

Human rights treaty implementation

THE CONSENSUS ON CANADA

LAW SHEET

**the POVERTY and
HUMAN RIGHTS
CENTRE**

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Introduction

This Law Sheet identifies overlapping areas of human rights treaty obligation in which various international monitoring bodies have found Canada's performance to be unsatisfactory. The extent of the consensus regarding Canada's non-compliance with its human rights obligations in particular areas, that exists among the international monitoring bodies applying different treaties, serves to highlight some of the work that Canadian governments must attend to urgently, if Canada is to maintain its reputation as a rights-respecting nation.

The key international human rights treaties to which Canada is a party, include the:

- *International Covenant on Economic, Social and Cultural Rights*
- *International Covenant on Civil and Political Rights*
- *Convention on the Elimination of All Forms of Discrimination Against Women*
- *Convention on the Elimination of All Forms of Racial Discrimination*
- *Convention on the Rights of the Child.*

Canada, having signed the treaties, is obligated to take steps to ensure that Canadian residents enjoy the rights guaranteed by them. International treaty monitoring bodies, which are committees composed of human rights experts, periodically review Canada's compliance with its obligations.

The review process

Canada submits written reports to each treaty body approximately every four years.¹ After an initial examination of the country's report, the treaty body requests further information, and the federal government submits written responses. A Canadian governmental delegation also appears before the treaty body during its review session, which allows Canadian government officials, including representatives of the federal, provincial and territorial governments, to respond in person to questions. Treaty body members' questions arise from their review of Canada's written report, the governments' responses to initial questions, and submissions from non-governmental organizations.

When the review process ends, the treaty body issues a written report referred to as "Concluding Observations". In the Concluding Observations, the treaty body identifies shortcomings in Canada's treaty rights implementation.

1 For an example of a report submitted by Canada to a treaty body, see: Canada's eighteenth periodic report due in 2005, submitted to CERD on February 3, 2006. Online: [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/734cbd1ad60297b8c125721400488743/\\$FILE/G0641199.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/734cbd1ad60297b8c125721400488743/$FILE/G0641199.pdf).

What the treaty bodies agree on

There is an emerging consensus regarding serious failures on the part of Canada to fulfil its human rights obligations. The treaty bodies have identified numerous Canadian shortfalls and most of the major treaty bodies, which have considered Canada's compliance at different times, consistently identify the same issues.

Canada's failure to address poverty

Many Canadians live in poverty, resulting in serious social problems and group-based disadvantage. The treaty bodies have repeatedly expressed grave concern, particularly about:

- High poverty rates of certain groups, especially women — in particular Aboriginal women, elderly women living alone, single mothers, older women, women of colour, immigrant women, and women with disabilities (CESCR 2006, para 15; CEDAW 2003, paras. 357, 358; CCPR 1999, para. 20); children (CRC 2003, para. 43; and Aboriginal people (CESCR 2006, para. 15; CERD 2002, para. 331; CESCR 1998, para. 17).
- Cuts to social assistance, inadequate welfare rates and restricted access to welfare, implementation of workfare programs, restrictions on employment insurance, inadequate minimum wage rates, and provincial clawbacks of the National Child Benefit Supplement from social assistance recipients (CESCR 2006, paras. 21, 23; CCPR 2006, para. 24; CCPR 1999, para. 18; CESCR 1998, paras. 20, 21, 22, 30).
- Disastrous levels of homelessness (CESCR 2006, paras. 28, 62; CESCR 1998, paras. 24, 34, 35, 46) and resulting damaging effects, including damage to health (CESCR 2006, para. 57; CCPR 1999, para. 12).
- Lack of adequate housing, especially for children and youth (CESCR 1998, para. 35, CRC 1995, para. 17), Aboriginal peoples (CESCR 2006, para. 24; CRC 1995, para. 17), and women (CESCR 2006, para. 26; CEDAW 2003, paras. 383, 384).
- High hunger rates. In 1993, CESCR called on Canadian governments to eliminate the need for food banks (para. 26). In 1998, CESCR noted that, despite its earlier recommendation, the number of food banks had doubled during the 1990s and food banks were still unable to meet demand (CESCR 1998, para. 33). In 2006, CESCR called on Canada to intensify its efforts to address the issue of food insecurity and hunger (CESCR 2006, para. 61).

