

A JOINT UPR SUBMISSION
BY

- ONTARIO COUNCIL OF AGENCIES SERVING IMMIGRANTS,
- THE METRO TORONTO CHINESE & SOUTHEAST ASIAN LEGAL CLINIC
- COLOUR OF POVERTY - COLOUR OF CHANGE

TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL
ON UNIVERSAL PERIODIC REVIEW OF HUMAN RIGHTS

CANADA

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INTRODUCTION

About OCASI

The Ontario Council of Agencies Serving Immigrants (OCASI) is a council of autonomous community-based, non-profit, immigrant and refugee serving agencies in Ontario founded in 1978. It is the umbrella organization for the immigrant and refugee serving sector in this province and acts as its collective voice. OCASI is a registered charity governed by a volunteer board of directors, and has more than 200 member organizations across the province of Ontario. The Council carries out analysis of the impact of legislation, policy and practice on immigrant, refugee and racialized communities, especially as it impacts on human rights and access and equity. OCASI brings human rights concerns to the attention of decision-makers and advocates for change.

OCASI is a founding member of Colour of Poverty - Colour of Change.

About MTCSEALC

The Metro Toronto Chinese & South East Asian Legal Clinic (MTCSEALC) is a community based non-profit organization, which is mandated to provide free legal services to low income members of Toronto's Chinese and Southeast Asian communities.

Established in 1987, MTCSEALC has provided services to tens of thousands of low-income individuals and families from these communities. Apart from providing direct legal services, MTCSEALC also engages in public education in order to help build knowledge among members of its community in order to empower them to protect their own rights. Moreover, MTCSEALC undertakes law reform activities to further the rights of immigrants, refugees and racialized communities in general.

MTCSEALC serves clients who face multiple problems in their lives because of economic, political and social barriers, such as: lack of job security, exploitation and discrimination at the workplace, domestic violence, lack of access to affordable housing, and much more.

MTCSEALC is also a founding member of Colour of Poverty - Colour of Change.

About Colour of Poverty - Colour of Change (COP-COC)

Colour of Poverty Campaign/Colour of Change Network (COP-COC) is a province-wide initiative (in the province of Ontario, in Canada) made up of individuals and organizations working to build community-based capacity to address the growing racialization of poverty and the resulting increased levels of social exclusion and marginalization of racialized communities across Ontario. COP-COC works to build concrete strategies, tools, initiatives and community-based capacity through which individuals, groups and organizations (especially those reflective of the affected racialized communities) can better develop coherent and effective shared action plans as well as coordinated strategies so as to best work together to address and redress the growing structural and systemic ethno-racial inequality across the province.

OVERVIEW OF THE COMMUNITY RESPONSE

OCASI, MTCSEALC and COP-COC have had the opportunity to review Canada's response to the first UPR conducted in 2009.

The purpose of this community response is to address and highlight areas of particular concern to members of communities of colour.

DEMOGRAPHIC CHARACTERISTICS OF THE CANADIAN POPULATION

Statistics Canada has noted that by 2017, one in five Canadians will be a "visible minority" according to Statistics Canada. The 2006 Census reported one in five Canadians as foreign-born, the highest proportion in 75 years. Recent immigrants born in Asia made up the largest proportion of newcomers to Canada in 2006 (58.3%). Another 10.8% were born in Central and South America and the Caribbean. 68.9% of the recent immigrants in 2006 lived in three census metropolitan areas, namely, Toronto, Montreal and Vancouver.¹

The Census noted that with few exceptions, most recent immigrants experienced higher unemployment rates and lower employment rates than their Canadian-born counterparts. Immigrants born in Africa experienced the most difficulties in the labour market, regardless of how long they had lived in Canada. For the very recent African-born immigrants, their unemployment rate at 20.8% was four times higher than that of the Canadian born.² Higher unemployment rates are also found among the younger recent immigrants between the age of 15 and 24, irrespective of where they were born.³

With few exceptions, very recent immigrants who had any level of postsecondary education had employment rates that were lower than that of their Canadian-born peers. Most important to note was the fact that this was true irrespective of where this postsecondary education was obtained.

