Palestinian and Jewish Unity (PAJU)
Palestinian Disability Coalition
Progressive Chinese of Québec
Race & Disability Canada
Righting Relations Canada
RightOnCanada
Canadians for Justice and Peace in the Middle East (CJPME) – Saskatoon Chapter
Stop Canadian Involvement in Torture
Tech Justice Law Project (TJLP)
The Ase Community Foundation for Black Canadians with Disabilities
The Canadian BDS Coalition and International BDS Allies
The Rideau Institute on International Affairs
Toronto Indigenous Harm Reduction (TIHR)
United Jewish People's Order (UJPO)
West Coast LEAF
Women's International League for Peace and Freedom - Canada (WILPF)
World BEYOND War

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I. INTRODUCTION

While Canada positions itself as a global advocate for international human rights, its foreign policy and export practices contradict this image by contributing to serious, ongoing violations of international human rights abroad—in particular, violations of civil and political rights in the Gaza Strip. Canada's continued direct and indirect arms exports to Israel, including through the United States of America (US), have enabled grave human rights abuses.

This submission illustrates how Canada's failure to adequately regulate the arms exports that enable Israel's continued atrocities in Gaza contributes to repeated and serious violations of the International Covenant on Civil and Political Rights (ICCPR or "the Covenant"), despite numerous warnings by United Nations (UN) bodies and Courts. Israel's bombardment of Gaza, which has been categorized by the UN Independent Commission of Inquiry on the Occupied Palestinian Territory (hereinafter "Commission of Inquiry") as genocide, includes killing tens of thousands of Palestinians, imposing a total siege, blocking humanitarian aid leading to starvation, systematically destroying healthcare and education systems in Gaza, and directly targeting women and children.

However, responsibility for the atrocities being committed in Gaza extends far beyond Israel. It is shared by many international actors—including the various states that continue to produce and provide the weapons that enable Israel's atrocities. Therefore, it is essential to engage these actors on their human rights responsibilities as well.

Other international human rights bodies and experts have also affirmed the responsibilities of states to suspend arms exports to Israel:

- In a statement of 23 February 2024, a group of UN Special Rapporteurs and working groups warned that "any transfer of weapons or ammunition to Israel that would be used in Gaza is likely to violate international humanitarian law and must cease immediately." In noting that "Israel has repeatedly failed to comply with international law," they specifically called out Canada for not ceasing military exports to Israel.
- In April 2024, the Human Rights Council adopted a resolution calling on States "to cease the sale, transfer and diversion of arms, munitions and other military equipment to Israel," due to concerns of human rights violations in Gaza.
- In October 2024, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) expressed concern about the role of Canadian military exports

to Israel in facilitating violations of women's rights in Gaza and urged it to do more to ensure its military exports do not facilitate violations of women's rights.

- In March 2025, the Committee on the Rights of Persons with Disabilities (CRPD Committee) condemned loopholes in Canada's arms export regime that allow military parts and components to be exported to the United States—where they are integrated into weapons systems and re-exported to other countries, such as Israel.
- More recently, in May 2025, the Committee on the Elimination of Racial Discrimination (CERD Committee) expressed concern about "significant gaps in Canada's legal framework" that allow for the indirect export of Canadian arms to Israel via the US, which are used to facilitate violations of international human rights and international humanitarian law.

As such, the authors submit that, in exporting violence through its arms sales and transfers, Canada is in serious breach of its obligations under the ICCPR, including Articles 1, 6, 26, 12, and 9, and recommend that it take urgent measures to comply with the fundamental rights enshrined in the Covenant.

II. KEY HISTORICAL CONTEXT

While the focus of this report is on the war in Gaza since October 7, 2023, violations of the international human rights of Palestinians must be contextualized and understood in relation to a long history of prior systematic human rights violations and denial of self-determination, occupation, and control by Israel on the territory. Israel's violations of international law with respect to Palestine predate the current assault, tracing its roots back as far as the 1948 Nakba—the mass displacement and dispossession of Palestinians during the establishment of an Israeli state, involving the settlement and annexation of the Palestinian territory. Despite formal withdrawal of its military presence in Gaza in 2005, the International Court of Justice (ICJ) has noted that "Israel remained capable of exercising, and continued to exercise, certain key elements of authority over the Gaza Strip, including control of the land, sea and air borders, restrictions on movement of people and goods, collection of import and export taxes, and military control over the buffer zone." The Court further observed that this exercise of significant control "is even more so since October 7, 2023."

Further, long before October 7, 2023, many human rights organizations and experts continuously raised serious concerns about the human rights situation in the Gaza Strip. Human Rights Watch (HRW) reported that the 15-year lockdown of the territory beginning in 2007

effectively created "an open-air prison" for more than 2 million Palestinians. HRW reported that border closures prevented the free movement of the population and severely restricted their access to goods, resulting in the violations of various guaranteed rights and freedoms. Israel's military attacks on Gaza and the killings of civilians are also not new, with multiple assaults occurring since Israel's military withdrawal in 2005, including a 22-day military offensive in 2008.

Thus, the violations alleged in this report must be considered against the backdrop of longstanding violations of civil and political rights in Gaza over multiple decades.

III. ICCPR VIOLATIONS IN GAZA

With respect to occupied territory, both the UN and regional treaty bodies have taken the position that the occupying state is obligated to observe its human rights obligations extraterritorially with respect to persons or territory over which it has effective control. The Committee has applied this principle to obligations under the ICCPR and, in the case of the Occupied Palestinian Territories (OPT), has found that Israel is responsible for all conduct by its authorities and agents in those territories that affects the enjoyment of rights under the Covenant.

That said, third-party states such as Canada have obligations under the Covenant with respect to the situation in Gaza as well, as "every State Party has a legal interest in the performance of every other State Party of its obligations."

A. Violations of the Right to Self-Determination (Article 1)

The right to self-determination, contained in Article 1(3) of the Covenant, imposes a positive obligation on States Parties to practically realize and respect the rights of peoples to self-determination. This Committee has previously called on Israel to recognize the self-determination of Palestinians in the OPT. This obligation, however, does not end with Israel, and is instead an obligation that all States Parties must uphold, including Canada.

Canada recognized the State of Palestine on September 21, 2025. This positive step in affirming Palestinian self-determination is not solely political or symbolic; it also carries with it fundamental legal consequences and responsibilities that must be respected. By expressly recognizing Palestinian statehood, Canada legally accepts the rights and duties determined for Palestine by international law. As articulated in an October 2025 Report of the Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967,

this responsibility includes respecting the principles of non-interference, territorial integrity, political independence, and self-defense.

Canada also recognized the right to self-determination of the Palestinian peoples, in line with Article 1 of the Covenant. While this recognition of the right to self-determination fulfils part of Canada's obligation, Article 1(3) requires that States Parties "promote the realization of the right." As articulated in *General Comment No.12*, the promotion of realizing the right to self-determination includes taking positive action and practical steps to "facilitate realization of and respect for the right of peoples to self-determination."

As such, Canada has a legal responsibility to halt intervention in the internal or external affairs of Palestine, as well as refrain from actions that adversely affect the Palestinian right to self-determination. This necessarily includes taking practical measures to support the end of an Israeli occupation in Palestine, including the export of arms used to violate, suppress, and abuse the right to self-determination.

B. Violations of the Right to Life (Article 6)

The right to life is "the supreme right from which no derogation is permitted," and a person cannot be arbitrarily deprived of their right to life "even in situations of armed conflict." In particular, the Human Rights Committee notes in *General Comment 36* that:

> "Practices inconsistent with international humanitarian law, entailing a risk to the lives of civilians and other persons protected by international humanitarian law, including the targeting of civilians, civilian objects and objects indispensable to the survival of the civilian population, indiscriminate attacks, failure to apply the principles of precaution and proportionality, and the use of human shields would also violate article 6 of the Covenant."

Further, "States parties must take appropriate measures to protect individuals against deprivation of life by other States." This includes exercising due diligence to protect the life of persons from violations by persons or entities whose conduct is not attributable to the State. This applies particularly to "States parties engaged in the deployment, use, sale or purchase of existing weapons," as they "must always consider their impact on the right to life." Providing arms to Israel—despite calls by the UN Human Rights Council (HRC), and multiple UN Special Procedures to end arms transfers—significantly risks violating the right to life of persons living in Gaza.

As is further explained below, Canada violates the right to life under Article 6 by continuing to supply Israel, directly and indirectly, with weapons that amplify the indiscriminate killing of civilians, limit access to food and healthcare, and aid in the destruction of infrastructure.

a) The Disproportionate and Indiscriminate Killing of Civilians in Gaza

As of January 14, 2026, the reported number of Palestinians in Gaza killed since October 07, 2023, reached 71,439 people, at least 20,179 of whom are children. In May 2025, of the 59,000 violence-related reported deaths, an estimated 83% were civilians. While these figures are limited to confirmed reported killings, a study published in The Lancet in July 2024 estimated that the number of deaths could have reached as high as 186,000 at that time. This estimate considered not only direct fatalities, but also deaths resulting from the compounded effects of the war, disease, the destruction of health-care infrastructure, and the severe shortage of food. Since October 2023, an additional 171,324 people have been wounded. One quarter of these cases are considered "life-changing injuries." The number of injuries continues to rise, with 13,500 injuries reported in July 2025 alone.

These attacks against Palestinian civilians have been described by healthcare workers as indiscriminate, particularly against children. One doctor interviewed by the Global Human Rights Clinic at the University of Chicago Law School (GHRC) reported about "four children that came in with gunshot wounds […] one who was fifteen-years-old with a gunshot to the head," an eight-year-old, and another twelve-year-old, all reportedly targeted by high velocity munitions.[1] During a three-week period, the same doctor documented fifteen cases of children who were shot in the head or neck, a fraction of the total cases involving children that she encountered.[2]

As concluded by the Office of the High Commissioner of Human Rights, Israel's use of Canadian-supplied munitions has "systematically violated the principles of distinction, proportionality, and precautions in attack—fundamental principles of international humanitarian law on the conduct of hostilities." And, citing Israel's use of unguided weapons and high-impact munitions that produce excessive civilian deaths, the Commission of Inquiry concluded that Israel has "intentionally killed Palestinian civilians in Gaza."

[1] University of Chicago Law School Global Human Rights Clinic Interview with physicians working in Gaza.
[2] University of Chicago Law School Global Human Rights Clinic Interview with physicians working in Gaza.

b) Limits on Access to Food and Healthcare

Canadian-supplied arms are also likely to be used by Israel to maintain conditions that make it difficult to survive in Gaza, in violation of the right to life. Currently, "more than half a million people in Gaza are trapped in famine, marked by widespread starvation, destitution and preventable deaths," with UNICEF approximating that 640,000 civilians in Gaza are facing catastrophic levels of food insecurity. These conditions are classified by the Integrated Security Phase Classification as phase 5—the most severe designation of food insecurity. In August 2025 alone, at least 185 persons died of malnutrition. This famine is man-made: Israel has destroyed Gaza's domestic food systems, limited imports, and displaced populations away from available food sources and production systems.

Furthermore, aid sites have been used to exacerbate the killing of Palestinians. The Gaza Humanitarian Foundation (GHF), set up to replace UN aid distribution systems, is accused of the deaths of 1,400 people and the injury of 4,000 others. On July 19, 2025, one doctor cataloged a mass casualty where over 100 patients came into the emergency room with gunshot wounds after attempting to collect food and aid from GHF. Another round of mass casualties came in later that day, similarly, all with gunshot wounds, and after attempting to receive aid from GHF. On August 13, 2025, the doctor reported another mass casualty incident related to food distribution, where he treated over twenty patients in one day. Seventeen of the patients he treated suffered from gunshot wounds, five of whom were dead on arrival.[3]

Israel's attacks on civilian infrastructure and Palestinians attempting to access aid, with the assistance of arms exports from Canada, are in direct violation of Article 6's obligation to refrain from the destruction of "civilian objects and objects indispensable to the survival of the civilian population." Over 80% of the infrastructure in certain areas has been destroyed, with several reported drone strikes on residential blocks. Between 18 March and 9 April 2025, there were 224 Israeli strikes on residential areas. For 36 of those strikes, the only fatalities recorded were women and children. Reports have shown that Israeli forces "extensively and systematically" destroyed homes and civilian infrastructure "indispensable for […] survival."

C. Violations of the Right to Equality (Article 26)

The right to equality is one that is significant to many international human rights treaties and the international human rights system as a whole. The Covenant upholds the right to equality

[3] University of Chicago Law School Global Human Rights Clinic Interview with physicians working in Gaza.

in Articles 2, 3, and 26, which, among other things, guarantees equality with respect to race, religion, national origin, and sex. There is no requirement to show a discriminatory intent under international human rights law; what matters is whether one has been discriminated against in effect.

States have an obligation to both respect the right to equality, which requires refraining from discriminatory action and ensuring that laws comply with this principle, and to protect the right to equality, which requires that states positively act to prevent discrimination by non-state actors. States also have an obligation to promote, guarantee, and secure equality through taking "proactive steps to eliminate structural patterns of disadvantage and to further social inclusion".

a) Race and National Origin

Palestinians are a distinct national, ethnic, racial, or religious group who have been subject to severe discrimination in violation of Articles 2 and 26 of the Covenant. This has been confirmed by the International Court of Justice, which found that Israel responsible for apartheid through measures that physically and legally discriminate against Palestinians under its jurisdiction, and by the Commission of Inquiry, which found that Israel has committed genocide against Palestinians in the Gaza Strip with the specific intent to destroy the Palestinian group in Gaza. Israel has perpetuated this discrimination through practices of killings, arbitrary detentions, torture of detainees, imposition of conditions inimical to human life, and the prevention of births evidenced by Israel's attacks on reproductive facilities, which the Commission of Inquiry found demonstrated Israel's intent to impose measures that would fundamentally alter families and prevent births within the Palestinian population.

This Committee, the CERD Committee, and the Committee on Economic, Social, and Cultural Rights (ESCR Committee) have continuously recognized Israel's failure to ensure equal treatment of non-Jewish people within its territory and under its jurisdiction, even before the start of the war in Gaza. However, the war in Gaza has only exacerbated this inequality of treatment towards the Palestinian people.

While not the focus of this report, Canada has contributed to the discrimination against Palestinian peoples not only through the supply of arms to Israel, but also through the suppression of Palestinian protestors and human rights defenders advocating for the rights of Palestinians in its own territory. Irene Khan, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion, noted in a report to the United Nations General Assembly that Canada was amongst many countries arbitrarily detaining and

using excessive force by the police against pro-Palestinian demonstrators. The British Columbia Civil Liberties Association filed complaints against the Vancouver Police Department in response to the use of excessive force against pro-Palestinian demonstrators through military-grade pepper spray, standing on the backs of handcuffed individuals, and strangling. Canadian civil society organizations have also called on Canada to end discriminatory practices such as criminalization, professional discipline, and censure against academics and demonstrators who support Palestine, which an open letter signed by over 650 lawyers, law students, and professors across Canada warned was contributing to a "chilling effect" on freedom of expression.

b) Other Grounds of Inequality and Discrimination—Women, Children, Persons with Disabilities

While discrimination against Palestinians on the basis of race and nationality is a defining feature of the war in Gaza, its effects are inherently intersectional, producing particularly severe and disproportionate harms for women, children, and persons with disabilities.

i) Women

The unique needs and circumstances of women and girls are resulting in serious gendered harms and rights violations. More than 700,000 menstruating women and adolescent girls in Gaza are suffering from insufficient access to feminine hygiene products and inadequate sanitation facilities, including the necessary privacy to maintain their personal dignity. Women in Gaza have reported using unhygienic cloth, rags, and mattress scraps to manage their periods. The lack of adequate facilities has also impacted pregnant women. Humanitarian organization CARE reported that women in Gaza had experienced "a 300% increase in miscarriage due to the lack of neonatal and maternal health care in the region." Health workers have also reported an increase in premature births and excessive bleeding during pregnancies.

Sexual and gender-based violence has increased since the beginning of the conflict, with ongoing reports of sexual assault and violence against Palestinian women and girls by Israeli forces. Those held in detention are especially at risk, with reports of rape, strip searches conducted by male soldiers, and repeated threats of sexual violence. Israeli soldiers have taken degrading photos of female Palestinian detainees and posted them on social media. Given the cultural and religious norms within Palestinian communities, these experiences are especially harmful to the women and their families, which increases the likelihood that instances of sexual violence go unreported.

ii) Children

The conflict in Gaza has disproportionately impacted children, with severe consequences for their lives and health. The approximate number of children killed during the hostilities has surpassed 20,000, with at least 1,009 of these children being under the age of one. The Commission of Inquiry found evidence that Israel was directly targeting children, given the number of reports of head and chest gunshot wounds, likely only possible through intentional targeting. Further, the Commission concluded that the direct targeting of children by Israeli forces provided evidence of Israel's genocidal intent to destroy the future existence of the Palestinian people. As of April 2024, the war had left an estimated 19,000 children orphaned, with an additional 17,000 unaccompanied. Children fleeing crisis, especially those who are unaccompanied, are at heightened risk of exploitation, including child labor, abuse, and trafficking.

The health crisis in Gaza is also severe, with famine affecting thousands of children and health concerns, such as diarrhea, impetigo, and even polio, spreading rapidly due to deteriorated living conditions and restricted humanitarian aid. Cases of non-bloody diarrhea among children under five years old have risen 33-fold, while for children aged five and older, cases have increased 98-fold compared to 2022. Bloody diarrhea has surged 22-fold, pediculosis cases have grown eightfold, and impetigo cases have quadrupled compared to the same period in 2022.

iii) Persons with Disabilities

Palestinians with disabilities have also been disproportionately impacted by Israel's military activities in Gaza. Palestinians with disabilities in Gaza often face unique challenges when attempting to flee attacks or respond to evacuation orders, placing them at heightened risk of being left behind or subjected to attacks. These challenges are particularly acute for individuals who have been separated from their primary caregivers, lack access to assistive devices, or have not received adequate and accessible warnings or evacuation support. Israel's destruction of Gaza's medical infrastructure has also severely diminished the ability of persons with both new and existing disabilities to access necessary treatment and services. In February 2025, over 70 organizations asked the CRPD Committee to review the impacts of Canadian arms exports on the rights of Palestinians with disabilities.

