

An International Human Rights Perspective on Canada’s Response to Gender-Based Violence Against Women during COVID-19

September 2, 2020

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By: Basia Walczak

Introduction:

Pandemics amplify and heighten all existing inequalities. As a result, COVID-19 is exacerbating and intensifying existing gendered, political, and social inequities and impacting women differently than men in a variety of ways. For example, women’s and girls’ exposure to the virus is amplified due to social norms and expectations surrounding their care-giving roles that result in elevated exposure to individuals or COVID-19 itself. Further, women make up 70% of the healthcare workforce heightening their risk of infection. Alarmingly, the COVID-19 outbreak has also intensified gender-based violence

globally. Urgent action must be taken to mitigate this trend.

A report published by the Office of the UN's High Commissioner for Human Rights ("OHCHR") indicates that state-imposed stay at home measures are increasing women's exposure to gender-based violence during the pandemic. Violence against women is an abject violation of human rights and women's and girls' heightened exposure to COVID-19 and enclosure with potential abusers makes them particularly vulnerable. Women from marginalized and disadvantaged groups are subject to compounded forms of discrimination during the pandemic, given that they face an elevated risk of experiencing gender-based violence. For this reason, adopting an intersectional approach addressing the particular needs of women facing intersectional forms of discrimination, is essential.

This article analyzes Canada's response to increased gender-based violence against women during COVID-19 against its international human rights law obligations. First, it examines COVID-19's global figures on gender-based violence, taking into account where Canada stands amongst its counterparts. It then examines Canada's response, and analyzes whether solutions proposed by the Canadian government fulfill Canada's international human rights obligations. Lastly, it enumerates expert recommendations that States ought to consider in satisfying their international obligations in addressing gender-based violence. I conclude that although the Canadian government did take a gender-sensitive approach in addressing the sharp increase in gender-based violence during the pandemic, an intersectional approach by the government would have been more effective in addressing the greater inequalities suffered by vulnerable groups with compound identities such as Indigenous women.

What is the Impact of COVID-19 on Gender-Based Violence?

The global increase of violence against women, especially domestic violence in the context of the COVID-19 pandemic lockdowns, has been significant. The UN Office of the High Commissioner of Human Rights has reported that the imposition of stay-at-home restrictions has led to an alarming increase in gender-based violence. The combination of economic and social stresses, generalized uncertainty, and lack of movement have dramatically increased abuse, in nearly all countries.

The pandemic's effects on gender-based violence have been amplified by its impacts on women's ability to access legal and emergency services. The UN's Special Rapporteur on Violence Against Women issued a statement highlighting that the closure of Courts and limited access to legal assistance and emergency counselling services or other emergency services, including alternative housing or shelters, have aggravated existing risks faced by women and girls.

Since the beginning of the pandemic, the UN has reported that there has been a significant uptake in the use of gender-based services: Lebanon and Malaysia have seen the number of phone calls to helplines double when compared with the same month last year, whereas in China these numbers have tripled. Further, search engines such as Google are seeing the highest magnitude of searches for domestic violence help in five years. It is also worth noting that these are just the statistics of which

the authorities are aware. Although domestic violence is widespread, it is among the least reported human rights abuses: current reporting numbers may not accurately reflect the rates at which abuse is actually taking place.

Intersectional discrimination suffered by Indigenous women has been further aggravated by the restrictive measures put in place to counter COVID-19. Canada has reported an increase in gender-based violence: a recent survey of more than 250 Indigenous women found one in five women reporting that they had been a victim of either physical or psychological violence in the past three months, an increase of 7% (here, p. 11). Prior to the pandemic, intimate partner violence was the most frequent form of violence against women with 8 in 10 victims being women. These statistics only worsened if the woman was Indigenous: Indigenous women are three times more likely to be victims of violence than non-Indigenous women.

