

EMPTY WORDS AND DOUBLE STANDARDS: CANADA'S FAILURE TO RESPECT AND UPHOLD INTERNATIONAL HUMAN RIGHTS

Joint Submission to the United Nations Human Rights Council
in relation to the May 2013 Universal Periodic Review of Canada
October 9, 2012

This Submission addresses two overarching human rights matters that are of pressing concern to a diverse range of Indigenous peoples and organizations and civil society groups across Canada. The first is the failure of Canada to adopt effective means of ensuring implementation of its international obligations. This concern was presented at the time of Canada's 2009 review as well. The second is a deeply troubling and more recent pattern of the Canadian government asserting that UN human rights experts and review processes should give less or even no scrutiny to Canada's record because other countries may face more serious human rights problems or because poverty and hunger may be more prevalent in less affluent countries.

1. EMPTY WORDS: THE IMPLEMENTATION GAP CONTINUES

At the time of the first Universal Periodic Review (UPR) of Canada, 48 civil society groups and Indigenous peoples and organizations supported the attached joint submission, expressing serious and longstanding concern about the Canadian government's failure to institute a transparent, effective and accountable system for ensuring full and proper implementation of the country's international human rights obligations. The statement, a copy of which is attached as an Annex,¹ highlighted that a growing number of important UN level human rights recommendations remain unimplemented and also pointed to numerous calls from UN treaty monitoring bodies for Canada to take action to address this very serious shortcoming.

The stakeholders that endorsed the statement reflected a broad range of human rights concerns and represent many different sectors of Canadian society including Indigenous peoples, women, children, people living in poverty, people living with disabilities, lesbian, gay, bisexual and transgendered people and refugees. All find that Canada's deficient approach to implementation is one of the most serious obstacles they face in advancing stronger protection within Canada of the rights enshrined in UN human rights instruments, and, indeed, the *Canadian Charter of Rights and Freedoms*. Organizations that work in the areas of international development and international human rights also supported the statement because they believe that Canada can and must set a much stronger example to the international community and demonstrate best practices with respect to implementing international human rights obligations.

¹ Annex, Promise and Reality: Canada's International Human Rights Implementation Gap.

At the time of Canada's UPR in February 2009, numerous states picked up these concerns and made recommendations to Canada to strengthen its approach to implementation.² In its response, Canada committed to "considering options for enhancing existing mechanisms and procedures related to implementation of international human rights obligations."³

Indigenous peoples and organizations and civil society groups were hopeful that Canada's approach to the follow up of its first UPR, a review process that the Canadian government itself had championed when the Human Rights Council was created, would mark a turning point. It was expected that Canada would make significant improvements in its approach to the implementation of recommendations made by UN treaty monitoring bodies and the UN Human Rights Council's Special Procedures. Unfortunately, neither has occurred.

Since the February 2009 UPR, two treaty monitoring bodies have conducted their periodic reviews of Canada.⁴ A third, the Committee on the Rights of the Child, is scheduled to review Canada's record at the end of September 2012. Additionally, two Special Procedures Mandate Holders have carried out visits to Canada and issued reports.⁵ Throughout that time period Canada was also tasked with implementing the recommendations it accepted at its 2009 UPR and in preparation for its 2013 UPR. All offered important opportunities for a new approach to implementation based on effective and meaningful consultations with Indigenous peoples and organizations and civil society, and that would also be transparent, well-coordinated between federal and provincial levels of government, and accountable to elected politicians across the country.

Despite these opportunities, there have been no significant efforts to ensure genuine consultations with Indigenous peoples and organizations and civil society groups, nor any attempt to increase the transparency, coordination or accountability of Canada's approach to implementation. Civil society has made numerous recommendations to government, with little to no response from government. There has, for instance, been no political level meeting of federal, provincial and territorial ministers responsible for human rights since 1988. As such the only intergovernmental process for discussing and coordinating human rights implementation remains the secretive Continuing Committee of Officials, which has no decision making authority and does not report publicly as to the topics it discusses let alone the results of those discussions.

² Report of the Working Group on the Universal Periodic Review, Canada, A/HRC/11/17, 3 March 2009, para. 86. See, for example, recommendations 12, 13, 14, 15, 62, 63 and 64.

³ Report of the Working Group on the Universal Periodic Review, Canada, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/11/17/Add.1, 8 June 2009, para. 14.

⁴ UN Committee on the Elimination of Racial Discrimination, February 2012; UN Committee against Torture, May 2012.

⁵ Special Rapporteur on the Right to Food, 2012; Independent Expert on Minorities, 2009.

There is no public tabling of action plans or reporting on the progress of implementing international human rights recommendations, including those stemming from the 2009 UPR or any of the other international level reviews that have taken place in the past four years.