D. Violations of the Right to Movement (Article 12)

Israel's widespread displacement campaign in Gaza, enabled by Canada's arms transfers, breaches Article 12 of the Covenant by unlawfully restricting the freedom of movement of Palestinians, by forcing repeated mass relocation, and cannot be justified under the limited exceptions permitted by the Covenant.

Article 12 of the Covenant guarantees every person lawfully within a State's territory the right to move freely and choose their residence without discrimination of any kind. A State must not forcibly displace individuals or compel them to relocate. Any restrictions on the right to movement must use the least intrusive means, be proportionate, be necessary, and be consistent with other rights in the Covenant. This is not the case with respect to Israel's military campaign in Gaza.

From October 2023 to June 2025, the Israeli military displaced 90% of Gaza's population, more than 1.9 million people. This displacement is recurring, with Palestinians being forced to relocate an average of 3–10 times since October 2023, as evacuation zones continue to shift.

One doctor interviewed by the GHRC recounted that many civilians she met were uprooted nearly once per week repeatedly for five or six weeks in a row, with some enduring displacement up to twelve times since October of 2023.[4] She noted that, "everyone is living in tents… the entire population has been displaced." The Commission of Inquiry found that the mass displacement of Palestinian people in Gaza amounted to war crimes related to cruel and inhumane treatment.

In many cases, Israeli attacks began either before civilians received evacuation orders or just hours afterwards, denying Palestinians a meaningful opportunity to flee. Sick, disabled, and elderly people faced a high risk of abandonment because they did not receive evacuation orders in an accessible way or simply could not physically evacuate in time. A disability rights activist with a visual impairment was killed in his home because he "did not receive evacuation information in a timely or accessible format." Additionally, evacuation orders often threatened to label anyone who remained in evacuation zones as terrorist accomplices, even though many sick, disabled, and elderly people simply could not leave.

Israel's forced displacement of Palestinians in Gaza cannot be justified under any of the Article 12(3) exceptions. Israel maintains that displacement and movement restrictions are necessary

[4] University of Chicago Law School Global Human Rights Clinic Interview with physicians working in Gaza.

military measures against Hamas. Officials claim evacuation directives intend to move civilians away from combat zones, framing them as proportionate responses. Under international humanitarian law (IHL), which applies in conflict and where relevant, is used as the *lex specialis* for interpretation, *Geneva Convention IV* and customary IHL prohibit individual or mass forcible transfers except where required for the security of the civilian population or for imperative military reasons. Even then, evacuations must be temporary and in satisfactory conditions of hygiene, health, safety, and family unity. Civilians who remain in place or decline to follow evacuation orders during armed conflict retain their protected civilian status.

In practice, Israel's systematic mass displacement operation, enforced using arms supplied by Canada, fails both the IHL criteria and Covenant standards for necessity, proportionality, and minimal intrusiveness. Israel's displacement orders repeatedly contained errors and did not give people enough time to reasonably flee.[5] The orders were often issued via text and social media, despite Israel's active destruction of Gaza's telecommunication network. Israel even released some evacuation orders only in English, despite many of Gaza's population speaking Arabic. According to HRW's analysis of 184 Israeli military evacuation orders and many satellite images, Israeli forces often designated specific routes or areas as "safe zones" for evacuation, only to later strike those very locations. Israel's designated safe zones also lacked basic human necessities, such as food, running water, bathrooms, and shelter.

These facts undermine Israel's claims of civilian protection and demonstrate that these displacements are indiscriminate and punitive, rather than narrowly tailored to legitimate security aims, as required under international law.

E. Right to Be Free from Arbitrary Arrest and Detention (Article 9)

Israel's use of security detention, particularly against children, civilians, and those exercising protected rights, constitutes a violation of Article 9 of the Covenant, which is facilitated in part by Canadian weapon exports.

Article 9 of the Covenant protects individuals from arbitrary arrest and detention, guarantees the right to challenge the lawfulness of deprivation of liberty, and affirms the fundamental right

[5] Human Rights Watch, "Hopeless Starving, and Besieged" (2024) ("Aside from the twenty-four-hour period provided to the UN on October 12, the longest time window identified by Human Rights Watch was given overnight on November 5, with 10 hours 25 minutes, and the shortest time window was 2 hours and 53 minutes, issued after the evacuation window had already begun on November 13. Of the 47 evacuation orders analyzed, 26 orders were posted online after the evacuation window had already begun.").

of liberty and security of a person. Detention must be reasonable, necessary, and proportionate in all circumstances. Security detention, often referred to as administrative detention, refers to detaining a person without a criminal charge on the premise that they may commit an offense in the future. Security detention is permissible only in the most exceptional cases, where strictly necessary to prevent a concrete and imminent threat, is limited in duration, and subject to effective judicial control. The State bears the burden of proving individualized necessity and secrecy of evidence. Incommunicado detention inherently renders detention arbitrary. Detention for the legitimate exercise of rights such as freedom of expression, association, or assembly is arbitrary per se.

Following October 7, 2023, Israel conducted mass administrative arrests and enforced disappearances using capabilities bolstered by arms supplied by Canada. This widespread use of administrative detention, particularly against children, reflects a systemic pattern of arbitrary deprivation of liberty in violation of Article 9. As of June 2025, the Israeli Prison Service ("IPS") held 10,550 detainees and prisoners on "security grounds," a broad category under IPS Ordinance 04.05.00 that encompasses any offense alleged to have a connection to state security, which is almost exclusively applied to Palestinians. These detainees are held without charge or trial and often based on undisclosed "secret evidence," preventing detainees or their counsel from knowing or contesting the grounds for detention, in direct violation of Article 9(2)–(4) of the Covenant and the right to judicial review. At the end of September 2025, at least 350 Palestinian children were detained in Israeli prisons under administrative detention without charge or trial. This use of administrative detention against children, absent individualized necessity and judicial safeguards, fails the necessity and proportionality obligations of Article 9, constituting arbitrary detention. Furthermore, many Palestinians were detained and interrogated *en masse* without legal representation for screening purposes and intelligence collection about hostages and tunnel locations. Several former detainees said they were held for remaining in areas under IDF evacuation orders.

Most detainees in Gaza are denied access to their families, effective legal representation, and judicial protection, while their relatives receive no information about their status or whereabouts. Palestinian women and children report that the IDF seized their husbands, fathers, and siblings from various parts of Gaza, leaving them with no information on their fate for weeks, months, or even longer. Contrary to international law, Israeli courts held that authorities are not required to disclose such information, a position that leaves no practical remedy to Palestinians in Gaza who do not even know if their loved ones are alive.

Israel, in violation of Article 9, relies on arrest and detention as tools to silence protected civic activity. Two healthcare workers interviewed by GHRC shared stories from Gazan colleagues about Al-Shifa Hospital staff members who were detained simply for being healthcare workers.[6] These scrub technicians, nurses, and physicians were tortured, beaten, and cut off from their families, including one nurse who was tortured for 53 days before being released.[7] Journalists, doctors and medical personnel, humanitarian workers, and human rights defenders legally present in Israel continue to be arrested and detained as punishment for the legitimate exercise of their rights to freedom of opinion, expression, assembly, association, and privacy.

Israel's use of the Incarceration of Unlawful Combatants Law as a basis for mass preventative detention operates outside the limits of lawful security detention under Article 9. Israel maintains that the Law authorizes the detention of individuals from Gaza to prevent security threats, arguing that such detention is preventative rather than punitive. However, such domestic laws are only permissible under the Covenant if their execution results in detention that is not arbitrary, which is not the case with respect to Israel's detention practices. Detention is imposed broadly and indefinitely, without individualized necessity or imminent threat. Proceedings rely on secret or undisclosed material inaccessible to detainees or counsel, and judicial review is perfunctory, based on ex parte security assessments.

Through its ongoing provision of arms, Canada is complicit in Israel's use of security detention against thousands of Palestinians, including civilians, humanitarian workers, medical staff, and children, converting what should be a narrowly tailored preventative measure into a system of arbitrary, punitive detention in violation of Article 9.

IV. CANADA'S FAILURE TO COMPLY WITH THE COVENANT

A. Canada's Arms Exports to Israel

In Canada, military exports are governed by a permit-based regime. Generally, Canadian exporters are required to apply for and obtain a permit from the government to export arms.

a) Direct Military Exports to Israel

In the months following October 7, 2023, as Israeli atrocities in Gaza escalated dramatically, so too did Canada's military support to Israel through arms exports. In the three months

[6] University of Chicago Law School Global Human Rights Clinic Interview with physicians working in Gaza (UC 0018, 0001).
[7] *Ibid.*

between October and December 2023 alone, the Canadian government authorized new permits totaling at least C$28.5 million (US$20.8 million) of military exports to Israel. In contrast, the total value of such permits issued in all of the previous year amounted to just over C$21 million (US$15.3 million).

Later, in March 2024, the Canadian government announced that it had stopped issuing new permits for arms exports to Israel since January 8, 2024. Canada was still maintaining this assertion a year later in March 2025, when it told the CRPD Committee during Canada's review that it had "suspended new permits for military items destined to Israel to allow for further review."[8] This assertion was later revealed to be false; documents obtained by the media showed that just the previous month, in February 2025, Canada issued two new permits for military exports to Israel worth a combined total of C$37.2 million (US$26.4 million). Canada later revealed that these permits relate to items for Israel's 'Iron Dome' missile system, which defends both civilian and military targets inside Israel, and generally acts as a shield for its attacks on Gaza. It is unknown if there are any other new permits for military exports to Israel that have been issued since January 8, 2024.

Further, existing permits that had already been issued before January 8, 2024, have largely remained in effect. In September 2024, the Minister of Foreign Affairs announced that Canada suspended about 30 existing permits for weapons exports to Israel—but this represented only a fraction of existing active permits (approximately 200), and the government gave no information about what permits were allowed to remain active and why. It also chose to suspend the 30 permits rather than cancel them, which means they can be reactivated at any time, and without any notice to the public.

Actual shipping data confirms that arms exports from Canada to Israel continue, regardless of how they are being authorized. Researchers analyzing publicly available data from shipping documents and tax records identified hundreds of shipments of military-related equipment from Canada to Israel between October 2023 and July 2025.

b) The 'US Loophole' and Indirect Arms Exports to Israel

While these direct exports to Israel are a serious cause for concern, Canada's indirect military exports to Israel pose a potentially far greater problem. This is because a massive loophole in Canada's military exports regime allows permit-free movement of almost all military items to

[8] UN Web TV, 769th Meeting, 32nd Session, CRPD (11 March 2025), *See statement of Deputy Permanent Representative Patricia McCullagh at around 35:15.*

the United States, which is Israel's largest arms supplier. This means that military exports that would otherwise be denied a permit for export directly to Israel can simply be exported to a buyer in the US and then re-exported onward to Israel from there. There is mounting evidence that a substantial volume of Canadian military exports has, in fact, followed this route to Israel throughout the most recent war in Gaza, a problem that Canada has done nothing to address.

Pursuant to diplomatic agreements, Canada has implemented special regulations that exempt most military exports to the US from requiring individual permits as they otherwise would. The US receives nearly half of all Canadian military exports and supplies approximately 70% of Israel's total arms imports.

Further, Canada has no legal mechanism enabling it to control or restrict the re-export of Canadian military exports onward from the United States to third countries like Israel. In contrast, any reexport of permit-free US military exports to Canada onward to a third country requires prior approval of the US Directorate of Defense Trade Controls. Canada does not impose similar reexport controls reciprocally.

Although there is scant publicly available information on Canadian arms exports to Israel routed through the US, they are likely far more significant than direct exports. For instance, in just one transaction announced on August 13, 2024, the Secretary of State approved the sale to Israel of over 50,000 120mm high-explosive mortar cartridges worth US$61.1 million, to be purchased from a Canadian manufacturer. The Israeli military has deployed 120mm mortars during its operations in Gaza since 2009, including during the most recent war.

According to media reports, the Canadian government reacted to this announcement by writing a letter to the Canadian manufacturer, to "request" that it "temporarily refrain" from exporting the items. However, there is no indication that it made any move to affirmatively block the transaction.

Canada does review some military exports to the US for approval. Even in these instances, it continues to allow military exports to the US that are ultimately destined for Israel. For example, all major military sales to the US Department of Defense go through the Canadian Commercial Corporation (CCC), a government agency. The CCC purports to explicitly incorporate human rights commitments into all its operations. Nevertheless, in March 2025, the CCC approved a sale of 155mm artillery shells to the US intended for onward reexport to Israel, despite identifying incidents and allegations of Israeli abuses with this type of munition.

Canada is also an integral part of the US military industry's supply chain and provides many key parts and components for US-made weapons. There is evidence that Canadian-made parts and components have gone into some of the key US-supplied military equipment used by Israel to commit atrocities in Gaza. For instance:

- The F-35 Joint Strike Fighter is a multirole fighter aircraft that Israeli forces have used in the ongoing bombardment of Gaza. An April 2018 study commissioned by manufacturer Lockheed Martin stated that "there is $2.3 million USD [approximately C$3.2 million] worth of Canadian components on every F-35 jet manufactured." In January 2023, the Canadian Minister of National Defense confirmed that every F-35 contains Canadian components. In June 2024, Israel announced an order for 25 more F-35s in a deal valued at US$3 billion.

Parts and components are important not only in building new aircraft but also in maintaining current ones, which represent roughly 70% of the total cost of an aircraft. Military expert Josh Paul notes that "modern fighter jets rely on immense amounts of continuous maintenance," estimating that for every one hour of flying, a fighter jet requires three hours of maintenance. "If you cut off the supply of spare parts, particularly on something like the F-35s, which relies on a global just-in-time delivery chain, it would very quickly become unflyable." The F-35 Program's head of logistics and sustainment, Major General Donald Carpenter, confirmed in April 2024 that Israel's fleet was being supported by shipments of replacement parts from partner nations.

- Canadian companies also provide aerospace parts for Boeing's F-15 fighter, which Israel has used to bombard Gaza. Canadian companies provide various components for its manufacture. In April 2024, the US approved the sale of 50 F-15s to Israel for more than $18 billion USD.
- Boeing also manufactures the AH-64 Apache attack helicopter, which Israel has used in its air assault on Gaza. Canadian companies provide various parts for the aircraft. Israel has requested 12 new AH-64 Apaches from the US, a request that has reportedly been "advanced and given priority."

Tracking data appears to confirm that significant quantities of arms have moved from Canada to Israel through the US during the most recent war. A recent report tracked 34 shipments from Canadian suppliers to US F-35 manufacturer Lockheed Martin between April 2024 and August 2025, each with corresponding shipments with identical or similar shipping labels going from

Lockheed Martin to Israel just days later. The report further tracked 433 shipments of explosives moving through Canada from the Polish state-owned giant Nitro-Chem to US Army Ammunition Plants. Nitro-Chem's TNT shipments to the US have been linked to US-made munitions used by Israel in Gaza.

c) Canada's Shifting Position

There is a great deal that is still unknown about precisely what Canadian military exports have been going to Israel since the most recent war started. Canada's policy and practices regarding military exports to Israel remain shrouded in secrecy, further obfuscated by government statements that are frequently contradictory, confusing, misleading, and occasionally downright false.

For example, in December 2023, Canada stated that it had not issued any military export permits to Israel since 7 October 2023. As noted above, the reality was that military export permits were being issued at accelerating rates. When this came out, the government shifted to asserting that only "non-lethal" military exports were being approved—even though this has no legal significance under either Canadian or international law, as non-lethal military items can still facilitate lethal acts. In March 2024, Canada announced that it had ceased issuing new arms export permits to Israel since January 8, 2024. It maintained this assertion for a while, even as at least two new permits were issued in February 2025. When information of the new permits came out, the government then shifted to claiming that permits were not being issued for items that "could be used in the current conflict in Gaza"—without specifying whether such items could instead be used outside of Gaza to facilitate the commission of international human rights violations inside Gaza—to say nothing of the escalating state violence in the West Bank or the military strikes against Lebanon and Iran.

Canada has shown the same evasiveness to UN treaty bodies as it has to the public. In Canada's October 2024 review by the CEDAW Committee, the Committee pressed Canada specifically on the issue of indirect military exports to Israel. Noting that Canada "engages in the indirect flow of military exports to Israel through the USA," the Committee asked what steps Canada was taking "to ensure that arms sold to the US or other countries are not transferred to Israel and used in the violation of the rights of women and girls in Gaza."[9] Canada responded evasively by stating that all export permit applications are reviewed under human rights

[9] UN Web TV, 2103rd Meeting, 89th Session, CEDAW (16 October 2024). *See Marion Bethel at around 1:11:51.*

standards, even if they are to the US. It did not mention the fact that most military exports from Canada to the US do not require an export permit application in the first place.[10]

The evasive answers continued in Canada's March 2025 review by the CRPD Committee. Aside from falsely stating that Canada had suspended new arms export permits to Israel, Canada also replied to a query about indirect arms exports to Israel through the US by stating that "goods exported from Canada transiting through the United States to a third country—so we're talking about transit or transshipment here—require a Canadian export permit for the third country."[11] However, mere transit or transshipment through the US is different from goods being exported to the US and then reexported from the US to a third country, such as Israel—often as a component of a larger weapons system. Committee members expressed frustration with Canada's evasiveness. "Your answer appears a little deceptive [Spanish: 'tramposa']," remarked one Committee member.[12] "There seems to be one major loophole in your answer," echoed another.[13]

B. Canada's Extraterritorial Obligations under the ICCPR

The ICJ has consistently held that Israel has extraterritorial obligations to uphold the Covenant in Gaza, due to its legal status as an occupying power. This extraterritorial application of the Covenant is clearly articulated in the Committee's *General Comment No. 31*, and has also been endorsed in leading jurisprudence, including *Al-Skeini v the United Kingdom*.