The persistence of poverty, especially in a wealthy and industrialized nation like Canada, is clearly regarded by the treaty bodies as a human rights failure.

Aboriginal People

Every treaty body that reports on Canada has found that a great deal must be done to improve standards of living and human rights for Aboriginal people.

Several treaty bodies have criticized Canada's failure to act on recommendations of the Royal Commission on Aboriginal Peoples (CERD 2007 para. 21; CERD 2002, para. 329; CESCR 1998, paras. 7, 18, 43; CCPR 1999, para. 8). These treaty bodies particularly expressed concern that governments have not implemented recommendations related to dispossession from land and breach of Aboriginal treaty rights and title (CESCR 2002, para. 18). The Human Rights Committee has called on Canadian governments to re-examine its policy and practices to ensure they do not result in the extinguishment of inherent aboriginal rights (CCPR 2006, para. 8). CERD urges Canadian governments to examine ways and means to facilitate the establishment of proof of Aboriginal title over land in procedures before the courts (CERD 2007, para. 22).

The treaty bodies have also expressed numerous concerns about the disparity in the quality of life experienced by many Aboriginal people compared with other Canadians, including:

- Lack of adequate housing, wide-scale unemployment, poverty, lack of access to safe drinking water (CESCR, 2006, para. 15; CESCR 1998, paras. 17, 18), and the special problems of Aboriginal children (CRC 1995, para. 17).
- High suicide rates (CESCR 1998, para. 17; CERD 1994, para. 326), especially among Aboriginal children (CRC 2003, para. 36; CESCR 1998, para. 18).
- Widespread discrimination against Aboriginal people, especially in employment (CERD 2007, para. 24; CERD 2002, para. 334; CERD 1994, para. 325), and, in particular, against Aboriginal women (CEDAW 2003, paras. 361, 362).
- Discrimination against Aboriginal women with regard to Indian Status, band membership, and matrimonial property on reserve lands (CERD 2007, para.15; CESCR 2006, paras. 11(d), 17, 45; CCPR 2006, para. 22, CEDAW 2003, paras. 360, 361).²

Treaty bodies have made it clear that to meet its international treaty obligations, Canada must respond quickly and remedy these widespread and persistent violations of the human rights of Aboriginal people.

2 See also: *Lovelace v. Canada*, Human Rights Committee Communication No. R. 6/24, UN. Doc. Supp. No. 40 (A/36/40) at 166 (1981)

Women

Treaty bodies have commented critically about women's inequality in Canada, and the factors that have exacerbated that inequality, including:

- Women's poverty and the worsening situation following post-1995 budgets and social service cutbacks, which have had disproportionate effects on women. (CEDAW 2003, paras. 351, 352; CEDAW 1997, paras. 334, 342; CCPR 2006, para. 24, CPR 1999, para. 20; CESCR 1998, paras. 16, 23, 54). CEDAW especially noted the poverty of Aboriginal women, elderly women living alone, single mothers, older women, women of colour, immigrant women and women with disabilities (2003, para. 357).
- Women's inequality in the labour market, restrictions on access to employment insurance benefits (CESCR 2006, para. 22), uneven and inadequate implementation of pay equity, and the inadequacy of protection provided by the statutory human rights system (CEDAW 2003, paras. 373, 374, 375, 376, 381, 382; CESCR 1998, para. 16, and exploitation of migrant domestic workers (CESCR 2006, para. 49; CEDAW 2003, paras. 365, 366).
- Barriers to women escaping domestic violence resulting from cuts to social assistance, and the lack of affordable housing and inadequate funding for women's crisis services and shelters (CESCR 2006, para. 26; CEDAW 2003, paras. 369, 370; CESCR 1998, paras. 28, 42).
- As mentioned above, discrimination faced by Aboriginal women with regard to employment (CEDAW 2003, 361, 362), and with regard to discrimination in matters relating to Indian status, band membership and matrimonial real property on reserve lands and equal participation in the governance of their communities (CERD 2007, para. 15; CESCR 2006, paras. 11(d), 17, 45; CCPR 2006, para. 22; CEDAW 2003, paras. 360, 361).