As reported by Statistics Canada, in 2007, very recent immigrants aged 25 to 54 who received their highest university education in Canada were less likely to have significant Canadian work experience compared to their Canadian-born peers. Gender also seems to play a role in this respect. While immigrant women represented nearly half of university-educated very recent immigrants, their participation in the labour force was significantly lower, particularly for those born or educated in Asia.⁴

The only exceptions to this troubling pattern of employment gaps are recent and established immigrants who received their highest university education in Canada or Europe; they had comparable employment rates in 2007 to the Canadian born. In contrast, many of those who obtained these credentials in Latin America, Asia or Africa had lower employment rates with the one exception being immigrants who received their university degree from a Southeast Asian (mainly Filipino) educational institution.⁵

If immigrants are not getting employed at the same rates as others, they are also not earning the same levels of income. The immigrants' birthplace – a proxy for ethnicity – turns out to have the strongest

¹ Statistics Canada. (2007). *Immigration in Canada: A Portrait of the Foreign-born Population, 2006 Census*. Ottawa, pp. 5, 19.

² Gilmore, Janice. (2007). *The Immigrant Labour Force Analysis Series, The Canadian Immigrant Labour Market in 2006: Analysis by Region or Country of Birth*. Ottawa. p.6.

³ Ibid, p.7.

⁴ Ibid, p.6.

⁵ Ibid, p.7.

influence over the immigrants' earnings, as a Statistics Canada study has shown. This finding coincides with the repeatedly noted fact that increasingly immigrants to Canada come from "non-traditional" sources and are members of visible minorities, and are more likely to be educated as compared with persons born in Canada. Despite an increasing number of university graduates among immigrants, the relative earnings of immigrants did not improve in recent times.⁶

Hiding behind the statistics is the disturbing trend of the ever growing racial inequities in Canada among the immigrant group members as well as racialized individuals born in Canada (both Indigenous Peoples as well as peoples of colour). Disturbingly, the employment inequities and the resulting income inequities experienced by recent immigrants with degrees (minus those with European or Filipino background) are shared by young visible minority men born in Canada to immigrant parents. Everything else being equal, their annual earnings are significantly lower than those of young men with native-born parents.⁷ Canadian born members of racialized communities, who have even higher levels of education than other Canadians in the same age group are faring the worst.⁸

A recent report by the Wellesley Institute and Canadian Centre for Policy Alternatives (CCPA)⁹ confirms a "colour code" is keeping "visible minorities" out of good jobs in the Canadian labour market. The report found that visible minority Canadian workers earned 81.4 cents for every dollar paid to their Caucasian counterparts. Earnings by male newcomers from visible minorities were just 68.7 per cent of those who were white males. Such colour code persisted for second-generation Canadians with similar education and age, though the gap narrowed slightly - with visible minority women making 56.5 cents, up from 48.7 cents in 2000, for every dollar white men earned, while minority men in the same cohort improved by almost 7 cents, to 75.6 cents.

The increasing "racialization" or "colour-coding" of all of the major social and economic indicators can be gleaned not only from the statistics on income & wealth, but also from any one of a number of different measures – such as the inequalities with respect to health status and educational learning outcomes, higher drop-out or "push-out" rates among racialized learners, inequitable access to employment opportunities and over-representation in low-paying, unstable, and low-status jobs in which their rights as workers are often poorly or totally unprotected, higher levels of under-housing and homelessness and the re-emergence of imposed racialized residential enclaves and the increasing rate of incidence and ethno-racial differentials with respect to targeted policing as Aboriginal and men and women-of-colour are ever more over-represented in Ontario's jails and prisons. All of these are products of the long-standing and now growing social and economic exclusion of racialized groups from the so-called mainstream of society.

It is in this context of growing inequities that the Report from Canada should be examined by the UN Human Rights Council.

⁶ Ostrovsky, Yuri. (2008). Statistics Canada Analytical Studies Branch Research Paper Series: Earnings Inequality and Earnings Instability of Immigrants in Canada. Ottawa.