Canada, as a State Party to the Covenant, also has extraterritorial obligations where its conduct contributes to human rights violations abroad. Significant academic commentary points to the need for states to be held accountable for extraterritorial complicity of human rights violations, and as an enabler of Israel's systematic attacks on civilians in Gaza through continued arms exports, Canada has played an implicit role in facilitating catastrophic human rights violations beyond its state borders.

In *Munaf v Romania*, this Committee held that states may be held responsible for violations of the Covenant beyond their borders "if they are a link in the causal chain" that enables these

[10] A transcript of the relevant portions of the dialogue from the CEDAW Committee session is attached as Appendix B.
[11] UN Web TV, 769th Meeting, 32nd Session, CRPD (11 March 2025), *See Patricia McCullagh at around 57:20.*
[12] UN Web TV, 769th Meeting, 32nd Session, CRPD (11 March 2025), *See Amalia Gamio at around 51:30. Translated as "I wasn't convinced by the answer you gave."*
[13] UN Web TV, 769th Meeting, 32nd Session, CRPD (11 March 2025), *See Markus Schefer at around 47:49.* A transcript of the relevant portions of the dialogue from the CRPD Committee's session is attached as Appendix C.

violations, and when the risk of violations is a "necessary and foreseeable" result of their conduct. Violations must also be judged by the knowledge the State Party had at the time. Canada had extensive knowledge through media coverage, repeated warnings by the UN, and humanitarian reports that arms were being used to facilitate a genocide in Gaza. Despite this knowledge, Canada continued to export arms—both directly and indirectly—acting as a causal link to enable foreseeable deprivations of civil and political rights in Gaza.

Canada's extraterritorial obligations with respect to arms exports have also been reiterated by the UN Human Rights Council, including in their 2025 report, which stated that "states must take a variety of legal, institutional, and practical measures to effectively govern arms transfers and activities related to them," and drew attention to complicity norms in relation to the Covenant, whereby states have responsibilities as accessories to the commission of a violation by a third state or non-state actor.

Canada's conduct also raises serious concerns regarding its obligation to prevent genocide under the *Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)* and customary international law. As a *jus cogens* norm and *erga omnes* obligation, the duty to prevent genocide arises when a state knows of, or should have known of, the existence of a serious risk of genocide. In *Bosnia and Herzegovina v. Serbia and Montenegro,* the ICJ held that possession of "information, voicing serious concern" was sufficient to establish knowledge of the risk of genocide, therefore triggering the duty to prevent.

Leading NGOs, genocide scholars, and UN bodies have issued repeated warnings since October 2023 of atrocities in Gaza. These warnings of war crimes quickly became warnings of impending genocide—with civilians in Gaza broadcasting the horrific conditions, targeted attacks, and grievous violations of international human rights law on social media. In an October 2025 Report, Francesca Albanese described the ongoing genocide in Palestine as a "live-streamed atrocity" and "a collective crime, sustained by the complicity of influential Third States that have enabled longstanding systemic violations of international law by Israel."

In November 2024, the UN Special Committee to Investigate Israeli Practices Affecting the Human Rights of Palestinian People stated that "Israel's warfare in Gaza is consistent with the characteristics of genocide," and urged member states to "uphold their legal obligations to prevent and stop Israel's violations of international law and hold it accountable." This clear risk of genocide triggered a duty by States, including Canada, to prevent it.

Taken together, these alarm bells from various international bodies and civil society reflect the urgent concern that the risk of genocide in Gaza was apparent, urgent, and in plain sight, and that Canada knew, or should have known, of such risks and immediately halted the flow of arms to Israel. Canada has unfortunately failed to do so.

C. The Obligation to Regulate Corporate Conduct

As this Committee has stated in *Basem Ahmed Issa Yassin et al. v. Canada*, "there are situations where a State party has an obligation to ensure that rights under the Covenant are not impaired by extraterritorial activities conducted by enterprises under its jurisdiction." While the extent of these obligations was not determined in the case, the Committee stated that extraterritorial obligations could be extended in circumstances where alleged violations were as serious as those cited in the case, namely restricting freedom of movement (Article 12), subjection to torture (Article 7), or denying minority cultural rights (Article 27).

Other UN treaty bodies have also recognized the obligation of states to regulate corporations to prevent human rights violations. The CRPD Committee has observed that States have a duty to actively prevent non-state actors and private persons, including businesses, from impeding persons with disabilities' ability to enjoy and exercise their human rights. The CEDAW Committee has similarly stated that Canada's obligations under CEDAW require it to protect women from discrimination by non-state actors, including corporations. The ESCR Committee and the Committee on the Rights of the Child (CRC Committee) have also both recognized the responsibility of States to regulate the actions of corporations that may negatively impact human rights in any part of the world.

The Inter-American Commission on Human Rights took a similar approach in its thematic report, *Business and Human Rights: Inter-American Standards*, explaining that when the State has knowledge of specific facts attributable to some business under its jurisdiction that threatens or violates human rights and the State tolerates or acquiesces to such conduct, this may result in the State's indirect responsibility for violations of human rights law.

Canada has consistently demonstrated inadequate oversight of its companies' international human rights impacts. Multiple UN monitoring bodies have expressed significant concerns about Canadian corporations' activities abroad and criticized Canada's lack of effective response. These include the CEDAW Committee, the ESCR Committee, the CERD Committee, and the CRC Committee.

For example, in its 2017 concluding observations, the CERD Committee urged Canada to enhance the accountability mechanisms for corporations operating overseas to prevent human rights violations. Similarly, in its 2016 concluding observations, the ESCR Committee recommended that Canada adopt a legal framework to hold corporations accountable for violations of economic, social, and cultural rights in their operations abroad.

UN mandate holders have also highlighted Canada's ongoing regulatory deficiencies.[14] As the Special Rapporteur on the Rights of Indigenous Peoples has noted:

> "The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate, and the State has extraterritorial obligations to take steps to prevent and redress infringements of these rights committed abroad by business entities over which it exercises control."[15]

D. Obligations with Respect to Indirect Military Exports to Israel

In the case at bar, Canada's duty to regulate corporate conduct requires Canada to cease arms transfers to Israel, whether it is direct or indirect. Arms transfers create a clear risk of international law violations, including the prohibition of genocide, which means that States Parties' obligations under the Covenant and *Genocide Convention* with respect to military exports may apply regardless of whether such exports arrive at their ultimate destination directly or indirectly.

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[14] Mandates of Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on obligations relating to enjoyment of a safe, clean, healthy, sustainable environment, and the Special Rapporteur of the rights of indigenous peoples, AL CAN 7/2021 (November 2021); Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to development; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to food; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the human rights to safe drinking water and sanitation, AL CAN 5/2020, (July 2020); Mandates of the Special Rapporteur on the rights of indigenous peoples; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, AL CAN 1/2022 (June 2022).

[15] Mandates of the Special Rapporteur on the rights of indigenous peoples; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, AL CAN 1/2022 (June 2022).

A number of other UN international human rights bodies have affirmed this. For example, in a statement of 20 June 2024, a group of several UN Special Rapporteurs, Independent Experts, and Working Groups, emphasized that the obligation to cease military exports to Israel extends to "indirect transfers through intermediary countries that could ultimately be used by Israeli forces, particularly in the ongoing attacks on Gaza."

Canada recently underwent its periodic reviews under the CEDAW and CRPD in October 2024 and March 2025, respectively, during which both Committees raised concerns regarding the State's continued direct and indirect transfer of arms to Israel.

In its Concluding Observations, the CEDAW Committee expressed concern over "direct or indirect arms transfers by the State party or by private companies under its jurisdiction to third countries, including Israel, for use in conflict zones where they may facilitate violations of women's and girls' human rights as well as of international humanitarian law, notably in Gaza." It urged Canada to implement a transparent accountability mechanism to assess such transfers.

More recently, in its March 2025 Concluding Observations on the combined second and third periodic reports of Canada, the CRPD Committee remained "concerned that despite assurances by [Canada] that its arms exports and control regime policies are compliant with international and humanitarian law, the exemption of certain export permits for items, parts and components shipped to the United States of America to integrate into larger weapons systems, which are then exported to other countries, may facilitate the violation of the rights of persons with disabilities and jeopardize their access to humanitarian assistance." The Committee recommended that Canada conduct a comprehensive analysis to identify and cease its "export of items to other countries, including to the United States, for their integration into larger weapons systems, indirect exports or re-exports" used to facilitate or commit grave human rights violations against persons with disabilities.

Similarly, under its early warning and urgent action procedure, the CERD Committee in May 2025 sent a letter to Canada raising concerns about "significant gaps in Canada's legal framework" that allow for the indirect export of Canadian arms to Israel via the US. The Committee noted that such indirect arms exports "would amount to breaches of the State party's obligations under the ICERD," and requested that Canada provide a response, including information on measures Canada has adopted to prevent direct or indirect arms transfers to

Israel by Canada or by private companies under Canadian jurisdiction. There is no evidence that Canada has taken any such steps.

Leaked internal documents suggest that Canada fears that addressing the gaps in its arms exports regime would upset its US counterparts, but this does not excuse its failure to uphold its international human rights obligations. Given the findings of the Commission of Inquiry regarding genocide committed by Israel against Palestinians in Gaza, coupled with substantial evidence of international human rights violations, Canada has obligations as a third state to prevent arms transfers, whether directly or indirectly, to Israel. This military assistance through arms transfers is proven to be ongoing and violates Canada's international human rights legal obligations, including under the ICCPR.

V. RECOMMENDATIONS

In light of the foregoing, the authors request that the Committee issue the following recommendations to Canada:

A. Ensure compliance with its obligations under the Covenant and other international human rights law, including the *Genocide Convention*, by:

- Suspending the issuance of all new permits for arms exports directly to Israel;
- Closing the current loophole for indirect arms exports to Israel by imposing export controls for all military exports to all countries, or, alternatively, controls on the re-export of Canadian military exports to a third country;
- Enhancing transparency by publicly communicating information about risk assessments in export permit approval decisions;
- Introducing mandatory human rights due diligence (HRDD) legislation for the arms sector;
- Conducting a review of laws, regulations, and policies for arms exports to prohibit the transfer of arms to all other places where they may be used to commit international human rights violations.

B. Call for the respect of the ceasefire in Gaza, and compliance with the International Court of Justice Advisory Opinion of 19 July 2024 on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem.

C. Ensure immediate, impartial, and independent investigations into violations of all allegations of civil and political rights in Gaza, including the role of third-party states in contributing to these violations.

VI. APPENDIX A

Affidavit of Judy Korecky, sworn 20 August 2024, enclosed in PDF version.

VII. APPENDIX B

CEDAW Review of Canada - Transcript of Country Dialogue (Excerpt)

89th Session, Committee on the Elimination of Discrimination against Women (CEDAW)

Full video available here: https://webtv.un.org/en/asset/k10/k10pecn9gn

Article 12

Rangita Da Silva de Alwis (Sri Lanka):

42:00: In closing, your Excellencies, I want to go back to where I started, with the Women, Peace, and Security Agenda and the CEDAW's GR 30. Minister Joly has made the primacy of reproductive rights and health her priority, and Canada's moral leadership on global women's rights makes a difference in the world. We bear witness to conflict-related reproductive rights violations in many conflict-affected regions. This needs Canada's urgent attention. Pregnant women face food insecurity and other essential objects indispensable for women's survival. In 2019, UN Security Council Resolution 2467 embraced a survivor-centric approach, and you have spoken about that in terms of your work in Canada. How would you include psycho-social support for survivors according to 2417 on food insecurity, 2475 on disability and conflict and access to essential services.

*note: this question was not addressed in the immediate follow-up by the state party

Ms. Genoveva Tisheva (Bulgaria):

51:14: Thank you very much, Madam Chair. I would like to go further of the question of Mrs. Da Silva de Alwis and also to congratulate first the state party, the Government of Canada, for the progress made on this issue, for the example that it set, and also for the contribution to international law and justice concerning women's rights. My questions will be in light of the principles and objectives of the CEDAW convention, which are from the very beginning strengthening international peace and security, cooperation between states, but also general and complete disarmament, in particular nuclear disarmament and the strict and effective international control. And also it is affirmed as we all know by the Beijing Platform for Action section E, but also Beijing Declaration, which is a resolution. So in that respect, **I would like that in parallel of the successes, of the achievements, that there is extensive information on the role of the state party for acts affecting human rights of women in Gaza, specifically their health and reproductive rights as a result of the arm trade and support of Canada to Israeli military forces since the end of 2023. Such actions include, in addition to random killing of pregnant women, but also violations of their reproductive rights, maternal, obstetric, and neonatal care they have the right to. Also attacks and displacement of pregnant women, destruction of infrastructure and health facilities, malnutrition of women and the newborn, lack of access to healthcare, violations of pregnant women's rights at all stages, including giving birth, neonatal care, premature birth, and also deaths of newborns. So my questions are how does Canada regulate corporations in its jurisdiction which contribute to human rights violation of women in Gaza**

through the arms trade, which makes the state party complicit to what has happened, to the actions that are made in Gaza to women? And also what are the steps for the country to refrain from continuing providing arms to the Israeli forces in the immediate future?

Government of Canada (Jennifer Keeling, Deputy Director, Human Rights and Freedoms Division, International Security and Political Affairs Branch, Global Affairs Canada):

1:03:08: Thank you very much. So you've mentioned the feminist foreign policy and the feminist international assistance policy a few times, so I'll kind of skip over that, but to note that regarding sexual and reproductive health and rights, in June of 2019, Canada made a 10 year commitment to global health and rights. And this commitment was announced by the Prime Minister at the Women Deliver Conference which Canada hosted in Vancouver, BC. Through that 10-year commitment, Canada is providing an average of $1.4 billion annually to support women's, children's, and adolescent's health around the world, of which $700 million is allocated to comprehensive sexual and reproductive health and rights. Canada's sexual and reproductive health and right investment make a comprehensive approach with a specific focus on five key neglected or underfunded areas including family planning and contraception, safe abortion services and post abortion care, comprehensive sexuality education, advocacy, and the prevention and response to sexual and gender-based violence.

With respect to humanitarian assistance in conflict situations, in 2022 and 2023, Canada provided $1.3 billion Canadian dollars in humanitarian assistance in line with Canada's gender equality and humanitarian action sub-policy. And gender equality considerations were integrated into approximately 99% of these humanitarian assistance projects, with the exception of funding for humanitarian logistics operations. This level of gender equality integration continues to be a priority for Canada in 2024. Under Foundations for Peace, Canada's National Action Plan on Women, Peace and Security - 2023 to 2029, the Government of Canada is committed to promoting and supporting women's participation in decision making and ensuring that women are meaningfully included throughout humanitarian action.

1:05.03: I'll turn quickly to the points about Israel and Gaza. And so **Canada has one of the strongest export control systems in the world. And the respect for human rights is enshrined in our legislation and it is a cornerstone of Canada's export controls regime. All export permits application for controlled items are reviewed on a case-by-case basis under Canada's robust risk assessment framework, including against the Arms Trade Treaty criteria, which are enshrined in Canada's Export and Import Permits Act. The Minister of Foreign Affairs will deny export permit applications if she determines that there is a substantial risk that the item could be used to commit or facilitate serious violations of international humanitarian law, international human rights law, or serious acts of gender-based violence or violence against women and children. Since January 8, 2024, the Government of Canada has not approved new export arms permits to Israel and this remains the government's approach. Taking into account the rapidly evolving situation on the ground, Canada suspended a number of export permits for military items destined to Israel during the summer.**

Article 13
Marion Bethel (Bahamas):

1:11:51: And finally, I want to just look at two extraterritorial obligations of Canada that have been briefly mentioned. One is in regard to the deep sea bed mining and ask how does Canada hold deep sea bed mining companies accountable for environmental damage to oceans, marine life, which inevitably impacts negatively the lives and livelihoods of women in the Pacific region and violates their human rights under the Convention? And the issue of Gaza has already been mentioned and what I'd like to put forward here is that **alternate reports indicate that Canada engages in the indirect flow of military exports to Israel through the USA, even though it has suspended many of the permits and licenses to do so. But there is an indirect flow of military exports. What measures is Canada taking to ensure that arms sold to the US or other countries are not transferred to Israel and used in the violation of the rights of women and girls in Gaza?**

Government of Canada (GAC - Daniel Loutfi, First Secretary, Permanent Mission of Canada to the United Nations, Geneva):

1:25:02: Thank you. So with respect to responsible business practice, I believe the question was specific to one sector, but I'm going to answer more generally because these issues arise in a number of sectors and Canada's approach is not sector specific, but takes a broader approach. Canada takes a balanced approach to responsible business conduct, which includes preventative measures, legislation in select areas, and access to remedy in the form of non-judicial dispute settlement mechanisms. Canada's approach to dispute resolution is founded on two mechanisms that reflect the objectives of both the UN Guiding Principles on Business and Human Rights and also the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. Canada's approach aims in part at reducing barriers and providing victims of alleged business-related abuses, include women and historically marginalized groups, access to remedy mechanisms to address grievances. Canada has two non-judicial dispute resolution mechanisms. We have a National Contact Point for Responsible Business Conduct and there's an Ombudsperson for Responsible Enterprise. So briefly the National Contact Point offers dispute resolution for a wide range of issues covered by the OECD Guidelines that includes employment-industrial relations, human rights, environment and bribery and the national contact point can facilitate dialogue or mediation to help resolve complaints involving multinational enterprises either operating in or from Canada. And that's in any sector. The Ombudsperson for Responsible Enterprises is mandated to review complaints regarding alleged human rights abuses arising from a Canadian company's operation abroad. And this is more specific to sector, so this is in the garment, mining, and oil and gas sectors. The Ombudsperson can also undertake a review on their own initiative.

Canadian companies who are involved in a dispute resolution process are expected to participate in good faith. If a company has not acted in good faith, the National Contact Point or the Ombudsperson can recommend implementing trade measures. And so these can include recommending the withdrawal of certain forms of trade promotion support that are otherwise offered by the Government of Canada, as well as the denial of future support from trade entities, such as Export and Development Canada, so that involves specific support that supports Canadian companies with exports abroad.

