

CANADIAN HUMAN RIGHTS COMMISSION



**SUBMISSION TO THE UNITED NATIONS
HUMAN RIGHTS COUNCIL ON THE OCCASION OF ITS REVIEW
OF CANADA DURING THE 3RD CYCLE OF THE
UNIVERSAL PERIODIC REVIEW**

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The Canadian Human Rights Commission (CHRC) is Canada's national human rights institution. It has been accredited "A-status" by the Global Alliance of National Human Rights Institutions, first in 1999 and again in 2006, 2011 and 2016.

The CHRC was established by Parliament through the *Canadian Human Rights Act* in 1977.¹ It has a broad mandate to promote and protect human rights. The Constitution of Canada divides jurisdiction for human rights matters between the federal and provincial or territorial governments. The CHRC has jurisdiction pursuant to the CHRA over federal government departments and agencies, Crown corporations, First Nations governments and federally-regulated private sector organizations. Provincial and territorial governments have their own human rights codes and are responsible for provincially/territorially-regulated sectors.

The CHRC also conducts compliance audits under the *Employment Equity Act*.² The purpose of the EEA is to achieve equality in the workplace so that no person is denied employment opportunities or benefits for reasons unrelated to ability, and to correct the historic employment disadvantages experienced by four designated groups: women, Indigenous peoples, persons with disabilities and members of visible minorities.

The CHRC has taken action to promote and protect the human rights of individuals in vulnerable circumstances by investigating complaints, issuing public statements, tabling Special Reports in Parliament, conducting research, developing policy, consulting with stakeholders, and representing the public interest in the mediation and litigation of complaints. It is committed to working with the Government of Canada to ensure continued progress in the protection of human rights, including Canada's implementation of the rights and obligations enshrined in those international human rights instruments to which Canada is a party. It is in the spirit of constructive engagement that the CHRC submits this report to the Human Rights Council on the occasion of its review of Canada during the 3rd cycle of the Universal periodic Review (UPR).

¹ Available at laws-lois.justice.gc.ca/PDF/H-6.pdf. Although Canada's human rights laws are not part of the Constitution, they are considered "quasi-constitutional" in nature, meaning that all other laws must be interpreted in a manner consistent with human rights law.

² Available at laws-lois.justice.gc.ca/PDF/E-5.401.pdf.

In the past two cycles of the Universal Periodic Review (UPR), and in intervening and subsequent reviews undertaken by United Nations treaty bodies, hundreds of issues have been raised and recommendations made in relation to Canada's implementation of its international human rights obligations. In reviewing the totality of these recommendations, what is of particular concern is that the same recommendations are made repeatedly, year after year and review after review. It is clear that, in many areas, little progress has been made in resolving longstanding issues.

Bearing this in mind, the following submission begins by briefly outlining a number of areas in which the CHRC believes there to be substantial and ongoing gaps between the promise of Canada's international human rights commitments and the lived reality of individuals and groups in vulnerable circumstances in Canada. It then discusses several aspects of the system for implementation of Canada's international human rights obligations, proposing a number of recommendations for improvement with a view to bridging the gap between promise and reality.

1. THE STARK DIFFERENCE IN LIFE CHANCES AND OUTCOMES FOR SOME INDIVIDUALS AND GROUPS IN CANADA WHO ARE IN VULNERABLE CIRCUMSTANCES ARE WELL-DOCUMENTED.

The situation of Indigenous peoples in Canada is one of the most pressing human rights issues facing Canada today. Indigenous peoples in Canada continue to experience high levels of socio-economic disadvantage and systemic discrimination in many facets of their daily life. Across the country, many First Nations and Indigenous communities continue to live without equitable access to quality health, education and other social services, and without access to safe drinking water and suitable sanitation, food security, and adequate housing. Indigenous women in Canada experience systemic discrimination and bear a disproportionate burden of violence, and are murdered or go missing at a disproportionately high rate. The root causes of this discrimination and violence are varied, complex, and intersectional. Indigenous peoples in Canada have experienced historical disadvantage, including systemic discrimination and racism. The legacy of the residential school system looms large over many aspects of Indigenous lives.

A disproportionate number of persons with disabilities live in poverty, subject to negative stereotyping, adverse living conditions, and discrimination. Persons with disabilities in Canada often do not have the same opportunities as others in areas such as education and employment. Accessibility – including in the built environment, in transportation, with technology, during the electoral process and in other ways – remains a pre-eminent concern for persons with disabilities in Canada. Individuals living with mental health disabilities face systemic stigma and discrimination. The ability of such individuals to access quality, affordable and appropriate mental health services continues to be a significant issue.