⁷ <http://www.cbc.ca/consumer/story/2007/10/29/immigration-statscan.html>

⁸ Leslie Cheung, October 2005. Racial Status and Employment Outcomes. Research Paper #34, Canadian Labour Congress. Ottawa: CLC.

⁹ Block, Sheila and Grace-Edward Galabuzi. (2011). Canada's Colour Coded Labour Market: the gap for racialized workers. Wellesley Institute and Canadian Centre for Policy Alternatives. Toronto.

Changes to the Refugee Determination System

Since the last UPR, the Government of Canada has also passed Bill C-31, the “*Protecting Canada’s Immigration Act*” which resulted in an overhaul of the refugee determination system.

Bill C-31 makes the following significant changes: it replaces the interview that had been introduced into the refugee determination process by the BRRA with a different procedure; it bars certain groups of refugee claimants from appealing refugee protection decisions; it changes the process and criteria for designating countries; and it expands the restrictions on applications to remain in Canada after a negative refugee determination decision. The new system has been roundly condemned by many reputable advocacy organizations in Canada. Among other things, the critics pointed out that the new refugee law:

- creates a discriminatory two-tier refugee determination system, making it difficult for “irregular arrivals” and refugees from “designated countries of origin” to receive a full and fair hearing of their claim’s merits and denying an appeal;
- places broad discretionary powers in the hands of the Minister of Immigration and the Minister of Public Safety, rendering decisions about irregular arrivals and designated countries of origin vulnerable to political, trade or military considerations, and to individual bias;
- imposes strict, unrealistic new timelines, denying time for refugees to understand the process and to prepare cases. Women victims of sexual violence and LGBTQ refugees who find it difficult to relay their experiences will be especially vulnerable;
- provides for lengthy detention for irregular arrivals;
- separates children under 16 years of age from their parents, placing children among irregular arrivals in foster care or detaining them, thereby hurting families;
- imposes a 5-year bar on applying for permanent residence for “irregular arrivals”, prolonging uncertainty and separating spouses and children until applications are processed;
- renders humanitarian and compassionate consideration ineffective, imposing a 1-year delay (after an unsuccessful claim) on applications for permanent residence on humanitarian and compassionate grounds – refused claimants will be deported in the meantime; and
- prohibits failed refugee claimants from accessing the Pre-Removal Risk Assessment application and thus resulting in the removal of individuals who face risk of torture and persecution

Recommendation

We ask that the Committee recommend the following to Canada:

Stop the implementation of the new refugee determination system until the Government has conducted a detailed analysis of the changes to ensure the system’s compliance with the Canadian Charter of Rights and Freedoms and with international human rights laws and conventions.

Family Class Immigrants

Over the last two decades greater requirements have been imposed on those who wish to sponsor their families and "family class" immigration (with the exception of spouses) has become more and more narrowly defined.

Increasingly restrictive financial eligibility requirements have also barred many low income Canadians from sponsoring their families from abroad. Conveniently, because members of racialized communities and recent immigrants are more likely to live in poverty, the financial eligibility requirement also has a disproportionately negative impact on these communities.

And because immigrants from Asia and other parts of global south are most likely to apply through the family class stream, and are also more likely than immigrants from European background to adopt an extended family structure, the reduction of the family class quota and the restrictive definition of family class membership have the added effect - intended or otherwise - of limiting the number of immigrants from these countries.

The Canadian Government has introduced a moratorium on the processing of all parents and grandparents applications, while instituting a multiple entry visitor's visa, commonly referred to as the "super visa" system for parents and grandparents to come to Canada to visit their families. Apart from the fact that eligibility for the multiple-entry visitor is conditioned upon the purchase of private health insurance policy – a measure that would ensure only those who could afford such a policy need apply – the Government of Canada has not addressed the underlying inequities in the visa system with this new policy.