1:27:18: **With respect um to the follow-up question on Israel, um, you know, there uh… the… I believe that the… the aspects of our response that emphasized that no new arms export permits to Israel um have been um… focused on. I also want to reiterate that wherever the export permits are happen- … wherever the exports are happening, even if they are**

through the US, all export permit applications of controlled items are reviewed on a case-by-case basis, including against Arms Trade Treaty criteria, which are enshrined in Canadian legislation. And again I'll just reiterate that the Minister of Foreign Affairs will deny export permit applications if she determines that there is a substantial risk that the item could be used to commit or facilitate serious violations of international humanitarian law, international human rights law, or serious acts of gender-based violence or violence against women and children.

VIII. APPENDIX C

CRPD Review of Canada – Transcript of Country Dialogue

(Excerpt)

32nd Session, 768th and 769th Meetings, Committee on the Rights of Persons with Disabilities (CRPD)

Full video of 768th Meeting available here: https://webtv.un.org/en/asset/k1n/k1n09gnpy1

Full video of 769th Meeting available here: https://webtv.un.org/en/asset/k1j/k1jvnn43r1

Day 1 (768th Meeting):

Article 32

Muhannad Salah Al-Azzeh

02:04:17: Thank you, Madam Chair, for giving me the floor and apologies again for the confusion. Maybe it's the nostalgia for the old methodology. Now my question is for sure on cluster one on 33, 32 sorry international cooperation. And I would like to ask if in Canada you any place have, clear markers in order to track your international cooperation programs, first to make sure that they are inclusive for persons with disabilities. If yes, please elaborate on these markers and if you have some percentages or data to tell us the percentage of inclusivity in these programs in particular regarding funds for other countries, this would be great. ***And second, how you make sure that all forms of your international cooperation, including in military aspects for example, does not make any harm for persons with disabilities. In particular when it comes for example for arms and similar equipment, because we learned from some resources about campaigns, advocacy campaigns, and reports they indicate kind of misuse for these equipment and that they had their impact on of course everybody, but mostly also on persons with disabilities***.

*Note: this question was not addressed in the immediate follow-up by the state party.

Day 2 (769th Meeting):

Article 11

Amalia Gamio Rios

28:22: Thank you very much, chairperson, and thank you to the distinguished delegation for the answers they've provided today. I'll try and be very brief but unfortunately, I have to come back to Article 10 because I am concerned about the fact that in practice deaths of

persons with disabilities are increasing in this assisted dying context, 60% of them are women and you can add to that people with psychosocial and intellectual disabilities. Sometimes these deaths take place in a private context in a secret fashion. Sometimes the family is only advised subsequently that the family member has been subject to this, and these deaths that are never investigated. I'd like to know what's happening with that. ***On Article 11, I'd like to ask what measures are being taken by the state to avoid the funding of sending weapons damaging the Gazan population, and what is happening in terms of the route through the United States of that which gives rise to hundreds of deaths.***

Government of Canada (GAC – Patricia Lyn McCullagh, Minister-Counsellor and Deputy Permanent Representative, Permanent Mission of Canada to the United Nations, Geneva):

35:02: Thank you very much, Patricia McCullough, Global Affairs Canada. I'm responding to the specific question on measures taken by Canada to avoid sending weapons to Gaza...um... As you may know Canada has one of the strongest export control systems in the world with respect to human rights, which are enshrined in our legislation and cornerstone of our export control regime. All export permit applications for controlled items are reviewed on a case-by-case basis under Canada's robust risk assessment framework. Including against the Arms Trade Treaty criteria...ah... which are enshrined in Canada's Export and Import Permits Act. The Minister of Foreign Affairs will in fact deny export permit applications if there is a substantial risk that an item could be used to commit or facilitate serious violations of international human rights law. And just to add that in response to the ongoing conflict in Gaza-Israel, Canada has suspended new permits for military items destined to Israel to allow for further review into whether the authorized items could be used in a manner inconsistent with Canada's foreign policy objectives. Thank you.

Marcus Schefer

47:41: **Thank you, chair.** ***I would like first to thank the delegation for their answer on arms export. However, there seems to be one major loophole in your answer. As far as I understand the individualized assessment does not take place in arms exports to the United States. However, there is evidence that the United States then re-exports certain arms in violation of the Arms Trade Treaty of the Geneva Convention, and maybe even of the Genocide Convention. What is the State Party doing to prevent such re-export from the side of the US?***

Amalia Gamio Rios

51:24: ***I will be brief, thank you chair. On article 11, I already asked a question on this, but I wasn't convinced by the answer you gave. Canada continues to export arms and weapons components to the United States, and the United States is the main shipper of weapons to Israel. So, the components that go into manufacturing those weapons go to the States and then end up in Israel. So, what are you doing about that point?***

Government of Canada (GAC – Patricia Lyn McCullagh, Minister-Counsellor and Deputy Permanent Representative, Permanent Mission of Canada to the United Nations, Geneva):

56:35: Thank you. Ah...in response to the question about Canada conforming with international law, I'd like to say that Canada is firmly committed to complying with and strengthening international law. With respect to arms transfers, the applicable areas of law are international humanitarian law, the treaty law on the arms trade, and international human rights law. And as I stated earlier Canada's export controls regime is fully compliant with the Arms Trade Treaty as well as with international humanitarian law and human rights law. With your specific...ah...question and in respect to your specific question vice chair, on the United States. I want to emphasize that in this regard goods exported from Canada transiting through the United States to a third country, so we're talking about transit or transshipment here, require a Canadian export permit for the third country when they do leave Canada, thank you.

Marcus Schefer

2:57:00: Thank you chair on behalf of my task force colleagues on the committee I would like to express our gratitude to the Canadian delegation for their positive engagement in this constructive dialogue. I also express the committee's gratitude to the significant commitment and invaluable input from the Canadian Human Rights Commission and organizations of persons with disabilities and other civil society representatives. ***It was a positive dialogue, but it would have been more fruitful if there was less reliance on prepared statements that frequently did not answer or go to the heart of our questions, we will only be able to implement the Convention if we actively engage with its logic.***

21 June 2024

Ms. Irene Khan, UN Special Rapporteur on Freedom of Opinion and Expression
Ms. Gina Romero, UN Special Rapporteur on Freedom of Peaceful Assembly & Association

Dear Special Rapporteurs,

On behalf of Canadian Lawyers for International Human Rights (CLAIHR)[1], we are writing to draw your urgent attention to the growing repression of fundamental freedoms of opinion, expression, assembly and association in Canada in relation to the current situation in Israel and Palestine.

We drafted this letter with the purpose of alerting you to these alarming realities. We have since become aware of the specific call for submissions to the thematic report of the Special Rapporteur on Freedom of Expression in Challenging Times. We believe the content of our letter is highly pertinent to this thematic report and would ask you to consider it for this purpose as well, despite it exceeding the recommended word limit. We are also of the view that the violations of fundamental freedoms of opinion, expression, assembly and association in Canada, a country often regarded as exemplary in these matters, are both so widespread and so egregious in relation to the current situation in Israel and Palestine as to merit a more extensive review.

Executive Summary

Since 7 October 2023, Canada has witnessed the rapid deterioration of the fundamental freedoms of opinion, expression, assembly and association. The repression of these freedoms has specifically targeted, and disproportionately impacted, individuals expressing pro-Palestinian views and groups advocating for Palestinian human rights and liberation.

Over the last eight months, we at CLAIHR have observed with increasing concern a widespread pattern of repression and censorship of pro-Palestinian opinion, expression, assembly and association across Canada. This has included the criminalization of political speech and the

[1]Canadian Lawyers for International Human Rights (CLAIHR), federally incorporated in 1992, is a non-governmental charitable organization comprised of lawyers, law students and legal academics, among others, working to promote international human rights within and in connection to Canada.

dangerous conflation of anti-Zionism with anti-Semitism and support for terrorism, leading to the repression of legitimate criticism of Israeli government policies, Israeli military action, and the Zionist political movement, leading in some cases to hate crime charges against pro-Palestinian advocates. Repression of pro-Palestinian protests, demonstrations and other forms of assemblies has been similarly widespread, and marked by discriminatory law enforcement, including against those engaging in civil disobedience and violence against peaceful protestors. Significantly, pro-Israel assemblies and protests have not been met with the same repression and violence.

Finally, pro-Palestinian views in Canada are increasingly met with discriminatory and unjust censorship and restriction in public institutions, including government agencies, national media, and universities, with individuals being punished or threatened with punishment for expressions of Palestinian solidarity. A dangerous pattern has emerged whereby legitimate criticism of Israeli government policies, Israeli military action, and the Zionist political movement, and expressions of support for the struggle for liberation of the Palestinian people are conflated with anti-Semitism and support for terrorism, which in turn has a chilling effect on the rights of Canadians to freely express their opinions and mobilize accordingly.

We are deeply troubled by this pattern of repression, discrimination and censorship impacting the fundamental freedoms of Canadians, and call your urgent attention to this matter.

Overview

While such issues predate October 2023,[2] Canada has witnessed the rapid deterioration of fundamental freedoms over the past eight months in relation to pro-Palestinian opinions and expressions of support. Canadian governments at the federal, provincial and local levels have been infringing on rights to free expression, opinion, assembly and association in a range of ways, including:

- Criminalising political speech;
- Repressing protest;
- Discriminatory law enforcement;
- Discrimination and censorship in public institutions.

The above-noted infringements have disproportionately targeted and impacted pro-Palestinian opinions and expressions of support, creating a chilling effect on the rights of Canadians to freely engage in open discourse regarding the situation in Israel and Palestine, freely express support for and solidarity with the Palestinian people, and freely criticize Israeli government policies,

[2] See for example, the 2022 report by the Arab Canadian Lawyers Association "Anti-Palestinian Racism: Naming, Framing and Manifestations" and the 2022 report by Independent Jewish Voices "Unveiling the Chilly Climate: The Suppression of Speech on Palestine in Canada".

Israeli military action, and the Zionist political movement. These infringements have increasingly created an atmosphere in which pro-Palestinian sentiment in Canada is stifled, suppressed, censored, restricted, penalized, or met with the threat of punishment.

Having closely observed this issue since October 2023, we at CLAIHR are not aware of evidence of similar trends of state repression of pro-Israel protest and expression. In fact, pro-Israel groups and organizations advocating against anti-Semitism receive markedly different treatment than pro-Palestinian groups, and have rightfully been able to freely exercise the full extent of their rights to expression, opinion, assembly and association. Critics of the State of Israel and supporters of Palestinian liberation are entitled to exactly the same rights, and the Canadian government has an obligation to guarantee these rights and adhere to the principles of non-discrimination and equality.

The ability of Canadians to exercise these freedoms is critical, given the historic atrocities being carried out. As UN experts warned[3] following the ruling of the International Court of Justice (ICJ) on the situation in Gaza in February: "Given the urgency to step up collective efforts to prevent genocidal acts, war crimes and crimes against humanity against Palestinians in Gaza, the full and unobstructed enjoyment of these fundamental freedoms is ever more crucial." Canadian civil society, protest movements and individuals must be able to contribute to global efforts to achieve a permanent ceasefire and pursue justice for atrocities.

We also note and unequivocally object to efforts to impede the rights of Canadians on the basis that pro-Palestinian expressions and advocacy are in any way inherently dangerous, violent or anti-Semitic. While the government must fulfil its obligation to protect individuals from any and all violence or incitement to violence, including any violence targeting the Jewish community, law enforcement must be carried out in a non-discriminatory, proportionate and lawful way. The Canadian government must ensure that such isolated instances do not lead to the broad criminalization of human rights defenders, abuses of state power or the repression of pro-Palestinian expression and advocacy, and must fulfill its obligation to guarantee and protect the rights to freedom of expression and peaceful protest of all Canadians.

What follows are some of the examples of this dangerous repression of freedoms of expression, opinion, assembly and association in Canada, all of which contravene Canada's international human rights obligations.

[3] United Nations Office of the High Commissioner for Human Rights (UN OHCHR), *Israel/oPT: Respecting and enabling civil society, human rights defenders and peaceful protests is vital for achieving sustainable ceasefire and just peace, say UN experts,* 13 February 2024.

Criminalization of Political Speech and Discriminatory Law Enforcement

Since October 2023, there has been a concerning trend towards criminalization of pro-Palestinian expression in Canada, including the misuse of hate-motivated criminal charges.

Canadian criminal law provides for increased sanctions for offences that are "motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor."[4] As a result, law enforcement has the power to designate offences as being motivated by hate.

On multiple occasions Canadian police have wrongly applied these designations to speech that expressed support for Palestinians or criticized individuals and corporations for their support of Israel's actions in Gaza and the West Bank.

A prominent example of this was when a group of activists in Toronto were criminally charged[5] in November 2023 for putting posters on the windows of a major bookstore chain and splashing paint on the sidewalk. The posters included a photo of the company's CEO with the text "Funding Genocide." Police added a hate designation to the charges, with a police spokesperson saying the vandalism was being treated as a suspected hate-motivated offence[6] "because the victim was specifically targeted because they are [or are perceived to be] Jewish, which meets the criteria of an identifiable group." In fact, the company CEO is the head[7] of the HESEG Foundation for Lone Soldiers, an organisation that gives free tuition to people who serve in the Israeli military, which is criticised as a means to recruit[8] non-Israeli Jewish people to volunteer to serve in the Israeli military and why the bookstore has been the subject of a boycott[9] for several years. The speech on the posters targeted the CEO not because of her identity or religion but because of her explicit support for the Israeli military.

The content of this speech is political expression and should therefore be legally protected, not criminalised under the false pretence that it is motivated by hate. Conflating legitimate criticism of corporate supporters of the Israeli military with identity-based hate is a worrying trend that is having a chilling effect on political expression in Canada.

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[4] Criminal Code, RSC 1985, c C-46, s 718.2(a)(i).
[5] CTV News, *11 people now charged in hate-motivated mischief investigation at Toronto Indigo store*, 23 November 2023.
[6] The Globe and Mail, *Toronto police charge 11 in Indigo store vandalism, report spike in hate incidents*, 28 November 2023.
[7] CTV News, *11 people now charged in hate-motivated mischief investigation at Toronto Indigo store*, 23 November 2023.
[8] *Ibid.*
[9] CBC, *Indigo bookstore vandalism sparks debate over definition of antisemitism,* 4 December 2023.

In Alberta, the Calgary Police Service similarly applied a "hate motivation" designation when charging a protest leader in Calgary with the criminal offence of Causing a Disturbance. According to police[10], the activist was addressing a crowd over a public address system and "proceeded to repeatedly use an anti-Semitic phrase while encouraging the crowd to follow along." Police would not disclose the phrase in question but organizers of the protest said the chant[11] was "From the River to the Sea, Palestine will be free." A group of Canadian legal scholars have written a detailed legal analysis of this phrase in the context of the Canadian legal system and concluded[12] that "it is clear that a criminal law response in terms of charging those chanting 'from the River to the Sea, Palestine will be free' with hate speech or hate motivated offences under the [Criminal] Code is or would be a gross overreach of the criminal law and one which erodes the [Canadian Charter of Rights and Freedoms] protected fundamental right to freedom of speech." We also note that courts in a number of countries, including in the Netherlands[13] and Germany[14], have determined that the phrase in question is legally protected speech.

This analysis aligns with the position and commentary of the UN Human Rights Committee regarding the right to freedom of assembly. This includes the obligation to ensure that any criminal sanctions against organizers and participants of a peaceful assembly are not the result of offences that are overly broad or ambiguous.[15] We also note the high threshold set out for defining restrictions on freedom of expression and incitement to hatred and the need to consider the context and intent of the expression as set out in the Rabat Plan of Action[16]. Bringing "hate motivation" criminal charges against protest leaders and organizers on the basis of a commonly used phrase open to subjective interpretation is overly broad and ambiguous, and constitutes an unjust infringement of the right to peaceful assembly in support of the Palestinian people.

Further, criminal and administrative sanctions for unlawful conduct related to peaceful assembly must be proportionate and non-discriminatory in nature,[17] and law enforcement's response to

[10] The City of Calgary Newsroom, *One man charged after weekend protest*, 7 November 2023.
[11] CBC, *Questions raised after arrest of Calgary protester on hate-motivated disturbance charge*, 10 November 2023.
[12] University of Toronto, *"From the River to the Sea: Palestine will be Free:" A Primer on History, Context, and Legalities in Canada*, 18 December 2023.
[13] Novara Media, *Dutch Court Rules 'From the River to the Sea' Protected Speech and Not Antisemitic*, 18 October 2023.
[14] Legal Tribunal Online, *District Court on "From the River to the Sea": When in doubt, freedom of expression*, 7 June 2024.
[15] UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, UN Doc CCPR/C/GC/37, para 67.
[16] UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred*, UN Doc A/HRC/22/17/Add.4.
[17] UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, UN Doc CCPR/C/GC/37, para 67.

civil disobedience in support of Palestine in Canada has been neither.[18] For example, the arrests of the Toronto activists[19] charged with gluing posters and splashing paint at the previously mentioned bookstore took the form of unannounced home raids in the middle of the night that involved arresting people still in bed, handcuffing family members and knocking doors off their hinges, the type of operation usually reserved for serious criminal offences such as "gun or drug busts". A policing expert estimated[20] that these operations generally cost "hundreds of thousands of dollars, if not millions," further demonstrating a disproportionate response against pro-Palestinian activists and supporters engaging in civil disobedience. Academics have raised alarm[21] about the anti-Palestinian bias demonstrated by police: "It's driven by pervasive anti-Palestinian sentiment among government officials. And it undermines the very idea of hate speech law when police apply the charges so selectively to serve political interests."

Repression of Protest

Furthermore, there is a clear pattern of discriminatory behaviour on the part of Canadian law enforcement at protests and demonstrations in support of the Palestinian people. Discriminatory and disproportionate policing of pro-Palestine assemblies has included the use of excessive force against protestors, with documented instances of Toronto police kneeling on a protestor's neck[22] and inflicting violent treatment during pro-Palestine protests[23] and against activists participating in civil disobedience[24].

In British Columbia, various Indigenous and human rights organisations have called for accountability for the violence and excessive force[25] used by police against pro-Palestinian activists engaged in peaceful civil disobedience at a railway blockade. In Montreal, riot police used tear gas[26] against a crowd of demonstrators at McGill University. In Edmonton, police used tear gas and hit students with batons, and an activist was hospitalized during a violent dismantling of a pro-Palestinian encampment[27] at the University of Alberta.