Racialized individuals and groups in Canada experience a number of barriers to equality, including socio-economic disadvantage and systemic discrimination. African Canadians experience disproportionately high levels of unemployment and poverty, as well as disparities in accessing education, health and housing. Their communities face environmental racism whereby landfills, waste dumps and other environmentally hazardous activities are disproportionately situated near neighbourhoods of people of African descent, creating serious health risks.

Vulnerable populations with diverse sexual orientations, or gender identities or expressions experience discrimination in many facets of life. Specifically, trans, two-spirit and gender non-binary individuals face disadvantage in employment, in the provision of housing and medical care, in accessing public services, when travelling, and when seeking and using identity documents. This has resulted in low labour force participation rates, avoidance of public spaces, exclusion from communities, reluctance to seek emergency health services, economic marginalization and high poverty levels, all of which contribute to higher levels of mental health issues..

Across Canada, concerns continue to be raised that racial profiling by police, security agencies, and other authority figures is a daily reality, reducing trust in public institutions, and having harmful impacts on Indigenous, Black, Muslim and other communities. Both Indigenous and Black men are significantly over-represented in federal prisons; this over-representation is even more pronounced for Indigenous women.

The prevalence of mental health issues amongst the federally-incarcerated population is of significant concern. Appropriate health care services and programming – including culturally-relevant programming – are not available or, where they are available, are insufficient. Solitary confinement continues to be used in Canadian prisons, with Black and Indigenous offenders over-represented among those subject to such confinement.

Every year, thousands of migrants who are not serving a criminal sentence are detained in Canada. A significant number are held in institutions intended for criminal populations rather than immigration holding centres, sometimes for significant periods of time. Limited services are available to these detainees. Hundreds of children have been and continue to be placed in immigration detention in Canada, in most cases, alongside their parents or adult siblings who have been held for immigration-related reasons.

All of these realities have been repeatedly recognized by international and regional human rights mechanisms, by civil society and Indigenous organizations, by domestic human rights institutions, and – in many cases – by government. Nevertheless, substantive progress remains largely elusive.

The CHRC is of the view that Canada's system of implementation is in itself flawed and that this is contributing in a substantial way to an overall lack of progress.

2. THE CURRENT SYSTEM FOR IMPLEMENTATION OF CANADA’S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS IS BOTH STRUCTURALLY INADEQUATE AND PRACTICALLY INEFFECTIVE. TO CLOSE THE GAP BETWEEN ASPIRATION AND REALITY, CANADA MUST FIND A NEW WAY OF WORKING, WHETHER BY ENHANCING EXISTING SYSTEMS OR BY CREATING NEW ONES.³

Significant gaps exist in the ability of individuals and groups in Canada to assert and realize their rights under international human rights laws and to access human rights justice in relation to those rights. Human rights are illusory if they are not respected, cannot be claimed, and if remedies for violations are unavailable.

International treaties and conventions are not considered part of Canadian law unless they have been implemented by statute. Therefore, many of the conventions that Canada has ratified currently have no direct application in Canadian Law. Canadian courts and tribunals typically view international human rights standards as a source of law that can be used to inform interpretation of domestic law. This has delivered limited results, particularly in the realm of economic, social and cultural rights, many of which do not exist as free-standing rights in Canadian law.⁴

Recommendation 1: The CHRC recommends that, in developing policy agendas, conducting budgetary analysis, enacting new legislation and reviewing existing legislation, Canada commit to conducting a human rights analysis with a view to identifying opportunities to explicitly incorporate its international human rights obligations into legislation.

In this regard, the CHRC notes specifically ongoing legislative reviews and initiatives in relation to accessibility, pay equity, corrections, poverty reduction and Indigenous peoples and recommends that Canada fully incorporate the applicable international human rights instruments into any resulting legislation.

Recommendation 2: The CHRC recommends that Canada raise awareness and develop capacity-building programs for policy-makers, the judiciary, administrative decision-makers and others as necessary, about international human rights standards and their applicability as a source of law in Canada, as well as the jurisprudence of international human rights mechanisms.

³ Follow-up to the following UPR recommendations: from 2009, recommendations 10, 12, 14, 15, 27, 35, 41, 62, 63, 64; from 2013, recommendations 16, 22, 27, 28, 29, 31, 39, 47, 66, 123, 130, 131.

⁴ See, for example, a recent report released by ARCH Disability Law Centre – a specialty legal clinic dedicated to defending and advancing the equality rights of persons with disabilities in the Canadian province of Ontario – contains an illustrative analysis of the difficulty in having rights enforced where they have not been incorporated directly into Canadian law. ARCH undertook a review and analysis of reported court and tribunal decisions in which the *Convention on the Rights of Persons with Disabilities* (CRPD) was referenced by the parties since 2010 when it was ratified by Canada. It found that the CRPD was raised in only twenty (20) cases in this seven-year period, and that in half of the cases where it was raised the court or tribunal rejected using the CRPD as a basis for its reasons in the case. Significantly, it found that, where the CRPD was referenced positively in reasons, in all cases it was used to support a legal finding or outcome that can already be found in existing Canadian and that it was never used as the primary reasoning in a case. Report available at: http://www.archdisabilitylaw.ca/Discussion_Paper_FedAccessibilityLegislation_CRPD.