These findings of increased gender-based violence have led UN Secretary-General António Guterres to call for urgent measures by governments in addressing the "horrifying global surge" in domestic violence against women. Phumzile Mlambo-Ngcuka, Executive Director of UN Women, echoed Guterres' statement in noting that confinement has fostered the tension created by issues of security, health, and money, creating the "perfect storm for controlling, violent behaviour behind closed doors."

Does Canada's Response Fulfill its International Human Rights Obligations?

Efforts Made by the Canadian Government

In an official statement, Global Affairs Canada ("GAC") noted that isolating at home could expose citizens to gender-based violence predicated on a climate of isolation, stress, and fear. GAC emphasised the need for prioritizing critical gender-based and child protection services, and stated that "Canada has taken a gender-based approach" to COVID-19 and was taking concrete steps to join the UN's call on addressing the surge in domestic violence.

In an effort to aid women and children fleeing violence, the Canadian government made a commitment to provide up to $50 million to women's shelters and sexual assault centers, inclusive of facilities located in Indigenous communities. Further, Courts worldwide have had to readily adapt both their practices and procedures in response to the COVID-19 pandemic. Canadian Courts have rescheduled hearings, switched to providing legal services virtually by hearing cases remotely, and suspended existing time limits in civil litigation proceedings through the passage of the *Time Limits and Other Periods Act (COVID-19)*. These changes to Court administration apply federally, and because of the split in constitutional jurisdiction, for which Canada is responsible internationally, provincial governments have made similar arrangements to their respective Courts. How do Canada's efforts to combat the increase in gender-based violence and their stated intention to adopt a "gender-based approach" satisfy their international human rights obligations?

Legal Implications of the Canadian Government's Efforts to Address Increases in Gender-Based Violence

Article 2 of the *Convention on the Elimination of All Forms of Discrimination Against Women* ("the *Convention*") indicates that States are obligated to respect, protect, and fulfill women's rights to non-discrimination. After decades of struggle by the women's rights movement, the international community now recognizes gender-based violence not as a private concern but rather as a human rights issue that ought to be addressed by States. In 1993, the preamble of the *Declaration on the Elimination of Violence Against Women* recognized gender-based violence as a violation of women's fundamental rights and freedoms. That same year, the *Vienna Declaration and Programme of Action* (article 38) confirmed that the elimination of gender-based violence in both public and private spheres of life constituted a human rights obligation. More significantly, the intentional framing of freedom from gender-based violence as a human right, as recognized in the Committee on the Elimination of Discrimination Against Women's ("CEDAW") *General Recommendation No. 35* (article 15), necessitates greater state involvement. Due to this shift, gender-based violence is not considered incidental but rather a prescribed effect of structural, and deep rooted discrimination that ought to be addressed by States through their due diligence obligation under the General Recommendation No. 35 (article 9). The CEDAW's *General Recommendation No.28* (article 19) re-emphasized States' due diligence obligation in preventing acts of gender-based violence.

Canada's present response to gender-based violence may not satisfy its obligations under article 12 of the *Convention on the Elimination of All Forms of Discrimination against Women* if it does not take a gender sensitive intersectional approach to COVID-19. Article 12 of the Convention illustrates that State parties are required to take measures to ensure that equal access to health care is maintained. Additionally, CEDAW'S *General Recommendation No. 19*, at paragraph 19, added that violence against women puts their health and lives at risk. In the context of a pandemic, effective access to health care for women experiencing gender-based violence becomes pivotal. On July 14, 2020, the current Special Rapporteur on Violence Against Women, Dubravka Šimunovi?, issued a statement emphasizing the need for safe access to support services and emergency measures. She added that specific attention ought to be paid to the accessibility of said services for women and girls from marginalized groups so that they are able to access these services.

Lorraine Whitman, the current president of the Native Women's Association, highlighted that in spite of increased government funding to Indigenous shelters and support for culturally sensitive services, Indigenous shelters and support services presently remain inaccessible because they are not in fact culturally responsive to their clientele. She urged the government to reconsider the composition of staff members at shelters: many shelters, and sexual assault centres in the country are not run for or by Indigenous people, which is why many First Nations, Inuit, and Métis women do not feel comfortable accessing them. Emergency services that are not culturally sensitive may fail altogether in reaching women who are most marginalized during this pandemic as a result of multiple structural factors perpetuating their discrimination.