These actions are contrary to the views expressed by the UN Human Rights Committee that

[18] Collective civil disobedience and direct action is covered by the freedom of assembly provided it is "non-violent", a criterion the UN Human Rights Committee has indicated includes damage to property that is not "serious." See UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, UN Doc CCPR/C/GC/37, paras 15, 16.
[19] The Breach, *Inside the 'shocking' police operation targeting pro-Palestine activists in Toronto,* 17 June 2024.
[20] The Breach, *In stunning pre-dawn raids, Toronto police 'terrorize' Palestine activists*, 24 November 2023.
[21] The Breach, *Inside the 'shocking' police operation targeting pro-Palestine activists in Toronto,* 17 June 2024.
[22] CBC, *Video appears to show officer with knee on protestor's neck, police say it didn't happen,* 12 December 2023.
[23] The Grind, *Violent Crackdown at Land Day March*, 31 March 2024.
[24] Toronto Star, *Pro-Palestinian protesters and police clash at Scotiabank HQ*, November 18, 2023.
[25] British Columbia Civil Liberties Association (BCCLA), *Pro-Palestine community members detail police brutality and suppression; continue calls for arms embargo with Israel*, 18 June 2024.
[26] Montreal Gazette, *Police spray tear gas, break up pro-Palestinian occupation of McGill building*, 7 June 2024.
[27] The Canadian Press, *Police crackdown on Gaza protest encampments on campus sparks outcry*, 11 May 2024.

freedom of assembly obligations require law enforcement to use no more force than is required for a legitimate purpose during an assembly.[28]

Police in Ottawa have also repeatedly issued significant fines[29] to activists who use megaphones at protests calling for a ceasefire in Gaza, contrary to the views expressed by the UN Human Rights Committee that participants in peaceful assemblies should be allowed to use equipment such as megaphones and sound systems to reach their audience.[30]

There have also been attempts to prohibit expressions of pro-Palestine solidarity in several Canadian municipalities. For example, the mayor of the city of Vaughan proposed a bylaw[31] that would ban protests outside schools, places of worship, hospitals and childcare facilities, which has been criticized by civil liberties experts[32] because it risks leading to a crackdown on "lawful, constitutionally protected expression, peaceful assembly and protest rights." In Toronto, police have banned protests and congregations of individuals[33] on a highway overpass that was the site of various protests, and police have arrested those in breach of the ban. The police justification[34] for the ban was that the protest "has left many in the surrounding Jewish community feeling intimidated." However, the Canadian Civil Liberties Association has argued[35] that police should not be the ones making such decisions and that a complete ban is disproportionate: "The feelings and the concerns and fears that people might have don't necessarily amount to a real safety issue and a prohibition [...] that can lead to arrest is a very serious restriction on freedom of expression."

International human rights law requires that any restrictions on freedoms of expression and assembly be necessary and proportionate.[36] The Human Rights Committee has made clear that: "The possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly."[37]

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[28] UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, UN Doc CCPR/C/GC/37, para 78.
[29] CTV News, *Ottawa Bylaw hands out noise fines to Palestine protesters, organizers vow legal action*, 25 December 2023.
[30] UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, UN Doc CCPR/C/GC/37, para 58.
[31] CBC, *Vaughan mayor proposes banning protests near places of worship, schools and hospitals*, 18 March 2024.
[32] *Ibid*.
[33] CTV News, *3 arrested at Avenue Road bridge following ban on demonstrations*, 13 January 2024.
[34] *Ibid.*
[35] CityNews, *CCLA speaks on the rights of protestors following Avenue Rd bridge arrests*, 15 January 2024.
[36] UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, UN Doc CCPR/C/GC/37, para 36.
[37] UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, UN Doc CCPR/C/GC/37, para 27.

Furthermore, the physical space of an assembly should generally be allowed and the prohibition of a specific assembly must be a last resort.[38]

This environment of repression of protest should be seen in light of the Concluding observations on Canada's most recent periodic report of the UN Human Rights Committee, which in 2015 had already expressed concerns about the increased repression of mass protest and excessive use of force by law enforcement at protests. The Committee stated that Canada "should renew its traditional commitment to the promotion and protection of the exercise of freedom of assembly, association and expression….The State party should effectively protect the exercise of the freedom of peaceful assembly and avoid restrictions that are not proportionate."[39]

Discrimination and Censorship in Public Institutions

The past months have also seen a rise in censorship and suppression of pro-Palestine expression in Canadian public institutions.

A prominent example has been the banning of the keffiyeh in the Legislative Assembly of Ontario. When Member of Provincial Parliament (MPP) Sarah Jama refused to remove her keffiyeh, she was "named",[40] which resulted in the denial of her ability to vote on matters before the Assembly, participate in committee proceedings and perform other duties as an elected official, such as table notices of motions and petitions. Other MPPs were also removed[41] from the legislature for wearing the keffiyeh and the ban has resulted in people being denied access[42] to the legislature to meet with their elected officials, such as a group that had been scheduled to speak with the Leader of the Official Opposition about anti-Palestinian racism.

One of the public spaces that has seen some of the most significant repression of freedoms of opinion, expression, assembly and association is academic institutions and university campuses. The Academic Alliance Against Antisemitism, Racism, Colonialism and Censorship in Canada (ARC) issued a statement[43] in February 2024 expressing grave concern "that our university administrations are ill-equipped to address the pressures being placed on them by various third parties (including governments, the media, and organizations) to suppress academic freedom", and warned that[44] "threats of funding cuts, personal intimidation tactics, doxing, harassment, and defamation will become severe in the following weeks, possibly months."

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[38] UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, UN Doc CCPR/C/GC/37, para 37.
[39] UN Human Rights Committee, *Concluding observations on the sixth periodic report of Canada,* CCPR/C/CAN/CO/6.
[40] CBC, *MPP Sarah Jama defies order to remove keffiyeh at Queen's Park,* 25 April 2024.
[41] Now Toronto, *'Jill stands for what's right,' Some Ontarians are defending MPP Jill Andrew after she was kicked out of the legislature for wearing a keffiyeh,* 9 May 2024.
[42] CTV News, *'It's discriminatory': Individuals refused entry to Ontario legislature for wearing keffiyeh*, 23 April 2024.
[43] Academic Alliance Against Antisemitism, Racism, Colonialism and Censorship in Canada (ARC), *Academic Freedoms in Canada and Critical Speech on Palestine and Israe*l, 6 February 2024.
[44] *Ibid.*

Suppression of pro-Palestine speech and threats to academic freedom and scholarship predates the most recent round of atrocities in Gaza. In its 2022 Report entitled Unveiling the Chilly Climate – The Suppression of Speech on Palestine in Canada,[45] Independent Jewish Voices Canada warned that "the suppression of speech on Palestine has significant consequences in academia where it threatens principles of academic freedom and encourages surveillance of critical intellectuals and activists and of the oppositional knowledge that they produce."

A few of the more prominent examples include:

- York University issued a statement[46] condemning a "Statement of Solidarity with Palestine"[47] released by three student unions, calling their statement "inflammatory." The University demanded[48] a full retraction, a public statement that the unions "not endorse or support antisemitism" and the immediate resignation of all student union executives involved, in addition to threatening sanctions.

- Toronto Metropolitan University condemned[49] a letter signed by law students calling on the Law Faculty to take action in response to the attack on Gaza. The University characterised the letter as expressing "sentiments of Antisemitism and intolerance" and hired a retired judge to conduct an external review and determine whether the students' words breached the student code of conduct, which he concluded they did not[50]. Some of the letter's signatories have accused the administration of defaming them[51] by wrongly characterising their petition as antisemitic and of ignoring their pleas for help as they endured Islamophobia and racism from students, staff and the public, while many faced reprisals[52] including the rescinding of job offers and calls to be blacklisted in the legal community.

- McGill University sought an injunction[53] to halt the ratification of a student union Policy Against Genocide in Palestine that, among other demands, called on the university to condemn the bombing of Gaza and cut ties with corporations "complicit in genocide, settler-colonialism, apartheid or ethnic cleansing against Palestinians." In 2022, the

[45] Independent Jewish Voices Canada, *Unveiling the Chilly Climate: the Suppression of Speech on Palestine in Canad*a, October 2022.
[46] YorkU, *A statement on behalf of York University*, 13 October 2023.
[47] YFS, YUGSA & GCSU/AÉCG, *Statement of Solidarity with Palestine,* 12 October 2023.
[48] YorkU, *Community update: York's response to three student unions' harmful statement*, 20 October 2023.
[49] Toronto Metropolitan University, *Lincoln Alexander School of Law's statement in response to the Open Letter*, 23 October 2023.
[50] Law Times, *TMU external review report criticizes legal community, chides students for ineffective advocacy,* 3 June 2024
[51] Toronto Star, *Inside the crisis at TMU's law school: It started with a letter of support for Palestinians. Now students and staff feel betrayed and donors are pulling out*, 15 January 2024.
[52] Toronto Star, *Legal community calls out the backlash against TMU law students behind pro-Palestinian letter*, 6 November 2023.
[53] Montreal Gazette, *Judge suspends adoption of pro-Palestinian policy by McGill student union*, 22 November 2023.

university had also threatened to sanction[54] its student union because of its adoption in a student referendum of a Palestine Solidarity Policy that said the union shall join an international campaign to boycott all companies and institutions that are "complicit in settler-colonial apartheid against Palestinians."

- The University of Manitoba suspended[55] the president of the Nursing Students' Association after university officials deemed her social media posts criticising the Israeli military's actions in Gaza to be "antisemitic." The decision was overturned[56] by a disciplinary panel that rejected the discriminatory claims underpinning her suspension.

- The University of Ottawa suspended[57] a resident physician over pro-Palestinian social media posts after he was the target of online harassment and his posts were called antisemitic by an associate professor of family medicine at the University. He was later reinstated but declined to return.

- Queen's University removed doctors[58] from their positions in deciding medical school residency placements "based on concerns that were brought …. about the perception of potential bias, based on the petition circulated by the Health Workers Alliance for Palestine." The petition called for a ceasefire, an end to the destruction of Gaza's health-care system and an end to the "ongoing occupation of Palestine and the apartheid system."

As UN human rights experts warned[59] in February 2024: "It is further concerning that freedom of expression and peaceful assembly is being limited in academic settings where it often takes the form of unjustified expulsions or dismissals, arrests and persecution of academics and students for expressing support for Palestinians' rights in Gaza. Universities, natural incubators of free thought, must not devolve into havens of obscurantism." This is unfortunately what is now happening in Canada.

Places of employment have also seen considerable repression of pro-Palestine expression. Two of the most alarming examples in the public sector are related to the aforementioned letter written by law students at Toronto Metropolitan University (TMU). The Public Prosecution Service of Canada - responsible for all federal prosecutions in Canada - threatened investigation

[54] The Canadian Press, *McGill threatens to sanction student union over pro-Palestine policy*, 5 April 2022.
[55] Penticton Herald, *University of Manitoba nursing student suspended, accused of antisemitic posts*, 30 November 2023.
[56] Penticton Herald, *Suspension lifted for nursing student accused of antisemitic posts*, 30 January 2024.
[57] CBC, *U of O doctor suspended for pro-Palestinian posts says he's been reinstated, won't go back*, 20 January 2024.
[58] The Breach, *'Abuse of power': Hospitals, med schools crack down on Palestine advocacy*, 29 February 2024.
[59] UN OHCHR, *Israel/oPt: Enabling human rights defenders and peaceful protests vital for achieving ceasefire and lasting peace, say UN experts*, 13 February 2024.

and disciplinary action[60] against employees who signed the letter or were among the more than 600 legal professionals who signed another letter in support of the student signatories.

In a similar move, the Ontario Ministry of the Attorney General (MAG) adopted a policy[61] that TMU students would have to sign an attestation that they were not among the signatories to the letter before being considered eligible for employment. The policy states that the signatories of the letter used their platform as law students to "express antisemitic views, display intolerance, and excuse terrorism." The British Columbia Civil Liberties Association condemned[62] the chilling impact this policy has on constitutionally-protected freedom of expression and highlighted the fact that MAG's responsibility for the judiciary raised concerns "with impacts to public confidence in the impartiality and fairness of the Court." As stated by a TMU law professor[63]: "For public bodies – bodies with express mandates related to racial justice – to institutionalize racist hiring practices and punish the few brave enough to speak out against the humanitarian catastrophe in Gaza, this reaches a whole new level of legal and moral turpitude."

Failure to Facilitate a Rights-Enabling Environment

In addition to the above-described repression and failure to protect Canadians from human rights violations, there have been a significant number of alarming comments made by public officials and political leaders that demean and disparage human rights defenders. These comments are highly concerning given the environment of repression of the fundamental rights to freedom of opinion, expression, assembly and association in Canada, in express violation of state obligations to protect such rights. They also tend to legitimise violence, intolerance, discrimination and disinformation, and signal an environment of impunity for state actors that engage in abuse or repression of human rights defenders.

We acknowledge the high level of protection afforded by international human rights law to political speech, including speech that many may find unduly critical or even offensive.[64] However, we highlight the importance of politicians refraining from statements that may hinder the full realisation of the freedoms of opinion, expression, assembly and association in Canada. Similarly, in an environment where, as shown in this letter, repression has become the norm, we are alarmed by the spread of misinformation and disparaging remarks against human rights defenders and others for exercising their right to freedom of expression, especially in cases

[60] The Orchard, *Canada's director of public prosecutions threatens to discipline employees, including students, who signed pro-Palestine letters*, 23 May 2024.
[61] The Breach, *Ontario government screened law students who signed pro-Palestine letter*, 21 December 2023.
[62] BCCLA, *Letter to the Ontario Ministry of the Attorney General RE: Policy violating employee freedom of expression is discriminatory and not in the public interest*, 19 December 2023.
[63] The Breach, *Ontario government screened law students who signed pro-Palestine letter*, 21 December 2023.
[64] UN OHCHR, *2021 Joint Declaration on Politicians and Public Officials and Freedom of Expression*, 20 October 2021.

where these individuals are facing abuse by state officials - such as via criminalization and censorship.

As noted by UN experts[65] in their February 2024 statement, state officials have an obligation to respect and enable civil society, human rights defenders and peaceful protests, particularly in light of the International Court of Justice's recent ruling ordering Israel to prevent and not to commit acts of genocide against Palestinians in Gaza.

Similarly, the Inter-American Commission on Human Rights (IACHR) and its Special Rapporteurships on Freedom of Expression (RELE) and on Economic, Social, Cultural and Environmental Rights (REDESCA) have recently called on the United States[66] to ensure respect for the rights to freedom of expression and peaceful assembly, and academic freedom, in the context of mass university encampments in support of Palestine. For the reasons stated in this letter, such a call should equally be addressed to Canada, where encampments across the country have faced attempts at repression[67], including universities that have called in police to dismantle peaceful encampments or have applied for court orders that would compel police to remove or restrain them.

As expressed in the 2021 Joint Declaration on Politicians and Public Officials and Freedom of Expression[68], this is part of a State's positive obligation to "create an enabling environment for freedom of expression and the right to information". The joint declaration recommends that politicians and public officials refrain from making statements "likely to promote intolerance, discrimination or dis/misinformation" and "not intentionally make false statements attacking the integrity of [...] human rights defenders."

As highlighted by the UN experts[69] in February 2024, some countries have imposed undue restrictions against pro-Palestinian expression: "States have sought to justify these restrictions by referring to risks related to incitement to hatred and 'glorification' or 'support of terrorism,' and potential risks to national security or public order. This approach is not only arbitrary, but it also dehumanizes Palestinians by unjustly linking them as a whole to criminal endeavours and terrorism. Moreover, it discredits their legitimate quest for freedom and rights by portraying it as an unlawful undertaking."

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[65] UN OHCHR, *Israel/oPt: Enabling human rights defenders and peaceful protests vital for achieving ceasefire and lasting peace, say UN experts*, 13 February 2024.
[66] The Organization of American States, *IACHR: United States must respect peaceful protest and academic freedom on campuses*, 9 May 2024.
[67] The Conversation, *By clearing protest encampments, universities put property over people,* 19 June 2024.
[68] UN OHCHR, *2021 Joint Declaration on Politicians and Public Officials and Freedom of Expression,* 20 October 2021.
[69] UN OHCHR, *Israel/oPt: Enabling human rights defenders and peaceful protests vital for achieving ceasefire and lasting peace, say UN experts*, 13 February 2024.

Canada has not been an exception to this and we have repeatedly witnessed politicians and public officials making statements that have maligned and disparaged human rights defenders, engaging in potentially anti-Palestinian discriminatory expression and exacerbating the already alarming situation of freedom of expression regarding violations of human rights in Palestine. The following are a few of the salient examples of such actions and statements:

- Politicians and public officials have engaged in widespread demonization of protests in support of Palestinian human rights and conflated them with support for or celebration of the 7 October 2023 Hamas-led attacks and terrorism:
    - Ontario Premier Doug Ford referred to pro-Palestine protests[70] as "hate rallies";
    - Vancouver Mayor Ken Sim denounced protests[71] and equated a rally in support of Gaza with the "glorifying of the indiscriminate violence (...), including the murder, kidnapping, and rape of innocent Israeli civilians";
    - Toronto Mayor Olivia Chow "unequivocally" denounced protestors and referred to protests[72] as a "rally to support Hamas," which she claimed was unsanctioned and called on police to investigate. Ontario law does not require a permit[73] to carry out peaceful protests;
    - Members of the federal Conservative Party demanded police charge[74] anyone in Canada who is "cheerleading the recent killing of more than 1,300 in Israel";
    - Member of the Ontario Legislature Lisa MacLeod characterised pro-Palestinian protestors as pro-Hamas and pro-terror on social media and posted an epithet for a chokehold along with language suggesting violence[75] be used against them.
- Sarah Jama, a member of the Ontario Legislature was censured and effectively silenced[76] for her pro-Palestinian activism and statements. She was expelled from her political party's caucus and censured by the Legislature, which prevents her from participating in debates, a key duty of her role as an elected official. She was also disparaged by the Ontario Premier[77], who stated that she had a "well-documented history of antisemitism"

[70] Doug Ford on X, "*The hate rallies celebrating the kidnapping and slaughtering of innocent Israeli people by terrorists are reprehensible and disgusting. They have no place in Ontario. Now more than ever, we stand with Israel and affirm its right to defend itself and its people.*" 8 October 2023.
[71] CTV News, *Police needed to keep peace at pro-Palestinian rally in Vancouver*, 9 October 2023.
[72] Yahoo News Canada, *'This is irresponsible from Olivia Chow': Toronto mayor criticized, 'admits mistake' in confusion over Palestine rally*, 11 October 2023.
[73] Steps to Justice: Your guide to law in Ontario, *I'm going to a protest. What do I need to know?,* 31 July 2020.
[74] The Globe and Mail, *Rallies raise question of whether Canada should have a law against public cheering of terrorism*, 15 October 2023.
[75] Lisa McLeod on X, *"I think it's time we bring out Canada's secret deterrence weapon from retirement and remind everyone that the Shawinigan Handshake can and will restore order. Cc @kinsellawarren"* 3 March 2024.
[76] The Canadian Press, *Hamilton MPP kicked out of NDP caucus, censured by legislature*, 23 October 2023.
[77] *Ibid.*

and supports the "rape and murder of innocent Jewish people."