In the preparation of Canada's National Report for its first UPR, the government did not engage in any consultations with Indigenous peoples and organizations or civil society. After Canada submitted its first UPR report and prior to its oral review, Canada provided modest funding for a coordinating committee of NGOs and Indigenous representatives to organize and host engagement meetings in five cities across Canada. These engagement sessions were attended by approximately 200 organizations, as well as by representatives of federal and provincial governments. In response to concerns and recommendations regarding the inadequate engagement with civil society and Indigenous peoples and organizations in advance of its first UPR, Canada accepted recommendation #63, to:

Establish an effective and inclusive process to follow-up on the universal periodic review recommendations (Norway); that civil society be actively involved in the further universal periodic review process of Canada (The Netherlands), in a thorough and timely (Denmark), meaningful and participatory (Philippines) manner and, in the implementation of the review (United Kingdom).

There has been no meaningful implementation of this commitment. One meeting was held between representatives of the federal government and a small number of civil society groups and Indigenous peoples and organizations in Ottawa in September, 2010 dealing only with the issue of developing a procedure for consultation. No funding was provided for travel for organizations outside of Ottawa to attend. There was no follow-up with participants of the meetings. Further meetings were held in 2010 in three Canadian cities, with short notice, no funding for civil society or Indigenous participation and no follow-up reports or engagement. Funding which was provided in advance of Canada's first UPR for cross-country engagement has been refused for the upcoming UPR. There are currently no plans for consultative meetings anywhere in the country to discuss preparations for the 2013 UPR. Public input is limited to an email address to which submissions can be sent.

Collectively, we believe that these entrenched problems with implementation by the government of Canada will only be resolved through law reform. Equivocal commitments to "consider" making improvements have proven meaningless. Instead, people in Canada find it increasingly difficult, in fact nearly impossible, to ascertain what steps *their* governments are taking to live up to binding international obligations to protect *their* rights.

RECOMMENDATION:

The Canadian government should launch a process of law reform to establish a formal mechanism for transparent, effective and accountable implementation of Canada's international human rights obligations. *An International Human Rights Implementation*

Act should be developed through a process of extensive consultation with provincial and territorial governments, Indigenous peoples and organizations and civil society groups.

Canada should provide to the Human Rights Council within one year of its UPR a report on the precise plans for implementation of UPR recommendations, including procedures and resources to be made available to ensure meaningful participation of civil society and Indigenous peoples and organizations.

2. DOUBLE STANDARDS: CANADA'S WAVERING COMMITMENT TO UNIVERSALITY

Central to the international human rights system is the essential principle of universality. States are committed to fulfill their obligations to promote universal respect for and the observance and protection of all human rights for all. The international system does not declare that the rights of individuals and peoples matter more or less because of where they live, or that there should be more or less international level concern about human rights protection in certain countries over others. From the adoption of the Universal Declaration of Human Rights in 1948 to the advent of the Universal Periodic Review 60 years later, in 2008, universality has been fundamental to international human rights protection. An important dimension to the principle of universality is that Canada's implementation of human rights should be measured against its capacity and history: whether it is progressing, regressing or stagnant, and in light of what should be reasonably expected of a country with such an abundance of resources and wealth.

Indigenous peoples and organizations and civil society groups from across Canada are deeply troubled by a growing number of public comments made by senior members of the Canadian government diminishing the importance of universality and suggesting that there should be less or even no international scrutiny of Canada's human rights record on the basis that other countries have worse records than Canada's or that less affluent countries experience more hunger or poverty. At the same time, the independence, integrity and expertise of independent international human rights experts, treaty-based human rights bodies, and senior UN human rights officials have been attacked by the government of Canada.

During the past nine months this has included:

- Characterizing concern expressed by the Special Rapporteur on the rights of Indigenous peoples, James Anaya, about a grave housing crisis faced by Indigenous people in the Attawapiskat First Nation as a "publicity stunt."
- Government ministers unleashing a barrage of personal insults and criticism in Parliament and in media comments during and following the May 2012 mission to Canada by the Special Rapporteur on the right to food, Olivier De Schutter. Among numerous insults and dismissive comments, the Special Rapporteur was told that he had wasted money that could be spent on food aid by choosing to have a mission to Canada, and that he should not get involved in "political

exercises in developed democracies like Canada.” The Parliamentary Secretary to the Minister of Foreign Affairs stated that “it is an insult to Canadians and their tax dollars that this fellow came over here to waste the dollars they have contributed.”