The treaty bodies view women's inequality in Canada as a serious failure to implement international human rights obligations.

Human rights enforcement

In Canada, statutory human rights legislation and the *Canadian Charter of Rights and Freedoms* are primary vehicles for enforcing human rights treaty obligations. However, treaty bodies have identified numerous obstacles to the effective operation of these domestic human rights instruments. The Human Rights Committee, among others, has expressed concern about s. 67 of the *Canadian Human Rights Act*, which has had the effect of protecting band councils from challenges to discrimination (CCPR, 2006, para. 22). CESCR has noted that provincial governments have ignored rulings by domestic human rights tribunals (1998, paras. 26, 30), and that lower courts have routinely interpreted the *Charter*

to exclude social and economic rights (1998, para. 15). Additional recommendations by the treaty bodies for improving human rights enforcement in Canada include:

- Ensuring prompt determination of human rights claims (CESCR 1998, para. 51), guaranteeing access to a competent tribunal that can provide an effective remedy (CCPR 2006, para. 11; CCPR 1999, para. 9), ensuring efficiency and accessibility for people bringing racial discrimination claims (CERD 2002, para. 339), and providing funded legal representation for vulnerable groups bringing claims (CESCR 2006, para. 43; CESCR 1998, para. 51).
- Extending the mandate of the Court Challenges Programme to cover challenges to provincial laws and policies that may violate the *Charter* (CESCR 2006, para. 42; CEDAW 2003, paras. 355, 356; CESCR, 1998, para. 59),³ and, because of the cancellation of the Program in September 2006, reinstating the Court Challenges Programme (CERD 2007, para. 26).
- Ensuring that governments acting as parties in *Charter* litigation promote interpretations of the Charter that are consistent with their obligation to uphold treaty-based human rights (CESCR 2006, paras. 11(b), 41; CESCR 1998, paras. 14, 50).
- Providing legal aid in family law and poverty law matters, which bear on the enjoyment of rights guaranteed by the treaties. These areas of law, as the treaty bodies have noted, are not adequately covered by legal aid schemes that are primarily focused on criminal law (CESCR 2006, para. 43; CEDAW 2003, paras. 355, 356; CESCR 1998, para. 42).

The treaty bodies have consistently found troubling gaps in the mechanisms available for Canadians to enforce their human rights entitlements. They recommend all governments make concrete improvements to give life to human rights guarantees.

Responsibility for human rights treaty obligations

Canada is a federal state, in which law-making powers are distributed between federal, provincial and territorial governments. In this arrangement, the Canadian social safety net is a product of intergovernmental agreements, shared responsibility and collaboration.

In the wake of cuts to the social safety net, and the elimination of national standards, particularly in the area of social assistance, the federal government has claimed that difficulties in federal/provincial/territorial relationships present obstacles to the fulfillment of treaty obligations.

3 The Court Challenges Program, that funded important test cases that challenge a law, policy or practice of the federal government, to advance equality rights under section 15 of the Charter, was cancelled in September 2006. The Program's mandate did not extend to provincial laws, policies, and practices in areas such as social assistance, health care, and education. This territorial restriction was a severe limit on people's access to the courts to address social and economic rights violations.

However, the treaties bodies have resisted any suggestion that complications inherent in federalism justify non-compliance with treaty obligations. Instead, the treaty bodies have consistently taken the position that all levels of government are responsible for treaty compliance, and that the federal government has a special leadership role to play, and a primary responsibility for ensuring that treaty obligations are fulfilled (CERD 2007, para. 12; CESCR 2006, para. 35; CEDAW 2003, paras. 348, 349, 350; CRC 2003, para. 9; CERD 2002, para. 326; CESR 1998, paras. 12, 19).

When Canada becomes a signatory to an international human rights treaty, the Canadian state as a whole and all levels of government are bound by the treaty.

The treaty bodies have recommended that senior levels of government make intergovernmental agreements that embody pan-Canadian standards for social programs that reflect treaty rights; and that the federal government consider re-attaching conditions to transfer payments, for the purpose of establishing national standards that can ensure that all residents of Canada, in all parts of the country, receive the equal benefit of Canada's international treaty obligations.