- A government cabinet minister responsible for post-secondary education in British Columbia attempted to interfere with the operations of higher education institutions, a move criticized[78] by leading academic freedom organisations. The minister met with the leadership of a community college, resulting in a teacher's termination, despite an investigation that found that his speech on Palestine was "not clearly outside the bounds of protected expression." This same government minister resigned from the provincial cabinet after making anti-Palestinian racist comments[79], saying that before the existence of the State of Israel there was just a "crappy piece of land with nothing on it."

In April 2024, the Canadian House of Commons passed a unanimous motion[80] that it "unequivocally condemn[s] antisemitism, and in particular reject[s] the idea that Jewish Canadians are responsible for the actions of the State of Israel." While a welcome act regarding the State's obligation to protect human rights, in contrast, public officials have largely failed to condemn numerous examples of acts of violence[81] and discrimination against Palestine supporters, such as an incident where a man was arrested after threatening such supporters with a nail gun[82].

In this context, statements and actions such as the examples given above by politicians and public officials further exacerbate the chilling climate activists and peaceful protesters face. They can serve to legitimise racist and intolerant speech within broader society, making it even more unsafe for advocates, while reinforcing State impunity for human rights violations through censorship and criminalization. Such double standards risk creating a deleterious environment where freedom of expression and peaceful protest are condemned by the State, while violence, harm and threats against those protesting are met with silence.

We acknowledge the rise in antisemitism, islamophobia and racism (specifically anti-Arab and anti-Palestinian racism) and the obligation of States, including Canada, to take appropriate actions to curtail this. We are, however, deeply concerned by the pattern of criminalization and repression of freedom of opinion, expression, assembly, and association. As highlighted[83] by UN experts, "[c]oncerns related to risks of potential anti-Semitism have also been used as a justification by some States to ban and criminalise peaceful assemblies and expressions in support of Palestinians' rights."

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[78] Vancouver Sun, *Selina Robinson criticized for comments about Langara instructor who praised Hamas attack*, 1 February 2024.
[79] CityNews, *Calls grow for B.C. MLA Selina Robinson to resign after days of controversial Israel comments*, 2 February 2024.
[80] Toronto Star, *Jewish Canadians can't be responsible for Israeli government's actions, MPs unanimously vote*, 19 April 2024.
[81] The Maple, *A Timeline Of Anti-Palestinian Violence And Threats In Canada*, 14 March 2024.
[82] CTV News, *Man who allegedly fired nail gun at protest in Thornhill, Ont. was motivated by hate: police*, 8 March 2024.
[83] UN OHCHR, *Israel/oPt: Enabling human rights defenders and peaceful protests vital for achieving ceasefire and lasting peace, say UN experts*, 13 February 2024.

We are aware of the serious risks and violence that the Canadian Jewish community has faced both historically and today, and we recognize that the Canadian government is obliged to create conditions where all communities can live free of discrimination and to curtail hate speech. International human rights law requires the State to strike a careful balance between the principle of equality and non-discrimination for all people, and the right to freedom of opinion and expression that protects the right to hold opinions and to seek, receive and impart information and ideas. This balance has, today, been lost in Canada and the current environment is one whereby the State has not only failed to enable freedom of expression in support of Palestine, but statements and actions by politicians and public officials have seriously exacerbated an already dangerous situation, resulting in precisely the kind of "rhetoric against and scapegoating of human rights defenders and groups at risk of discrimination, including by politicians and public officials, which chills freedom of expression, thereby reducing the diversity of information and ideas in society and misleading citizens" that was warned against by the Joint Declaration on Politicians and Public Officials and Freedom of Expression[84].

The extent and severity of these attacks on freedom of pro-Palestinian speech are dramatic and have worsened since October 2023. Only weeks after the Hamas-led attacks, the British Columbia Civil Liberties Association released a statement[85] on attempts to suppress support for the people of Palestine and warned of "the chilling effect that irresponsible statements and actions from government officials will have on the free exercise of Charter-protected rights in Canada."

Conclusion

CLAIHR submits this report on systematic violations in Canada of freedom of opinion, expression, assembly and association in relation to the situation in Israel and Palestine, particularly regarding State actions that have resulted in the suppression of freedom of speech, criminalization of human rights defenders and the erosion of the environment within which activists, civil society and human rights defenders can exercise their rights to freedom of expression and peaceful assembly.

This report focuses in particular on the role of State officials, institutions and political leaders and the impact their actions have had on the right to freedom of expression and peaceful assembly. It provides factual information and representative examples of the following:

- Dangerous trends regarding the actions and failures to act of Canada in this context;

- Violations of the rights to freedom of expression and peaceful assembly within Canada, particularly as they have been created, perpetuated and/or sanctioned by State actions;

[84] UN OHCHR, *2021 Joint Declaration on Politicians and Public Officials and Freedom of Expression,* 20 October 2021.
[85] BCCLA, *BCCLA statement on attempts to suppress support for the people of Palestine*, 25 October 2023.

- The failure of the State to properly act and protect the human rights of groups at significant risk of discrimination, violence and incitement of violence, in particular, Jewish, Muslim, Arab and pro-Palestinian groups and individuals;

- The lack of measures from the State to properly protect freedom of expression and peaceful assembly;

- The actions of State officials and political leaders, which have resulted in the criminalization of political speech, repression of protest, discriminatory law enforcement, and discrimination, censorship in public institutions, and erosion of an enabling environment for freedom of speech, discrimination and misinformation.

The facts outlined in this report reveal a pattern of Canada consistently failing to meet its international human rights obligations with respect to the fundamental freedoms of opinion, expression, assembly and association in support of Palestine and Palestinians. We urge you to use your mandates to call on Canada to:

1. Immediately end all State and State-sanctioned violations of the rights to freedom of opinion, expression, assembly and association, and to live free from discrimination;

2. Provide appropriate remedies for such violations;

3. Take immediate measures to protect the rights to freedom of opinion, expression, assembly and association;

4. Take immediate measures to protect individuals and groups from discrimination, violence and incitement to violence, in accordance with international human rights law, and to refrain from weaponizing this obligation against human rights defenders;

5. Uphold its commitment to the rights to freedom of opinion, expression, assembly and association, and take immediate measures to counter disinformation and discrimination, particularly as a result of the expressions of politicians and public officials, in accordance with international human rights law;

6. Promote an environment where these fundamental freedoms are respected and the rights they confer freely exercised.

Respectfully,

Canadian Lawyers for International Human Rights

CLAIHR
Canadian Lawyers For International Human Rights

Investigating and Prosecuting Forced Migrant Labour at the International Criminal Court

Submission for the Office of the Prosecutor's Policy on Slavery Crimes

30 April 2024

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I. Introduction

This commentary from the Canadian Lawyers for International Human Rights (CLAIHR)[1] draws from the unique dynamics and experiences brought on by migrant labour programs in Canada to illustrate the particular factors indicating forced migrant labour. It concludes by linking these factors to the prosecution of forced migrant labour under the crime against humanity of enslavement in the *Rome Statute of the International Criminal Court* (ICC).

The definition and elements of "enslavement" under Article 7(2)(c) of the *Rome Statute* require that the "perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty."[2] The ICC Elements of Crimes report explicitly states that:

> It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.[3]

[1] Canadian Lawyers for International Human Rights (CLAIHR), federally incorporated in 1992, is a non-governmental charitable organization comprised of lawyers, law students and legal academics, among others, working to promote international human rights within and in connection to Canada.

[2] *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002) ("Rome Statute") at Art. 7(2)(c); International Criminal Court, Elements of Crimes, Art. 7(2)(c).

[3] *Ibid.*

Forced labour is a particularly nuanced form of slavery crime. It is defined in the *International Labour Organization (ILO) Forced Labour Convention*, 1930 (No. 29), from which the *Supplementary Convention on the Abolition of Slavery* draws in its preamble, as "all work or service from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."[4] In the context of migrant labour, determining whether such labour is, or has become, forced requires a number of contextual and dynamic considerations.

Framework

In assessing Canada's laws regarding migrant workers, alongside how CLAIHR considers the relationship between these laws and forced labour crimes, CLAIHR uses the ILO Indicators of Forced Labour. These represent "the most common signs or 'clues' that point to the possible existence of a forced labour case".[5] They include a variety of factors including "intimidation and threats", "withholding of wages", "debt bondage", "abusive working and living conditions" and more.[6] The ILO advises that just one indicator may be enough to deduce a setting of forced labour, but a contextual analysis that may require analysis of multiple indicators provides a basis to assess whether the crime of forced labour is present.[7]

Second, CLAIHR advocates for a victim-centered approach in assessing circumstances of forced labour and creating relevant guidance documents. Much has been written regarding a victim-centered approach and its place at the ICC.[8] This submission does not employ one singular framework to determine what a victim-centered approach looks like but draws from sources recognized in scholarship and international criminal justice mechanisms. CLAIHR argues that in developing policy regarding slavery crimes, the ICC should consider an approach that "aims to maximize choice and address each survivor's unique needs, contexts, and coping strategies".[9] It must also consider the numerous ways structural and physical discrimination can influence a victim, be it through gender, socioeconomic status, age, citizenship status, disabilities, language accessibility, and more.[10] These vulnerabilities require thematic strategies that CLAIHR addresses in these submissions.

II. Background on Migrant Labour Programs

Migrant Labour Globally and in Canada

The International Organization for Migration (IOM) recognizes that migrant labour does not have a definition in international law. However, the IOM offers a helpful working definition of "labour migration" as "the movement of persons from their home State to another State for the purpose of

[4] *International Labour Organization Forced Labour Convention*, 28 June 1930, No. 29, Art. 2(1).
[5] See International Labour Office, "ILO Indicators of Forced Labour" (2012) online (pdf) *International Labour Organization* at 2.
[6] *Ibid*.
[7] *Ibid*.
[8] See e.g., Nao Shimoyachi, "Between Accountability and Reconciliation: The Making of 'the Victim-Centered Approach' at the International Criminal Court" (2024) *Gl S Q* 4:2 1; Luke Moffett, "Elaborating justice for victims at the international criminal court: Beyond rhetoric and the hague" (2015) *J Intl C J* 13:2 281; Rianne Letschert and Jan Van Dijk, "Reconstructing victim-centered justice on a global scale" in Rianne Letschert and Jan Van Djik (eds), *The New Faces of Victimhood* (Springer, Global Justice Series: 2011).
[9] Lauren B Cattaneo et al "Survivor-Centered Practice and Survivor Empowerment: Evidence from a Research-Practitioner Partnership" (2020) *Violence Against Women* 27:9 online at 2.
[10] See International, Impartial and Independent Mechanism, "Victim/Survivor Centred Approach" (2011) online: *United Nations*.

employment".[11] In its 2022 World Report, the IOM reported that international migration is increasing, and that two thirds of the nearly 281 million international migrants in 2020 were labour migrants.[12] There is a greater number of men than women migrant workers, and they are predominantly moving from low and middle income countries (LMIC) to higher income countries.[13]

Canada is significantly involved in this global trend and strong parallels can be drawn between certain elements of Canada's migrant work programs and that of other states, including those in the Arabian Peninsula. In 2017, Canada was home to 550,000 temporary foreign workers, under its Temporary Foreign Workers Program (TFWP).[14] These workers accounted for 15.5% of Canada's national employment in agriculture, forestry, fishing, and hunting sectors.[15] The countries of origin for these temporary foreign workers are also mostly LMICs, such as Mexico, Guatemala, and Jamaica.[16]

It is important to consider the socioeconomic challenges and resulting vulnerabilities migrant workers face when crafting law and policy. The indispensable role migrant workers play in Canada's economy highlights the need to define the responsibilities of states in receiving these migrants.

This submission also recalls that under the *Forced Labour Convention, 1930 (no. 29)*, forced labour has been defined as "work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".[17] Canada ratified this convention in 2011.[18] The *Forced Labour Convention* allows a springboard to help identify forced labour as a slavery crime. CLAIHR notes the importance of Canada's ratification of this document, as Canada has not signed onto the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.* In a gap of international legal protection, the ILO definition provides an opportunity for rights-holders to find recourse.

Temporary Foreign Worker Program and How it Works

CLAIHR's submission primarily focuses on Canada's TFWP, which "allows Canadian employers to hire foreign workers to fill temporary jobs when qualified Canadians are not available".[19] It is primarily governed by the federal *Immigration and Refugee Protection Act* and accompanying regulations, while employment protection is regulated by the provinces.[20]

Prospective employers submit applications to Employment and Social Development Canada (ESDC) to hire these workers. Depending on the application stream, ESDC conducts a Labour Market Impact Assessment (LMIA) to "determine the likely effect these workers would have on the Canadian labour

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[11] See International Organization for Migration, "IOM and Labour Migration" (2017) online (pdf): *International Organization on Migration* at 1.
[12] See M McAuliffe & A Triandafyllidou, *World Migration Report 2022*, *Report* at chapter 1 (International Organization for Migration: Geneva, 2022).
[13] *Ibid* at p 36.
[14] See Statistics Canada, "The distribution of temporary foreign workers across industries in Canada" (June 2020) online: *Statistics Canada* [archived].
[15] *Ibid*.
[16] See Statistics Canada, "Countries of citizenship for temporary foreign workers in the agricultural sector" (April 2024) online: *Statistics Canada*.
[17] See *CO29 – Forced Labour Convention 1930 (No.29)*, (1 May 1932), Geneva, ILC Session 14 <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029>.
[18] See International Labour Organization, "Ratifications of CO29- Forced Labour Convention, 1930 (No. 29)" (2023) online: *International Labour Organization*.
[19] See Employment and Social Development Canada, "Temporary Foreign Worker" (2024) online: *Government of Canada*.
[20] *Ibid.*

market".[21] ESDC states that an LMIA is created by "looking at available labour market information for the region and the occupation, the employers' recruitment and advertisement efforts, wages and working conditions, labour shortage and the transfer of skills and knowledge to Canadians".[22] If they have a positive or neutral impact on the Canadian Labour Market, they can then apply for a work permit. The Canada Border Services Agency then screens the individual for admissibility to Canada at an entry port.[23]

The program has the following streams: (1) High-wage; (2) Low-wage; (3) Primary Agriculture Stream (which includes workers in the Seasonal Agricultural Worker Program which will be addressed later); (4) Global Talent Stream; and (5) Caregiver Program.[24] Individuals hired under the low-wage can be paid less than the provincial or territorial median hourly wage.[25] Employers can have a maximum of 20-30% of their employees in these low-wage positions, and employees can be in the fields of construction, food manufacturing, hospitals, nursing and residential care facilities, accommodation and food services, and other sub-sectors.[26] The duration of a migrant worker's stay in Canada also depends on the LMIA, passport validity, and the job offer from the employer.[27]

Gaps in Rights Protection

Canada's TFWP has undergone much criticism for its failures to protect migrant workers. Much of migrant workers' vulnerabilities rest in the recruitment scheme. Although there have been numerous protections put in place recently (addressed below) many migrant workers still pay large sums to acquire these positions and are underpaid once they arrive in Canada; this creates a circumstance of debt and dependence upon the employer.[28] Once in Canada, foreign workers can be subject to harmful conditions as a result of unequal power between Canadian employer and foreign employee, and a consequent relationship of dependency. These have often been compared to conditions of forced labour.