Another worrisome change under the family sponsorship was the regulatory change to the spousal sponsorship. Introduced in September 2010, the new provision governing spousal sponsorship would see spouses in genuine relationship being denied permanent resident status to Canada. As a very high percentage of Canadian permanent residents and citizens who submit spousal sponsorship applications are seeking to bring their spouses from China, India, other parts of Asia and Africa, the regulatory change to spousal sponsorship thus have a disproportionate impact on members from these respective communities. The Government is also considering the imposition on a conditional visa so that those who qualify are to be given limited permanent resident status that would be conditional upon remaining married to the spouse who is the sponsor. This change would have the greatest impact on women, making them further vulnerable if they were in an abusive relationship.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Broaden the definition of family and increase quota for family class immigration to allow family reunification with immediate and extended family.
- b. Remove the health insurance restriction from multiple-entry visas for parents and grandparents.
- c. Review and redress any inequities in resource allocation at Canadian visa posts, particularly with a view to providing equitable service at visa posts located in countries with a majority racialized population.
- d. Withdraw plan to introduce a conditional permanent residency for sponsored spouses.

Temporary Foreign Workers Program (TFWP)

A recent report¹⁰ on migrant workers notes that the number of temporary foreign workers in Canada has more than tripled in the past decade, that many migrant workers are employed in low-paying work such as care-giving, agricultural labour and in the service sector (hotels, restaurants, food processing). It notes that migrant workers are frequently underpaid, overworked, and denied basic rights like decent housing, and health and safety.

In 2003, the total number of guest workers in Canada was just over 110,000. In 2007 and 2008 more TFW than immigrants entered Canada. In 2010, 182,276 TFWs entered Canada and 282,771 TFWs were present in Canada as of December 1, 2010¹¹. That year, only 280,681¹² permanent residents were admitted to Canada, lower than the number of TFW's present in the country.

The program also underwent a series of “administrative changes” in recent times which some critics have described as benefiting employers without any provisions to ensure that the workers’ rights would be protected. Although racial status data are not available for these workers, they are disproportionately people of colour. Of the top 10 source countries for guest workers, half of them host racialized populations, and in 2006 nearly 35% of the 160,000- plus guest workers came from countries where the population is racialized.¹³

On December 9, 2009, some new dramatic changes regarding TFWP came into force.¹⁴ The new regulations place a higher onus on employers to prove that their job offers are genuine to prevent workers from being duped with promises of jobs that don't exist. As well, employers who have failed to meet their contractual obligations to provide satisfactory wages and working conditions are barred from hiring new workers for two years.

But the small positive change brought about by the new regulations is clearly overshadowed by the negative measures that have been put in place since then.

On April 1, 2011 changes to the TFW program came into force, such that it will become “a revolving door of migrant workers willing to accept inferior wages and working conditions will be available to Canadian employers”. There is now a 4-year limit on the stay of a TFW and a subsequent 4-year period in which the worker would not be allowed to work in Canada¹⁵. Included with this was an additional change that would prohibit an employer who had violated the terms of the agreement with the worker from hiring any more TFWs for a two year period. However, the government did not implement a mandatory employer monitoring system as protection for workers.

Canada's Live-In Caregiver program continues to be one of the most problematic aspects of the migrant worker program, particularly the requirement that the worker should live with the employer for at least one-year. The majority of workers recruited through the program are women and are generally people of

¹⁰ Faraday, Fay. 2012. “Made in Canada: How the law constructs migrant workers’ insecurity”. Metcalf Foundation. Toronto.

¹¹ Citizenship and Immigration Canada (2010). Facts and Figures 2010 – Immigration overview: Permanent and Temporary residents.

¹² Ibid.

¹³ Flecker, Karl. 2008. Conservative Colours: The Harper Conservatives and the Colour-Coding of Canada. Healy T. ed. The Harper Record. Ottawa: Canadian Centre for Policy Alternatives.

¹⁴ Regulations Amending the Immigration and Refugee Protection Regulations (Temporary Foreign Workers), Canada Gazette, Vol. 143, No. 41 – October 10, 2009

¹⁵ Canadian Council for Refugees (2011). “Changes to the Temporary Foreign Worker Program Leave Workers Unprotected”.

colour from the global south. The live-in requirement puts these women workers in a position of tremendous vulnerability to abuse and exploitation by the employer, and such cases continue to be reported. The live-in provision puts workers in a situation where they are isolated, invisible and often cut-off from sources of support or assistance¹⁶.