- Chastising the Committee against Torture for carrying out its regular, treaty-mandated review of Canada’s record under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in May 2012, instead of focusing on concerns about torture in other countries. A government spokesperson stated that, “in times when there are serious concerns regarding human rights violations across the world, it is disappointing that the UN would spend its time decrying Canada.”
- Sharply criticizing the High Commissioner for Human Rights for mentioning concerns about emergency legislation passed in the province of Quebec in response to widespread student demonstrations in a passage in her June 2012 speech to the UN Human Rights Council referencing various countries where freedom of association and assembly had been restricted. Canada’s Minister of Foreign Affairs stated publicly that “with what's going on in Syria, with what's going on in Iran and Belarus, the UN would be better to spend its time on [what is happening] there.”

These public comments, some of which descended to the level of personal insults, appear to have become a sustained attack on UN level human rights experts and bodies when they raise questions or concerns or even make recommendations with respect to Canada’s human rights record. Implicit in these attacks is a notion that there should be little or no international oversight of Canada’s human rights record because Canada’s record is better than other countries or because poverty and hunger are less severe in an affluent country like Canada. That position has no basis in international law, it renders empty the very concept of universality in international human rights protection, and devalues the human rights of the countless people in Canada whose rights are not adequately protected and who look to the international system for protection. Furthermore, it sets a debilitating example to the other states which may use similar insults or double standards to argue that they too should not be subject to international scrutiny.

RECOMMENDATION:

The Government of Canada should publicly and unequivocally confirm that it fully accepts that Canada’s record must regularly be assessed by UN level human rights experts, bodies and other processes, as part of universal human rights protection, and that the government welcomes such ongoing reviews, and will engage constructively with recommendations resulting from such reviews.

ANNEX

PROMISE AND REALITY: CANADA'S INTERNATIONAL HUMAN RIGHTS IMPLEMENTATION GAP

Joint NGO Submission to the United Nations Human Rights Council
in relation to the February 2009 Universal Periodic Review of Canada
September 8, 2008

Our organizations are deeply concerned about the mounting gap between the commitments Canada has made on the world stage to protect human rights and the failure to live up to those promises at home. We are particularly concerned that there is no transparent, effective and accountable means of ensuring that those commitments are implemented.

Over several decades many important UN recommendations have been directed at Canada. The recommendations have been made by treaty monitoring bodies in the course of their periodic reviews of Canada's record or in response to petitions brought forward by individuals. Recommendations have also been made by the special procedures of the UN Human Rights Council (previously Commission on Human Rights) following visits to Canada. The recommendations touch on a wide variety of critical human rights concerns and range from outlining specific action to be taken on behalf of one aggrieved individual to suggestions for law reform to better protect the rights of entire marginalized communities.

Many of our organizations separately highlight a number of these vitally important UN recommendations in our individual submissions to this review. While they touch on a range of disparate issues they all have two unfortunate points in common. First, few, if any have been implemented. Second, there has been virtually no public reporting or public explanation of the refusal or failure to implement. Sadly, these two observations apply to the overwhelming majority of recommendations directed at Canada by UN level human rights bodies: no implementation and no explanation.

Our organizations have repeatedly sought to engage governments at federal, provincial and territorial levels about this serious concern. We have made little or no progress. Repeatedly we come up against two major barriers.

First, excessive government secrecy means that there is virtually no public information about these issues. When Canada has been asked by UN treaty monitoring bodies about how it deals with follow-up to recommendations and concerns, it has pointed to a relatively obscure Federal, Provincial and Territorial Continuing Committee of Officials on Human Rights. That Committee, however, is virtually unknown by most Canadians, conducts all of its work *in camera* and never reports publicly.

An appropriate inter-governmental institution with the authority and accountability to implement recommendations and respond to concerns has never existed in Canada. Federal and provincial level human rights commissions are not able to play this role as they have limited mandates, grounded in specific aspects of non-discrimination, which do not extend to many of the rights enshrined in international instruments. There has been no inter-ministerial meeting dealing with human rights in Canada since 1988.

Second, governments frequently blame federalism. Federal and provincial/territorial governments consistently blame each other for the shortcomings. The constitutional division of powers between the federal and provincial/territorial governments in Canada cannot be an excuse for a failure to implement rights. Article 27 of the Vienna Convention on the Law of Treaties states the principle that a state may not invoke provisions of its internal law as justification for a failure to perform a treaty.

Numerous UN level bodies have raised these concerns.