Employers often provide housing and basic services, as workers often are required to live on the premises of their work and do not have access to social services in Canada.[29] This creates wide-sweeping restrictions over migrant workers' mobility and ability to associate with others. Additionally, it has been reported that employers may require migrant workers to perform work inconsistent with the restrictions outlined in their work permits. As a result, they end up working "without status", and therefore without protections of the *Immigration and Refugee Protection Act*. Thus, employers can then "make increased demands on the worker and effectively prevent the worker from complaining about mistreatment".[30] In 2007, it was reported that eleven Filipino workers paid large fees to labour brokers, and then 'sold' to

[21] *Ibid.*
[22] *Ibid.*
[23] See Fay Faraday, "Profiting from the Precarious – How recruitment practices exploit migrant workers" (2014) *Metcalf Foundation* (Report) online (pdf): *Metcalf Foundation* [Faraday].
[24] See Eleni Kchulis & Mayra Perez-Leclerc, "Temporary Foreign Workers in Canada Background Paper" (2020) *Library of Parliament* online: *Parliament of Canada*.
[25] See Employment and Social Development Canada, "Hire a temporary foreign worker in a high or low-wage position" (2024) online: *Government of Canada*.
[26] See Employment and Social Development Canada, "Program requirements for low-wage positions" (2022) online: *Government of Canada*.
[27] See Immigration, Refugees and Citizenship Canada, "How long can I work in Canada as a temporary worker?" (2024) online: *Government of Canada*.
[28] See *Faraday, supra* note 23.
[29] See Rishika Wadehra, "Equal rights for migrant care workers" (October 2021) *Canadian Centre for Policy Alternatives* online (pdf): *CCPA*.
[30] See *Faraday, supra* note 23 at 38.

employers who kept them in an isolated and remote-located home while paying them substantially lower wages than originally agreed.[31]

There have also been reports of fears of reprisal as employers have significant power over foreign workers, with the ability to have them deported. The Seasonal Agricultural Worker Program (SAWP) has been host to such abuse. Under the TFWP, this sub-stream allows employers in specific commodity sectors to host workers to carry out primary agriculture activities for a maximum of eight months between January 1 and December 15 of each year, and is reserved for workers from Mexico or participating Caribbean countries.[32] Under the SAWP, employers have discretion to terminate employees and can have that individual removed from Canada within 24-48 hours.[33] Furthermore, because this is a seasonal position, workers are incentivized to curry the favour of their employees so as to ensure an opportunity to return; thus they are disincentivized to voice complaints and/or assert their rights against their employers.[34] Women have reported unique harms of intense surveillance, sexual harassment, and unwanted pregnancies.[35]

Living on farms in often dismal conditions, the COVID-19 pandemic highlighted the inhumane settings such workers operate in. One report alleges migrant workers in Ontario were required to dust greenhouses with toxic chemicals to suppress bacteria growth but this burned their eyes, lungs, skin and contaminated food in their lunchroom.[36] The deaths of Bonifacio Eugenio Romero, Rogelio Munoz Santos, and Juan Lopez Chaparro from COVID-19 and unsafe working conditions under the SAWP were reviewed by Ontario's Deputy Chief Coroner. While everyday Canadians were required to self-isolate and social distance, these workers died from being forced to work in "congregate living and working conditions" while workplace inspections were paused for health and safety reasons.[37]

The Canadian government has responded to concerns regarding the TFWP and has implemented amendments to the *Immigration and Refugee Protection Act Regulations* that govern this program. This includes requiring an employment agreement between the employee and the foreign worker when applying for an LMIA, amending the definition of 'abuse' to include 'reprisal', prohibiting employers from charging fees, and more protections.[38]

However, these developments have not absolved the program of its flaws. For example, in 2020, a complaint was brought forward to the British Columbia Human Rights Tribunal by temporary foreign farm workers from Guatemala who alleged sexual harassment and "employment-related adverse impacts" influenced by their "Guatemalan race and place of origin".[39]

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[31] See Judy Fudge and Fiona MacPhail, "The Temporary Foreign Worker Program in Canada: Low-Skilled Workers as an Extreme Form of Flexible Labour" (2009) *Comp Lab L & Pol'y J* (31:5) 5.
[32] See Employment and Social Development Canada, "Hire a temporary worker through the Seasonal Agricultural Worker Program: Overview" (2024) online: *Government of Canada*.
[33] See Bethany Hastie, "Renewing Labour's Engagement with Old Forms of Precarity: A Case Study of Unionization of Migrant Agricultural Workers in British Columbia" (2019) *Labour, Cap & Soc* 49:1, 28.
[34] *Ibid.*
[35] See Amy Cohen & Susana Caxaj, "Bodies and Borders: Migrant Women Farmworkers and the Struggle for Sexual and Reproductive Justice in British Columbia, Canada" (2018) *Alternate Routes: J Crit Soc Res* 90.
[36] See Hilary Beaumont, "'They care about their plants and not us': for migrant farmworkers in Ontario, COVID-19 made a bad situation worse" (2021) online: *The Narwhal*.
[37] See Reuven R Jhirad, "Deputy Chief Coroner's review: COVID-19 related deaths of temporary foreign agricultural workers in 2020" (2021) *Government of Ontario* online: *Government of Ontario*.
[38] See *Immigration and Refugee Protection Regulations* SOR/2002-227; See also Immigration, Refugees, and Citizenship Canada, "New amendments to the Immigration and Refugee Protection Regulations (temporary foreign workers)" (2016) online: *Government of Canada*.
[39] See *Gatica and Migrante obo Temporary Foreign Workers from Guatemala v. Golden Eagle Blueberry Farm*, 2020 BCHRT 214 at para 16.

In October 2023, the UN Special Rapporteur on contemporary forms of slavery released a statement after their 14-day visit to Canada. He stated that 'Employer-specific work permit regimes, including certain Temporary Foreign Worker Programmes, make migrant workers vulnerable to contemporary forms of slavery, as they cannot report abuses without fear of deportation".[40] Without adequate monitoring and accountability of employers and their ability to exploit migrant workers, these workers are subject to conditions that could indicate forced labour, as this submission will illustrate.

III. Migrant Labour as Forced Labour

Forced migrant labour and trafficking is an exceptionally nuanced form of modern slavery. It can arise from many different labour situations, including for example, from domestic work or from physical labouring in the agricultural sector. Forced migrant labour is often difficult to identify on its face, especially considering that the crime is often committed in situations without obvious physical restraint and confinement and where the victim seemingly entered into an employment relationship voluntarily. Considerable caution must be exercised when determining the threshold at which migrant labor transitions into forced labour, taking into account contextual factors and relevant indicators necessary to identify it.

While CLAIHR advocates for the usage of the contextual factors and indicators described below, we must emphasize that investigators, prosecutors, and other members of the Office of the Prosecutor (OTP) should not approach forced migrant labour in a checklist fashion. They should be guided by the overarching and contextual victim-centered question that: given the heightened vulnerability of migrant workers and the deceptive, exploitative, coercive, and/or abusive practices that they have been subjected to, would a migrant worker in this specific situation with all their personal attributes and history, feel like they had no choice but to engage in the labour? OTP officials should also always be open to and aware of novel and unconventional factors indicative of forced labour unaddressed in literature or precedents.

Contextual Factors

The first guiding principle of this question concerns the contextual factors at play in the context of migrant labour, particularly in relation to the heightened vulnerability of migrant workers and systemic regulation of migrant labour programs. While the below contextual factors are often present, they are not exhaustive. Each situation must be carefully examined to fully appreciate the contextual dynamics at play.

Unequal Employment Relationship: To start, every employment arrangement inherently involves some level of inequality, and within this framework, migrant workers face heightened vulnerability due to various factors, including their lack of alternative working arrangements and prospects. In several migrant work programs, including Canada's, permits for migrant labour are tied to employment at one particular enterprise. This leads to a situation of extreme vulnerability, where the migrant worker has no choice but to comply with the employer's terms and conditions because they cannot legally work anywhere else. According to one migrant worker from Spain, "[t]he employer has full rights over your life, to call you at any moment, at any second, one hour in advance and tell you you have to be here and work in two hours or three hours. What do you do? You can't get another job so you tend to comply."[41] Due to this lack of alternatives, migrant workers often feel unable to complain about their conditions, causing further issues in identifying situations where there is forced labour.

[40] See Tomoya Obokata, "End of Mission Statement" (6 September 2023) *Special Rapporteur on contemporary forms of slavery, including its causes and consequences* online (pdf): *OHCHR* <https://www.ohchr.org/sites/default/files/documents/issues/slavery/sr/statements/eom-statement-canada-sr-slavery-2023-09-06.pdf>.

[41] Shantz, J, "'Slave-Like Conditions': Abuse of Foreign Workers in Canada" (2015) 27 *Employ Respons Rights J* 233 at 237.

Exclusion from State Services: Migrant workers come from foreign states and are not citizens of the host state; they do not enjoy legally binding rights to "fair and equitable treatment" and ILO conventions that seek to regulate the treatment of migrant workers have not been ratified by any major industrialized nation.[42] In addition, migrant workers are placed in situations where they do not have the same informal support systems from their home states. They have often left behind their families to carry out work without a full understanding of what that work will entail, leading to a situation of extreme isolation.

Isolation: Migrant workers also often do not speak the official or predominant language of the host state or region, fueling this experience of isolation from the general population and the social services that it may offer. This isolation can be exacerbated by geography and the nature of the work, such as in the Canadian context. For example, in 2014, the British Columbia Human Rights Tribunal found that African migrant workers in a remote area of British Columbia were subject to horrific conditions and had no money or transportation to leave; they were completely at the mercy of their employers.[43] Remote migrant work also increases the likelihood that the government is unable or unwilling to enforce any health, safety, and employment standards.

Discrimination: It is highly crucial to consider that migrant workers, particularly in the Canadian context, are usually from marginalized groups and regularly face discrimination on the basis of gender, sex, race, ethnicity, nationality, sexuality, religion, socio-economic status, language, and other factors. Not only does this discrimination further fuel isolation from the host population, but it also often manifests in abusive and negligent treatment. In the above-mentioned 2014 decision from British Columbia, the Tribunal found that the employers taunted the workers with racial slurs and epithets, and at least one worker testified that the work camp was divided along racial lines.[44] It also is important to emphasize that the nature of such discrimination is often intersectional. In the context of migrant domestic labour, the CEDAW Committee reported that:

> Women migrant workers often experience intersecting forms of discrimination, suffering not only sex- and gender-based discrimination, but also xenophobia and racism. Discrimination based on race, ethnicity, cultural particularities, nationality, language, religion or other status may be expressed in sex- and gender-specific ways.[45]

Systemic Nature: As migrant labour is usually facilitated pursuant to government regulations, it is important to consider that forced migrant labour could be a systemic crime. As described in the previous section, Canada's need for unskilled labour has led to a long-standing system of temporary migrant labour. Accordingly, any analysis of forced migrant labour should also look at the labour laws and regulations that make it possible. However, it is also important to keep in mind that while some systems of law in the context of migrant labour ensure protections on paper, states often fail to uphold these protections and enforce regulations whether through an unwillingness or lack of immediate capacity. The Canadian TFWP, for instance, is certainly guided by protections to prevent forced labour, but the state is often criticized as failing in its duty to uphold these protections through audits and other inspections.[46] Whatever the case maybe, it must be recognized that migrant work programs, such as Canada's, are conducted pursuant to state-regulated systems facilitated by not only the employers, but also government officials in immigration, economic, and border control roles from the host state and state of emigration.

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[42] Shantz, J, "'Slave-Like Conditions': Abuse of Foreign Workers in Canada" (2015) 27 *Employ Respons Rights J* 233 at 238.

[43] *Balikama obo others v. Khaira Enterprises and others*, 2014 BCHRT 107.

[44] *Balikama obo others v. Khaira Enterprises and others*, 2014 BCHRT 107; Shantz, J, "'Slave-Like Conditions': Abuse of Foreign Workers in Canada" (2015) 27 *Employ Respons Rights J* 233 at 234.

[45] CEDAW, "General recommendation No. 26 on women migrant workers", (2008) C/2009/WP.1/R at para 14.

[46] Giuliana Grillo de Lambarri, New Canadian Media, "Canada's temporary migrant worker program fails both labourers and employers, Senate committee hears" 10 October 2023: online.

Indicators

The ILO's Special Action Programme to Combat Forced Labour (SAP-FL) has published several indicators of forced labour, all of which are relevant to the context of forced migrant labour.[47] Drawing from the *ILO Forced Labour Convention, 1930 (no. 29)*, these indicators cover not only the conditions indicative of forced labour where it is being carried out, but also the trafficking and recruitment practices leading to forced labour. Analyzing the full temporal and geographical scope of the forced migrant labour context is crucial to fully understanding the experience of victims of this crime and ensuring any sort of effective accountability.

The indicators "represent the most common signs or "clues" that point to the possible existence of a forced labour case."[48] The SAP-FL adds that "the presence of a single indicator in a given situation may in some cases imply the existence of forced labour", while in other circumstances, the combination of several indicators will indicate forced labour.[49] These indicators are by no means exhaustive and apply to both the recruitment process and the destination where labour occurs.

First, while migrant workers are virtually always in positions of heightened vulnerability, the exploitation of such vulnerability is a strong indicator of forced labour. The ways that such abuse can manifest is endless. For example, at the recruitment end, the ILO highlights abuse by failing to provide adequate information, particularly in respect of living and working conditions. This is sometimes the case for temporary migrant workers in Canada, who are not told that they will be living in overcrowded lodgings upon arrival.[50] On the destination end, the ILO highlights the example of abuse of vulnerability by creating a situation of full dependency on the employer. This dependency is increased when the employer has control over living space, food and nutrients, pay, etc

Closely related is the practice of deception used to exploit the vulnerable position of migrant workers. This can take many forms, ranging from false promises of obtaining citizenship or residency to the provision of false information concerning salaries, working conditions, and family reunification. Deception is a strong indicator of forced labour as it demonstrates the lack of a fully informed choice to enter into an employment relationship or remain in one. The West Coast Domestic Workers' Association documented in its 2014 report on "Labour Trafficking & Migrant Workers in British Columbia" that a common form of deception in Canada comes from informing migrant workers of the dangers that arise from not having proper immigration documents or status.[51] In turn, the workers become more reliant on the exploitative employer.

Further indicative of forced labour in the context of migrant work is the use of coercive practices. For instance, employers can restrict the movement of workers in a number of ways, including by locking them up or restricting their mobility. Another common coercive measure is the use of intimidation and threats, particularly manifesting in the threat of deportation or retribution if migrant workers raise complaints. In April 2014, Belizean migrant workers accused McDonald's Canada of requiring them to sign an

[47] International Labour Organization, Special Action Programme to Combat Forced Labour, "ILO Indicators of Forced Labour" 2012.
[48] International Labour Organization, Special Action Programme to Combat Forced Labour, "ILO Indicators of Forced Labour" 2012 at 2.
[49] International Labour Organization, Special Action Programme to Combat Forced Labour, "ILO Indicators of Forced Labour" 2012 at 3.
[50] Kathy Tomlinson, Globe and Mail, "False promises: Foreign workers are falling prey to a sprawling web of labour trafficking in Canada" 5 April 2019: online.
[51] West Coast Domestic Workers' Association, "Labour Trafficking & Migrant Workers in British Columbia" (2014) at 39.

agreement not to speak to the media about alleged abuses. At least one of them was fired by McDonald's after his online communications complaining about conditions were tracked.[52]

Physical and sexual violence is also an indicator of forced migrant labour, including as a coercive measure to ensure no one complains about the conditions of the work. Migrant domestic workers face additional risks related to their gender and sex, including gender-based violence. Victims then have little or no options of accountability due to fear from reprisals or merely being unable to manoeuvre the legal system of a foreign country in a foreign language.

Other coercive indicators of forced labour include the retention of identity documents, such as passports, preventing workers from leaving, as well as debt bondage and the withholding of wages. In the complaints concerning McDonald's Canada, the workers reported that they were forced to share an expensive apartment and the company deducted almost half of their paychecks to cover rent.[53] Payment was withheld for "expenses", which is also a common practice for recruiters, who may dupe migrant workers into significant debt due under the guise of transportation, permits, and housing fees.[54]

Abusive and poor conditions of employment and living conditions are also strong indicators of forced migrant labour. Migrant workers are sometimes subject to abusive circumstances of isolation, including as mentioned above, division on the basis of racial lines. Of particular note, migrant workers in Canada often have insufficient access to toilets and are living in cramped housing arrangements. As the Migrant Rights Network and Food & Farmworkers Working Group reported in 2021, in about 44% of cases, five to 10 migrant workers shared one house.[55] During the COVID-19 pandemic, this significantly increased the likelihood of migrant workers in Canada contracting the virus.[56] In addition to living in cramped and unsanitary conditions, the United Nations Special Rapporteur on Contemporary Forms of Slavery found during his visit to Canada in 2023 that migrant workers had to work excessive hours with no access to overtime pay.[57] The ILO Committee of Experts has emphasized the issue of excessive overtime in particular, and has noted that when workers exceed regulated maximum hours, and when they fear that to do otherwise would mean losing their employment, these conditions indicate both poor working conditions as well as forced labour.[58]

National and regional courts have considered other indicators in the context of forced labour, but it is important that any analysis of a given situation must be approached with a clear understanding of the contextual factors at play for migrant work programs and the personal attributes and experiences of the particular workers. Investigation and prosecution of forced labour must always be attuned to the psychological experiences and reactions of the victims in determining whether the particular working arrangements are non-consensual.

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[52] Shantz, J, "'Slave-Like Conditions': Abuse of Foreign Workers in Canada" (2015) 27 *Employ Respons Rights J* 233 at 236.
[53] Shantz, J, "'Slave-Like Conditions': Abuse of Foreign Workers in Canada" (2015) 27 *Employ Respons Rights J* 233 at 236.
[54] International Labour Organization, Special Action Programme to Combat Forced Labour, "ILO Indicators of Forced Labour" 2012 at 21.
[55] CBC News, "Housing conditions for migrant workers in Canada 'worse than if we were in prison,' new report says" 10 June 2021: online.
[56] ILO, "COVID-19 Among Migrant Farmworkers in Canada: Employment Strain in a Transnational Context" (2022) ILO Working paper 79.
[57] Darren Major, CBC News, "UN envoy links temporary foreign worker program to 'contemporary forms of slavery'" 6 September 2023: online.
[58] ILO Committee of Experts, "Eradication of forced labour - General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)" (2007) at paras 132–133.

IV. Forced Migrant Labour and the Rome Statute

Pursuant to Article 7(1)(c), the Rome Statute of the ICC prohibits enslavement as a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Article 7(2)(c) defines "enslavement" for the purposes of paragraph 1 as meaning "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children."

Traditional concepts of slavery, as defined in the 1926 Slavery Convention, have evolved in international jurisprudence to encompass a wide range of contemporary and modern forms of slavery, all of which are based on the exercise of any or all of the powers attaching to the right of ownership.[59] The meaning of enslavement provided in Art. (7)(2)(c) has been further elucidated in international jurisprudence and scholarship, especially in relation to novel and emerging forms of slavery. Three main features have been identified in relation to various forms of 'modern slavery', of which forced labour and domestic servitude has been widely recognized as one such kind: (i) **Coercion or force:** If individuals are compelled to work against their will through threats, violence, or other forms of coercion; (ii) **Abuse of power or control:** If those in positions of authority or control over migrants exploit their vulnerability to compel them to work under conditions they cannot refuse; and (iii) **Deprivation of liberty:** If migrants are restricted in their movements or otherwise deprived of their freedom in order to perform labour.