Additionally, only a fraction of Indigenous women will be able to directly benefit from the government's $50 million-dollar response package. Dr. Pamela Palmater, Ryerson Universities' Chair in Indigenous

Governance, criticized the government's $50 million-dollar response package for shelters as "woefully inadequate" given that only 6% of shelters for victims of abuse are located in Indigenous communities themselves. Due the COVID-19 outbreak, the Canadian government allotted an additional $10 million in April to support Indigenous Service Canada's network of shelters on reserve and in the Yukon. However, Dr. Palmater indicated that $10 million was not enough to account for the existing gaps given the increased numbers of Indigenous women seeking these services, and the lack of their present availability on reserve when compared with the rest of the country. Additionally, given the increased risk of COVID-19 being pervasive in institutional settings, Dr. Palmater emphasized that the government's focus ought to be on providing safe, and adequate housing for Indigenous women on reserves.

What are Some Key Actions States Can Undertake?

Addressing the Pandemic

In addressing gender-based violence adequately during the pandemic, Canada has already undertaken some of UN Secretary-General António Guterres' recommendations: allocating funds to civil society organizations, increasing access to judicial services online, and declaring shelters as essential services. However, as illustrated above, the adoption of a nuanced intersectional approach that recognizes the differential impacts of COVID-19 on groups that face intersecting forms of discrimination, such as Indigenous peoples, may be needed.

As stressed in the statement of the UN's Special Rapporteur on Violence against Women reporting the connection between COVID-19 and an increase in gender-based violence, women who have been disproportionately impacted by multiple inequalities during COVID-19 may require specialized attention in increasing their accessibility to testing services, treatment, and essential support services. As underlined by Native Women's Association President Lorraine Whitman, the composition of shelter staff is essential in ensuring Indigenous women make use of these services. Michele Audette, who worked as a commissioner on the National Inquiry into Missing and Murdered Indigenous Women and Girls ("the Inquiry") stressed the need for all levels of government to ensure that shelters, social workers, and first responders serving Indigenous communities are well supported in responding to gender-based violence.

Looking Ahead

Indigenous women face multiple, and intersecting forms of discrimination and experience higher rates of violence than non-Indigenous women. In her 2019 Country Visit Report to Canada, the UN's Special Rapporteur on Violence against women, its causes and consequences indicated that there is an urgent need for a more comprehensive and holistic national plan on violence against women, with a particular emphasis on ensuring that Indigenous women have access to comparable levels of services Canada-wide. In her Recommendations, the Special Rapporteur indicated the need to adopt an action plan based on international human rights standards accepted by Canada, such as the

Convention on the Elimination of Discrimination of All Forms of Discrimination against Women and the CEDAW's General Recommendation No. 35 (paragraph 95).

In spite of delays in Canada's national action plan, intended to be delivered a year following the Inquiry's final report delivered June 3, 2019, the urgent need for an expansive, and responsive plan has been highlighted by the sharp rise in gender-based violence, particularly in Indigenous communities.

Conclusion:

In launching his Policy Brief detailing how COVID-19 could reverse progress that has been made in gender equality and women's rights, UN Secretary-General António Guterres emphasized that women and girls must be put at the centre of efforts to recover from COVID-19. The exposure of an increase in gender-based violence worldwide strengthens the need for a gender-based and intersectional approach in addressing this issue. In moving forward, Canada ought to take stock of international human rights frameworks and the crucial structure they provide in strengthening the effectiveness of their efforts in addressing gender-based violence during and following the pandemic.

This article could be cited as Basia Walczak," An International Human Rights Perspective on Canada's Response to Gender-Based Violence Against Women during COVID-19" (2020), 4 PKI Global Justice Journal 31.

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