- The Committee on Economic, Social and Cultural Rights, noting that most of its previous recommendations have not been implemented, has called on Canada “to establish transparent and effective mechanisms, involving all levels of government as well as civil society, including indigenous peoples, with the specific mandate to follow up on the Committee’s concluding observations.”⁶
- The Human Rights Committee has urged Canada to “establish procedures, by which oversight of implementation of the Covenant is ensured, with a view, in particular, to reporting publicly on any deficiencies. Such procedures should operate in a transparent and accountable manner and guarantee full participation of all levels of government and of civil society, including indigenous peoples.”⁷
- The Committee on the Elimination of Discrimination against Women has urged that Canada “search for innovative ways to strengthen the currently existing consultative federal-provincial-territorial Continuing Committee of Officials for human rights as well as other mechanisms of partnership in order to ensure that coherent and consistent measures in line with the Convention are achieved.”⁸
- The Committee on the Rights of the Child has encouraged Canada to “strengthen effective coordination and monitoring, in particular between the federal, provincial and territorial authorities, in the implementation of policies for the promotion and protection of the child, as it previously recommended, with a view to decreasing and eliminating any possibility of disparity or discrimination in the implementation of the Convention.”⁹

⁶ *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, E/C.12/CAN/CO/4, E/C.12/CAN/CO/5, 22 May 2006, para. 35.

⁷ *Concluding Observations of the Human Rights Committee*, CCPR/C/CAN/CO/5, 20 April 2006, para. 6.

⁸ *Report of the Committee on the Elimination of Discrimination against Women*, A/58/38, Twenty-eighth session (13-31 January 2003), para. 350.

⁹ *Concluding observations: Canada*, CRC/C/15/Add.215, 27 October 2003, para. 11.

The Standing Committee on Human Rights of the Senate of Canada has similarly recommended that the “federal government – with the provinces, territories, Parliamentarians and interested stakeholders - ... establish a more effective means of negotiating, incorporating and implementing its international human rights obligations.”¹⁰

The Solution

In our view, there are three fundamental changes that must be made before Canada’s approach to implementation of its international human rights obligations will improve.

1. Government secrecy around these issues must give way to openness and transparency.
2. A coordinated and accountable process for monitoring implementation of Canada’s international human rights obligations involving both levels of government, as well as Indigenous peoples and civil society, needs to be developed. As part of any such process there should be a high level focal point for implementation of Canada’s international obligations that, at a minimum, meets the following criteria:
 - a) regular public reporting and transparency;
 - b) on-going engagement with civil society organizations, citizens and the media;
 - c) following engagement with affected stakeholder populations, public response to concluding observations from UN treaty body reviews and other UN-level recommendations within a year of receipt; and
 - d) a mandate to investigate and resolve complaints, including those related to co-ordination with provinces on matters that cross federal/provincial jurisdiction.
3. A more concerted effort must be made to ensure that effective remedies are available in Canadian law and within Canadian human rights institutions for all of the rights contained in ratified international human rights treaties, so that governments can be held accountable by Canadian courts and human rights institutions for failures to comply with international human rights.

We are hopeful that in the context of the constructive dialogue engendered by the new procedures under the Universal Periodic Review, these three changes may be put forward by Canada as firm commitments.

¹⁰ Standing Senate Committee on Human Rights, *Who’s in Charge Here? Effective Implementation of Canada’s International Obligations with Respect to the Rights of Children*, November 2005, pg. 82.

Endorsed by:

- Action des Chrétiens pour l'Abolition de la Torture – Canada
- L'Association québécoise des organismes de coopération internationale
- Canadian Association of Elizabeth Fry Societies
- Canadian Centre for International Justice
- Canadian Council for International Cooperation
- Canadian Council for Refugees
- Canadian Federation of University Women
- Canadian Journalists for Free Expression
- Canadian Lawyers Association for International Human Rights
- Canadian Paraplegic Association
- Civil Liberties Association – National Capital Region
- Communication, Energy and Paperworkers' Union
- DisAbled Women's Network Canada
- Entraide missionnaire
- Group of 78
- Human Rights Watch
- Kashmiri-Canadian Council
- Maritimes-Guatemala Breaking the Silence Network
- Oxfam Canada
- Parkdale Community Legal Services
- Safe Drinking Water Foundation
- Social Justice Committee of Montreal
- Social Rights Advocacy Centre
- World Federalist Movement - Canada

The following organizations, which are making their own separate submissions to this Review, associate themselves with the concerns and recommendations outlined in this submission:

- Action Canada for Population and Development
- Amnistie internationale Canada francophone
- Amnesty International Canada (English branch)
- Canadian Centre for Victims of Torture
- Canadian Coalition for the Rights of Children
- Canadian Feminist Alliance for International Action
- Canadian Friends Service Committee (Quakers)
- Canadian HIV/AIDS Legal Network
- Centre for Equality Rights in Accommodation
- Citizens for Public Justice
- Council of Canadians with Disabilities
- First Nations Summit
- Independent Living Canada
- International Civil Liberties Monitoring Group
- International Organization of Indigenous Resource Development
- La Ligue des droits et libertés
- Mouvement d'éducation populaire et d'action communautaire du Québec
- National Union of Public and General Employees
- Native Women's Association of Canada
- PEN Canada
- Quebec Native Women Inc / Femmes Autochtones du Québec
- Right On Canada
- The Wellesley Institute
- Women's Housing Equality Network