The factors and contextual elements relevant to identifying and investigating forced migrant labour inform the relevant issues pertaining to its prosecution under the crime against humanity of enslavement. In particular, important factors that the OTP must consider at this stage include the prevalence of psychological control as opposed to physical control, the extended temporal and territorial parameters of the crime, and the systemic nature of the programs that may facilitate forced migrant labour.

Psychological Control

The Trial Chamber in *Kunarac* opined that indications of enslavement include elements of control and ownership; the restriction or control of an individual's autonomy, freedom of choice or freedom of movement; and, often, the accruing of some gain to the perpetrator; exploitation; the exaction of forced or compulsory labour or service, often without remuneration and often, though not necessarily, involving physical hardship; sex; prostitution; and human trafficking.[60] The denial of consent or freedom of choice has been repeatedly identified as a key indicator of forced labour rising to the level of modern slavery, as noted by the Trial Chamber in *Krnojelac*: "The consent or free will of the victim is absent. It is often rendered impossible or irrelevant by, for example, the threat or use of force or other forms of coercion; the fear of violence, deception or false promises; the abuse of power; the victim's position of vulnerability; detention or captivity, psychological oppression or socio-economic conditions. What must be established is that the relevant persons had no real choice as to whether they would work."[61]

As highlighted above, there is mounting evidence regarding the coercive control and deprivation of liberty exercised by employers through migrant labour programs in Canada and elsewhere. Preliminary investigations into Canada's migrant labour programs indicate that a number of factors constituting forms of modern slavery are satisfied: migrant workers are subject to psychological control, control and restrictions placed on their freedom of movement, measures taken to prevent or deter escape, threats of force or coercion, and other indicia established by international jurisprudence as constituting modern

[59] ICTY, Prosecutor v. Krnojelac, "Judgement", IT-97-25-T, 15 March 2002, para. 359.
[60] ICTY, Prosecutor v. Kunarac, Kovac and Vukovic, "Judgement", IT-96-23-T and IT-96-23/1-T, 22 February 2001, para. 542.
[61] ICTY, Prosecutor v. Krnojelac, "Judgement", IT-97-25-T, 15 March 2002, para. 359.

forms of enslavement.[62] It is crucial to emphasize that there is no requirement that the victim be physically restrained and/or physically prevented from escaping in order for enslavement to be established: psychological, financial, and other non-physical means of control and deprivation of liberty are sufficient to establish the exercise of the right of ownership over a person. That being said, in many cases in Canadian migrant labor programs, migrant workers have reported their passports being confiscated and held by their employers, which may constitute physical restraint and deprivation of liberty in addition to psychological factors. In any event, CLAIHR advocates that a victim-centered approach must be pursued in determining the means of deprivation of liberty, focusing on whether the victim, in their particular circumstances, would feel that they have no choice but to work.

Temporal and Territorial Parameters

Trafficking and forced migrant labour practices indicated above also inform the proper temporal and territorial parameters over the crime against humanity of enslavement in this context. Deceptive, coercive, and abusive recruitment practices for forced migrant workers are part of the crime. These practices often establish the forced and/or misinformed basis for the migrant work and represent the beginning of the crime. The destination state, where the deceptive, coercive, and abusive treatment continues while the forced migrant worker carries out their work, is a direct continuation of the crime. Accordingly, CLAIHR urges the OTP to recognize and appreciate that prosecuting the crime against humanity of enslavement in the context of forced migrant labour would often require investigating situations in more than one state.

Systemic Nature

Finally, migrant labour is often carried out pursuant to state-regulated programs. When the practice of forced migrant labour is rampant within these programs and ingrained into the fabric and loopholes of government laws, the crime takes on a systemic nature and may amount to a systematic attack directed against a civilian population. CLAIHR recommends the OTP to consider that while direct perpetrators of forced migrant labour might not be state officials, they are often acting under a state-sanctioned system. The rules and regulations of any such program, as well as the conduct of state officials, must be scrutinized when investigating and prosecuting forced migrant labour as a crime against humanity. Given the principle of complementarity under which the ICC operates, CLAIHR further highlights the failure of the Canadian government to exercise proper oversight over its migrant labour programs and/or take sufficient steps to protect migrant workers from modern slavery.

V. Conclusion and Recommendations

CLAIHR urges the OTP to closely monitor allegations of forced migrant labour committed in Member States and by nationals of Member States. With migrant labour programs and opportunities rising across Canada and the rest of the globe, it is crucial that the OTP is able to recognize the widespread and systematic abuse, deception, coercion, and exploitation that rises with it. CLAIHR recommends that the OTP's policies in respect of investigating and prosecuting forced migrant labour under the crime against humanity of enslavement must:

I. Carefully consider the heightened vulnerability of migrant workers, the context in which they find themselves, and the various indicators of forced labour in the particular context of migrant labour;
II. Be guided at all stages by the perceived voluntariness of victims, taking into account their particular contextual circumstances;

[62] ICTY, Prosecutor v. Kunarac, Kovac and Vukovic, "Appeals Judgement", IT-96-23-T and IT-96-23/1-A, 12 June 2001, para. 119.

III. Recognize and appreciate the extent of psychological control as a highly common element in forced migrant labour;
IV. Carefully consider the temporal and territorial parameters of the crime, as it begins in one state and continues in another;
V. Recognize and appreciate that forced migrant labour can be facilitated by state-regulated programs, practices, and lack of oversight.

CLAIHR
Canadian Lawyers for International Human Rights
Juristes canadiens pour les droits internationaux de la personne

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

Toronto, ON | email: info@claihr.ca

INTRODUCTION

1. 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.

2. 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.

3. 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

4. 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.[1] The TFWP is primarily governed by the federal *Immigration and Refugee Protection Act* and accompanying regulations, while employment protection is regulated by the provinces.[2]

5. 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.[3] Women temporary foreign workers ("TFWs") report unique harms of

[1] See Fay Faraday, "Profiting from the Precarious – How recruitment practices exploit migrant workers" (2014) Metcalf Foundation (Report) online (pdf): Metcalf Foundation [Faraday]; See Eleni Kchulis & Mayra Perez-Leclerc, "Temporary Foreign Workers in Canada Background Paper" (2020) Library of Parliament online: Parliament of Canada.

[2] See Employment and Social Development Canada, "Temporary Foreign Worker" (2024) online: Government of Canada.

[3] See Immigration, Refugees and Citizenship Canada, "Canada announces new pilot programs to support caregivers and Canadian families, intends to make the caregivers program permanent" (June 2024) online: *Government of Canada*; See Immigration and Refugee Protection Regulations SOR/2002-227; See also Immigration, Refugees, and

intense surveillance, sexual harassment, and unwanted pregnancies.[4] Approximately 97% of women TFWs report the following: (1) that they operate in the caregiving economy[5] 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.[6]

6. 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.[7]

7. 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.

8. Recent discourse as a result of a housing and unaffordability crisis in Canada has led to blaming migrants for housing and employment shortages.[8] 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.[9]

Citizenship Canada, "New amendments to the Immigration and Refugee Protection Regulations (temporary foreign workers)" (2016) online: Government of Canada

[4] See Amy Cohen & Susana Caxaj, "Bodies and Borders: Migrant Women Farmworkers and the Struggle for Sexual and Reproductive Justice in British Columbia, Canada" (2018) Alternate Routes: J Crit Soc Res 90 [Cohen].

[5] See Standing Senate Committee on Social Affairs, Science and Technology, "Act Now: Solutions for Temporary and Migrant Labour" (2024) *Senate of Canada* online (pdf) at 106 [Senate Report].

[6] See Nalini Mooten, "Racism, Discrimination and Migrant Workers in Canada: Evidence from the Literature" (2021) *Immigration, Refugees and Citizenship Canada* at 83 *[Mooten]*.

[7] See E Hjalmarson, "Sentenced for the season: Jamaican migrant farmworkers on Okanagan orchards" (2022) *Race & Class*, 63:4, 81 at 88 & 93; See also *Cohen, supra*.

[8] See e.g. Nojoud Al Mallees, "Immigration is making Canada's housing more expensive. The government was warned 2 years ago" (11 January 2024) *CBC News*, online.

[9] See Employment and Social Development Canada, "Minister Boissonnault reducing the number of temporary foreign workers in Canada" (26 August 2024) *Government of Canada,* online.

9. 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.[10] 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".[11]

Recommendations

10. 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)*.

11. 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.

12. 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*.[12]

INDUSTRY-DRIVEN VIOLENCE

13. 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.[13] 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.[14] Canada adopted a motion to cease future arms exports to Israel on March 18, 2024, but the hundreds

[10] See Canadian Lawyers for International Human Rights, "Investigating and Prosecuting Forced Migrant Labour at the International Criminal Court Submission for the Office of the Prosecutor's Policy on Slavery Crimes" (30 April 2024) *CLAIHR* (report) online.
[11] See Tomoya Obokata, "Visit to Canada - Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata*" (22 July 2024) A/HRC/57/46/Add.1.
[12] See UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008 at para 26.
[13] See *Hamam Farah et al v Minister of Foreign Affairs and Attorney General of Canada*, 2024, Notice of Application to Federal Court for Judicial Review.
[14] *Ibid* at para 1(b).

already authorized since October 2023 remain unaddressed.[15] UN Women reports that as of 18 August 2024, "[a]bout 70 per cent of those killed are said to be women and children".[16]

14. 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.[17]

15. Canada continues to police Wet'suwet'en Land Defenders who are predominantly women.[18] 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.[19] Not only is Canada profiting from environment-exploiting fossil fuels passed without the Free, Prior, and Informed Consent[20] 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.[21] 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.[22]

16. 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.[23] Overseas, numerous

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[15] See Canada, House of Commons, Vote No. 658, 44th Parliament, 1st Session, Sitting No. 290 - Monday, March 18, 2024.

[16] See UN Women, "Facts and estimates: Women and girls during the conflict in Palestine" (21 August 2024) online: *UN Women.*

[17] See International Human Rights Program at the University of Toronto Faculty of Law and Global Human Rights Clinic at the University of Chicago Law School, "Feminist Foreign Policy Fail? Assessing Canada's Human Rights Obligations in Gaza" (October 2024).

[18] See Amnesty International, "Criminalization, Intimidation And Harassment Of Wet'suwet'en Land Defenders" (2023) online: *Amnesty International* at 47 [Wet'suwet'en Report].

[19] *Ibid* at 47-48.

[20] See CEDAW, General recommendation No.39 (2022) on the rights of Indigenous women and Girls.

[21] See *Wet'suwet'en Report, supra.*

[22] See Oxfam Canada, "Feminist Scorecard: Feminist Action in a World of Crises" (April 2024) at 7; Women's Legal Education and Action Fund (LEAF), "Gender and Poverty" (5 July 2023) at 15-16; Oxfam Canada, "Caring in a Changing Climate: Centering Care Work in Climate Action" (2022).

[23] See UNOHCHR, Human Rights Handbook for Parliamentarians No 26, HR/PUB/16/4, 2016 at 32; 42 UNCESCR, GC 24 at para 14; Comm. on Economic, Social and Cultural Rights, General Comment 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, U.N. Doc E/C.12/GC/24 (23 June 2017) at para. 10

reports document human rights violations connected to the global operations of Canadian corporations, including forced labour, land grabbing, and environmental destruction.[24] Women are often subject to horrific sexual violence by mine security guards alongside other forms of physical violence such as beatings and killings.[25] Indigenous women face repression and violence for protesting Canadian mining companies.[26] 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."[27]

Recommendations

17. 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.

18. 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.

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

20. 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.

21. 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.

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[24] See Tavia Grant, "Hollow Core", Globe and Mail (April 1, 2023), ("[T]he Globe has recorded more than 50 instances [of alleged human rights abuses] in 30 countries in the last five years alone, based on media reports, NGOs, academic reports and legal documents.")

[25] See Columbia Law School Human Rights Clinic & International Human Rights Clinic Harvard Law School, "Righting Wrongs? Barrick Gold's Remedy Mechanism For Sexual Violence In Papua New Guinea Key Concerns And Lessons Learned" (2015).

[26] See generally, Mining Watch Canada, "Putting Voices At Risk: Government of Canada prioritizes economic interests of Canadian mining companies over the safety of human rights and environmental defenders" (June 2024).

[27] United Nations Special Rapporteur on the Rights of Indigenous Peoples, Visit to Canada 1-10 March 2023, End of Mission Statement at 10.

22. 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.[28]

23. Canada must regulate corporations by:

    a) 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

    b) 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.

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

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

    b) 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;

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

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

ECONOMIC JUSTICE

25. 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.[29] 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.[30]As the cost-of-living and inflation rises to crisis levels across Canada, the basic costs of housing, groceries, and

[28] See Organization of American States, "Committee of Experts celebrates political will of Canada to be part of the Belém do Pará Convention" (2018).
[29] Oxfam Canada, "Feminist Scorecard: Feminist Action in a World of Crises" (April 2024) at 7; Women's Legal Education and Action Fund (LEAF), "Gender and Poverty" (5 July 2023).
[30] Sheila Block, "Canada's Colour-Coded Income Inequality", *Canadian Centre for Policy Alternatives* (9 December 2019).

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).[31]

26. 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.[32] In 2022, Canadian-born women employed either full- or part-time employment earned on average 9.2% less than their male counterparts.[33] 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.[34] 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.[35] 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%).[36] 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).[37] 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.[38]

27. 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[39], with approximately 56% of all female workers employed in the

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[31] Jim Stanford, "Updated Industry-Wide Data on Food Retail Prices, Volumes & Profits - Submission to House of Commons Agriculture and Agri-Food Committee", *Centre for the Future of Work* (December 2023).
[32] See *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981, accession by Canada 10 December 1981) at art 11; *C100 - Equal Remuneration Convention, 1951 (No. 100)*, International Labour Organization (entered into force 23 May 1953, accession by Canada 16 November 1972); and *C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*, International Labour Organization (entered into force 25 June 1958, accession by Canada 16 November 1972)
[33] Marie Drolet and Mandana Mardare Amini, "Intersectional Perspective on the Canadian Gender Wage Gap", Statistics Canada (21 September 2023).
[34] Organisation for Economic Co-operation and Development, "Gender wage gap" (2022); World Economic Form, "Global Gender Gap 2024" (June 2024) at 12 at 135-136.
[35] Canadian Women's Foundation, "The Facts about the Gender Pay Gap" (5 April 2024).
[36] Drolet and Mandana, *supra* at 7 and 9.
[37] Ontario Pay Equity Office, "Understanding the Gender Pension Gap in Canada" (May 2024).
[38] *Ibid*.
[39] See Oxfam Canada, "How Much Do We Care? An Assessment of the Canadian Paid and Unpaid Care Policy Landscape" (June 2023).

"5 Cs" professions - caring, clerical, catering, cashiering, and cleaning – all largely underpaid caring professions that were on the frontlines of the pandemic.[40] 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.[41] 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.[42]

28. 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

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

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

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

c) Implementing the recommendations of the Employment Equity Task Force Report;

d) 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;

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[40] Canadian Women's Foundation, Canadian Centre for Policy Alternatives, Ontario Nonprofit Network, and Fay Faraday, "Resetting Normal: Women, Decent Work, and Canada's Fractured Care Economy" (July 2020) at 4.

[41] Katherine Scott, "Women, work, and COVID-19: Priorities for supporting women and the economy", Canadian Centre for Policy Alternatives (8 March 2021). See also CRIAW, "Women, COVID-19, and Care Economy" (2021); Anjum Sultana & Carmina Ravanera, "A Feminist Economic Recovery Plan for Canada: Making the Economy Work for Everyone", The Institute for Gender and the Economy and YWCA Canada (28 July 2020); CRIAW, "Racialized Women & COVID-19 Challenges in Canada" (2021)

[42] See Cee Strauss, "Basic Income and the Care Economy", Women's Legal Education and Action Fund (LEAF) (2021); CRIAW, "Violence Against Women in Canada & COVID-19 Pandemic" (2021).

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

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

30. 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

31. 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.[43] 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.[44]

32. 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.

33. 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.[45] 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.[46] 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

[43] IPU Parline, "Monthly ranking of women in national parliaments" (2024).
[44] SMP or FPTP is part of a family of electoral systems known as majoritarian systems.
[45] Justin Trudeau, Hansard, 42nd Parliament, 1st Session, Volume 148, Number 053, May 11, 2016.
[46] See *Fair Voting BC v. AG Canada*, 2023 ONSC 6516; sections 2(1), 24(1), and 313 of the *Canada Elections Act*, SC 2000, c 9 establish Canada's FPTP system; ss. 3 and 15 of the *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11

overrepresentation" is the "primary barrier" to the election of women in parliament.[47] 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".[48] While the court ultimately denied the application, it is currently under appeal (scheduled to be heard in late 2024).

34. The Special Committee of the House of Commons on Electoral Reform recognizes that there are numerous proportional representation ("PR") systems options[49] for Canada that would uphold Canadian values of representation and also enable Parliament to accurately represent the will of voters (contrary to FPTP).[50] 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.[51]

Recommendations

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

36. 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.

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

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

[47] *Fair Voting BC v. AG Canada*, 2023 ONSC 6516, paras 108-109.
[48] *Fair Voting BC v. AG Canada, 2023 ONSC 6516.*
[49] In contrast to FPTP, PR electoral systems are "multiple-winner" systems. Districts elect multiple representatives, often from different political parties, to reflect the district's distribution of political views. Therefore, substantially all voters are represented by a representative for whom they have voted. PR systems can be tailored to address a country's political, social, or geographical demands. They are by far the predominant family of electoral systems in advanced democracies today, used in New Zealand, Scotland, Wales, Norway, Sweden, Denmark, Finland, the Netherlands, Germany, Ireland, Belgium, Spain, and Switzerland.
[50] Report of the Special Committee on Electoral Reform, House of Commons Canada, 42nd Parliament, 1st Session, December 2016.
[51] Profeta, P., & Woodhouse, E. F. (2022). Electoral Rules, Women's Representation and the Qualification of Politicians. Comparative Political Studies, 55(9), 1471-1500.