Specifically, treaty bodies have recommended that:

- federal and provincial agreements be changed to establish national standards for mental health care, home care, child care, shelters for battered women, and legal aid for non-criminal matters (CESCR 2006, para. 20; CEDAW 2003, paras. 351, 356; CESCR 1998, para. 42).
- the federal government re-establish a national program of cash transfers that includes universal entitlement to social assistance and social services, national standards, and a statutory right to adequate assistance, a right to freely chosen work, and a right to appeal (CESCR 2006, paras. 20, 52; CEDAW 2003, paras. 351, 352; CESCR 1998, paras. 19, 40).

Monitoring compliance and enforcement

The treaty bodies have also recommended that the federal government ensure provincial and territorial governments are aware of their obligations under international treaties, including their obligation to create mechanisms for enforcement of treaty rights within the provinces and territories (CESCR 2006, para. 35; CESCR 1998, para. 52).

In its 2006 Concluding Observations, the Human Rights Committee recommended that Canada establish oversight procedures for the implementation of the Covenant with a view, in particular, to reporting publicly on any deficiencies. The Committee stated: “such [oversight] procedures should operate in a transparent and accountable manner, and guarantee the full participation of all levels of government and of civil society, including indigenous peoples” (CCPR 2005, para. 6). This call was repeated by CESCR in 2006, which urged Canada to establish “transparent and effective mechanisms, involving all levels of

governments as well as civil society, including indigenous peoples, with the specific mandate to follow up on the Committee's concluding observations" (CESCR 2006, para. 35).

Canada has not moved forward to implement the central recommendations of the treaty bodies, nor has it created the appropriate mechanisms to monitor and enforce compliance with treaty rights, or to follow up on treaty body recommendations. The lack of such credible mechanisms presents a serious challenge to the realization of human rights and the promotion of a rights-respecting culture.

Conclusion

Canada has established a global reputation for supporting human rights and promoting the development of new international human rights instruments. Many individual Canadians, Canadian non-governmental organizations, and Canadian officials have helped draft treaties and have urged governments of other countries to sign on to new treaties. However, currently Canada is developing a reputation for making legislative, policy, and budgetary choices at home that are diminishing the human rights of its residents. There is an emerging consensus that Canada must address the poverty of disadvantaged groups; the lack of national standards for social programs; the lack of effective domestic enforcement for human rights violations; and the disproportionate impact of these failures on Aboriginal peoples, women, people of colour, and people with disabilities.

Treaty bodies have identified these problems based on the reports of Canadian governments and in the context of careful and extensive review processes. As a matter of international obligation and good faith, federal, provincial and territorial governments must respond to these concerns, and give life to treaty-based human rights for all Canadians.

About the Poverty and Human Rights Centre

This Law Sheet was produced by the Poverty and Human Rights Centre, in Vancouver British Columbia. The Poverty and Human Rights Centre is a non-profit research and public education centre committed to promoting recognition and realization of rights to social and economic security. The Centre's Directors are Gwen Brodsky and Shelagh Day. For more information about the Poverty and Human Rights Centre, go to the Centre's website <http://www.povertyandhumanrights.org/>

The financial support of the Social Sciences and Humanities Research Council Community University Research Alliance, the Canadian Bar Association Law for the Future Fund, and the Law Foundation of British Columbia is gratefully acknowledged.

The Poverty and Human Rights Centre also acknowledges K. Kinch, P. Murray, M. Fagbongbe, and V. Salmon for their assistance in the preparation of this law sheet.

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International Covenant on Economic, Social and Cultural Rights, 19 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR].

International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976) [ICCPR].

Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13, Can. T.S. 1982 No. 31, 19 I.L.M. 33 (entered into force 3 September 1981) [CEDAW].

Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456 (entered into force 2 September 1990) [CRC].

Concluding observations

The most recent Concluding Observations regarding Canada and upcoming due dates for Canadian reports are listed below. A good starting point for further online research is the United Nations Treaty Body Database at <http://www.unhchr.ch/tbs/doc.nsf>. Earlier Concluding Observations, some of which are not on the Internet, are usually available at public and university libraries.