Migrant agricultural workers have experienced many of the similar conditions of being unpaid or underpaid, being asked to do work not specified in the contract, work in unsafe conditions and often being forced to pay a premium for health insurance, rent and other charges imposed by the employer¹⁷. Many agricultural workers are located in rural communities or neighbourhoods where they are isolated and far from sources of assistance. Migrant agricultural workers and Live-in Caregivers are at risk of loss of their temporary immigration status or even deportation if they complain about their treatment or take any action to redress their situation. Workers who are deported in this manner are then unable to pursue a complaint against the employer, including trying to recover the wages that are lawfully owed to them.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Canada should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- b. Canada should review and remove residence restrictions imposed on workers participating in the Live-In Caregiver Program and Seasonal Agricultural Worker Program.
- c. Canada should work with provincial and territorial governments to ensure that temporary foreign workers enjoy the same legal protections as all other workers in Canada and ensure that these laws are being effectively enforced.

Cuts to Settlement Services

Significant cuts have been introduced by Citizenship and Immigration Canada over the last couple of years, with the greatest cuts being brought to Ontario.

In December, 2010, the Federal government cut \$53 million in funding from settlement agencies and programs across Canada, excluding Quebec. Ontario, the province receiving the largest number of immigrants, bore more than \$43 million of the cuts, forcing the closure of some agencies and resulting in job losses across the sector.

The cuts come at a time when the immigrant and refugee serving sector had managed to turn the corner after years of under-funding and had established a level of stability in the sector. They also came at a time when more complex interventions are needed to facilitate labour market participation by new Canadians and to address complicated social and health issues of Refugees (GARS). Apart from the destabilizing effects of the cuts in general, there is concern about whether the current investment is sufficient to address the many systemic barriers that immigrants, especially racialized immigrants face in the settlement process.

Recommendation

We ask that the Committee recommend the following to Canada:

¹⁶ Toronto Star. 2009. "Investigation: Nanny Abuse". Toronto Star, April 2, 2009. Toronto.

¹⁷ UFCW Canada (2009). The Status of Migrant Farm Workers in Canada 2008-2009. United Food and Commercial Workers Union Canada.

- a. Canada must invest the necessary funds to support immigrant settlement and integration on the basis of need, including addressing systemic barriers.

Collection of Disaggregated Data and Cancellation of Long Form Census

On the national level, there is also no concerted effort to collect race-based data on a disaggregated basis.

The lack of desegregated data means the Government of Canada does not have a clear picture of who are among the most marginalized in Canada and how are they affected by government policies and programs.

To add injury to insult, the Government of Canada decided to abolish the mandatory long-form census in 2010. While the Government of Canada continued to maintain a mandatory short-form census, there are no questions in the short-form census dealing with information on race, ethnicity and disability – although gender based and age based questions are included.

The exclusion of questions about race and ethnic origin will also have a long lasting and irreversible impact on access to social programs by those who are the most in need. It also negatively affects the ability of low income Ontarians and members of other disadvantaged communities to bring to light issues of justice, be it through the court system or in the political arena. By taking away reliable census data, the Government has also succeeded in taking away one of the most effective tools for law reform.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Bring back the Long Form Census
- b. Collect and track disaggregated data across all Ministries, Departments and relevant institutions in order to identify racialized and other structural and systemic disadvantage

Access to Justice for Vulnerable Groups

With the creation of the Canadian Health and Social Transfer (CHST), the Government of Canada no longer has dedicated funding to provinces for legal aid programs on an ongoing basis.

Over the last few years the Canadian Government has dedicated some legal aid funds in some areas of criminal law or immigration law, but such funds were targeted at specific initiatives. In addition, the CHST has not in any way kept pace with the rising cost of legal aid. As such, provincial governments are often asked to step in to pick up the short fall.