Recommendation 3: The CHRC recommends that Canada continue its efforts to ensure that the composition of the judiciary, administrative tribunals, and other decision-making bodies reflects appropriate gender representation and the diversity of the Canadian population including with respect to race, colour, national or ethnic origin, religion, sexual orientation, gender identity or expression, and disability.

Access to reliable, up-to-date data on key human rights indicators – who, specifically, is disadvantaged and what is the nature of that disadvantage—is of paramount importance in ensuring access to justice for individuals and groups in vulnerable circumstances. Various stakeholders and international human rights mechanisms have noted the absence in Canada of such reliable, comprehensive and publicly-available data.

Recommendation 4: The CHRC recommends that Canada implement a mandatory disaggregated data collection policy. It should collect, analyze and report publicly on key human rights indicators on a consistent basis in order to facilitate the identification of disadvantage and allow progress to be measured over time. This should include a particular focus on areas in which significant disparities have already been found to exist such as in relation to child welfare, policing, employment, education and criminal justice.

Data should be collected and analyzed in a transparent and accessible way, and should be made publically available. Where appropriate, this should be done in cooperation with affected communities, civil society organizations, and others.

Canada is a complex federal state wherein the commitments made by the federal government in the international realm create obligations at many different levels and impose duties on not just the federal government, but also provincial/territorial governments, Indigenous governments, and municipal governments who themselves provide critical services to their populations.

This shared responsibility brings with it the opportunity to draw on diverse expertise and experience to arrive at creative and efficient solutions to longstanding and seemingly intractable problems in implementing the promise of Canada’s international commitments. However, it also requires that the mechanisms tasked with decision-making, implementation, and monitoring be coordinated, transparent, inclusive, responsive and accountable. Unfortunately, that is not the case in Canada.

Canada lacks a process for ensuring coordinated policy-making in respect of Canada’s international human rights obligations. Rather, policy-making happens in a fragmented way with no coming-together of key decision-makers with civil society, Indigenous organizations, human rights institutions, and other stakeholders. Illustrative of this point is the fact that there has not been a meeting of federal/provincial/territorial ministers responsible for human rights since 1988.

The mechanisms that the government has put in place to coordinate its activities in relation to its international human rights obligations are significantly limited. The

Continuing Committee of Officials on Human Rights (CCOHR) serves as the primary federal/provincial/territorial co-ordinating mechanism in relation to international human rights standards. Its work is done entirely *in camera* and involves limited consultations with civil society, Indigenous organizations or human rights institutions. It is not vested with the authority to implement the recommendations of or respond to the concerns expressed by the international human rights system, nor does it offer an opportunity for public debate or follow-up. As such, in its current form, it is wholly insufficient as an accountability mechanism for ensuring the effective implementation of Canada's international human rights commitments.

With respect to parliamentary engagement, the Senate Standing Committee on Human Rights has a mandate to, among other things, educate the public and ensure proper application of, and adherence to, international human rights principles and laws. It does not, however, provide the kind of ongoing systematic oversight that is required in Canada. It does not regularly engage with Canada's periodic reporting to United Nations treaty bodies, for example, by discussing and calling witnesses with respect to Canada's report to these bodies, or by following-up on the outcomes of these reviews and requesting information from the government about its plans for implementation of recommendations made. Even where the Committee does take up the issue of Canada's implementation of its international human rights obligations, as it did prior to the previous two (2) cycles of the UPR, it is not clear that the recommendations made by the Committee are considered or implemented.⁵

Recommendation 5: The CHRC recommends that Canada review and reform its current accountability structures in relation to the implementation of its international human rights obligations. In particular, these structures should be made more transparent, responsive and inclusive. This should be done in consultation with civil society, organizations representing Indigenous peoples, and others.

Recommendation 6: The CHRC recommends that Canada develop an implementation plan in relation to its international human rights obligations, in full consultation with civil society organizations, Indigenous organizations, human rights institutions and other stakeholders. This plan should contain specific benchmarks and timeframes and should be subject to regular Parliamentary scrutiny.

⁵ For example, in 2012, the Committee made a number of recommendations designed to ensure the government's operations in relations to its human rights treaty obligations are more transparent and accountable, including that it create a central public database with detailed information pertaining to Canada's involvement with the international human rights system, and that it provide action plans outlining how it intends to implement the recommendations it accepts from Canada's UPR and from other UN treaty bodies.