1. Committee on Economic, Social and Cultural Rights (CESCR)

- Review of 4th and 5th periodic reports: *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN CESCR, 2006, UN Doc. E/C.12/CAN/CO/4, E/C.12/CAN/CO/5, online: Office of the High Commissioner for Human Rights
[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/87793634eae60c00c12571ca00371262/\\$FILE/G0642783.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/87793634eae60c00c12571ca00371262/$FILE/G0642783.pdf)
- Review of 3rd periodic report: *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31, online: Office of the High Commissioner for Human Rights
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/c25e96da11e56431802566d5004ec8ef?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/c25e96da11e56431802566d5004ec8ef?Opendocument)
- Review of 2nd periodic report: *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN CESCR, 1993, UN Doc. E/C.12/1993/5, online: Office of the High Commissioner for Human Rights
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/280a3783f5a26d09c12563e80058b47e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/280a3783f5a26d09c12563e80058b47e?Opendocument)
- Due date for Canada's 6th Report: June 6, 2010.

2. Human Rights Committee (CCPR)

- Review of 5th periodic report: *Concluding Observations of the Human Rights Committee: Canada*, UN CCPR, 2006 UN Doc. CCPR/C/CAN/CO/5, Online: Office of the High Commissioner for Human Rights
[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/\\$FILE/G0641362.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/$FILE/G0641362.pdf)
- Review of 4th periodic report: *Concluding Observations of the Human Rights Committee: Canada*, UN CCPR, 1999, UN Doc. CCPR/C/79/Add.105, online: Office of the High Commissioner for Human Rights [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/e656258ac70f9bbb802567630046f2f2?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e656258ac70f9bbb802567630046f2f2?Opendocument)
- Due date for Canada's 6th report: October 31, 2010.

3. Committee on the Elimination of Discrimination Against Women (CEDAW)

- Review of 5th periodic report: *Concluding Observations/Comments of the Committee on the Elimination of Discrimination against Women: Canada*, 20/02/2003 UN Doc. A/58/38 (Part 1), paras. 336-389, online: Office of the High Commissioner for Human Rights [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/43474744606c3353c125728e00700376?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/43474744606c3353c125728e00700376?Opendocument)
- Review of 3rd and 4th periodic reports: *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Canada*, UN CEDAW, 1997, UN Doc. A/52/38/Rev.1, paras. 306-343, online: Office of the High Commissioner for Human Rights [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/b5dce41c28f858478025649d002d37f7?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/b5dce41c28f858478025649d002d37f7?Opendocument)
- Due date for Canada's 6th report: June 30, 2007.

4. Committee on the Elimination of Racial Discrimination (CERD)

- Review of the 17th and 18th periodic reports: *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, UN CERD, 2007, UN Doc. CERD/C/CAN/CO/18 XX March 2007, online: Office of the High Commissioner for Human Rights <http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.CAN.CO.18.pdf>
- Review of 13th and 14th periodic reports: *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, UN CERD, 2002, UN Doc. A/57/18, paras. 315-343, online: Office of the High Commissioner for Human Rights [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/a6ced60ebefe314dc1256c6f00594c92?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/a6ced60ebefe314dc1256c6f00594c92?Opendocument)
- Review of 11th and 12th periodic reports: *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, UN CERD, 1994, UN Doc. A/49/18, paras. 298-331, online: Office of the High Commissioner for Human Rights [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/0169109da024c4b0c1256b580050ad29?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/0169109da024c4b0c1256b580050ad29?Opendocument)

5. Committee on the Rights of the Child (CRC)

- Review of 2nd periodic report: *Concluding Observations of the Committee on the Rights of the Child: Canada*, UN CRC, 2003, UN Doc. CRC/C/15/Add.215, online: Office of the High Commissioner for Human Rights [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/995a15056ca61d16c1256df000310995/\\$FILE/G0344648.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/995a15056ca61d16c1256df000310995/$FILE/G0344648.pdf)

- Review of Canada's initial report: *Concluding Observations of the Committee on the Rights of the Child: Canada*, UN CRC, 1995, UN Doc. CRC/C/15/Add.37, online: Office of the High Commissioner for Human Rights [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/a6daf2f3b9d386da4125623700565bcb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/a6daf2f3b9d386da4125623700565bcb?Opendocument)
- Canada's consolidated 3rd and 4th reports are due January 11, 2009. The 3rd periodic report was originally due January 11, 2004.