The continuing underfunding of legal aid in all provinces, including Ontario, poses a serious barrier for many vulnerable groups, including racialized communities, to access justice.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Provide dedicated and adequate funding to provinces for legal aid and that such funding should be indexed to cost of living

Changes to the Employment Equity Program

As part of an omnibus budget bill introduced by the Government of Canada in March 2012 and which received Royal Assent in June 2012, changes were made to the *Employment Equity Act* (EEA) and the Federal Contract Compliance program, without any prior public consultation.

Prior to the amendment, section 42(2) of the EEA states:

42(2) The Minister is responsible for the administration of the Federal Contractors Program for Employment Equity and shall, in discharging that responsibility, ensure that the requirements of that Program with respect to the implementation of employment equity by contractors to whom the Program applies are equivalent to the requirements with respect to the implementation of employment equity by an employer under this Act.

After the amendment, this section now reads:

42(2) The Minister is responsible for the administration of the Federal Contractors Program for Employment Equity.

Thus, by removing specific legislative requirements in the EEA concerning Federal Contractors, the amendment gives the Minister the discretion to determine the requirements, if any, of this program, and thereby rendering the compliance with EEA voluntary for Federal Contractors.

At the same time, the Canadian Government has been gradually reducing the number of Contract Compliance Officers whose job is to monitor the compliance by Federal Contractors under the EEA in order to reduce workplace discrimination.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Undertake concrete measures to improve representation of racialized groups in the federal public service and fulfil its requirements under ICERD as well as the equality rights protection under section 15 of the Canadian Charter of Rights and Freedoms.

Omnibus Crime Bill

The Government of Canada introduced in 2011 Bill C-10, an omnibus crime bill, which became law in March 2012.

A number of Canadian NGOs have raised serious concerns about the Bill when it was tabled, and which were not addressed in the final version. For instance, the amendments to the Immigration and Refugee Protection Act contained in C-10 give an extremely broad mandate to deny a work permit to any foreign national who is considered to be 'at risk' of being exploited. However it does not specify what factors would be used to determine whether an individual would be at risk.

The government had stated in public debates around the Bill that the intention is to prevent the trafficking of women. However the impact of the Bill would be to target vulnerable individuals rather than address abuse and exploitation by employers or human traffickers. In fact women would likely be over-represented among those who would be denied a work permit because they are considered to be 'at risk' of being trafficked.

The Bill has other troubling provisions such as mandatory minimum sentences for a broad range of offences, including minor offences. Racialized individuals are over-represented among those who are charged with a criminal offence, those who are prosecuted, the length of the sentence and the number of individuals who are incarcerated (often incarcerated as opposed to being fined or allowed to do

community service). The imposition of mandatory minimums regardless of societal conditions means that racial and the impact of racialization will not be addressed even where there is a willingness to do so on the part of the decision-makers in the case.

Recommendations

We ask that the Committee recommend the following to Canada:

- a. Remove mandatory minimums from the law;
- b. Remove the clause that allows the denial of a work permit to anyone who is considered 'at risk'.

Access to Social Services

While refugee claimants in Canada do have access to certain basic services such as health and social assistance, such services may be terminated when the claim is found to be unsuccessful. The Canadian Government recently has recently made drastic changes to the Interim Health Program which results in denial to basic health services by refugees.

More importantly, many undocumented and non-status immigrants are not able to access many services that are granted to permanent residents. Even permanent residents sometimes are denied access to health care, as in the case of Ontario where there is a three-month waiting period for newly arrived immigrants before they could be eligible for the provincial health insurance coverage.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Work with provincial and territorial governments to ensure that all residents have access to needed healthcare regardless of immigration status.

Conclusion

Despite the Canadian Charter of Rights and Freedoms and the various federal and provincial human rights laws and systems that are there to advance and promote equality, racial discrimination persists in Canada. Members of racialized communities, both people of colour and Indigenous peoples, continue to face challenges and barriers to achieving true equality. We call on the Committee to adopt the recommendations as set out in this joint report so as to remind the Government of Canada of its obligation to protect the rights of all Canadians under domestic laws and international human rights laws.