

U.N Human Rights Council's Universal Periodic Review Response of Canada to the Recommendations

Note: Canada's review before the United Nations Human Rights Council's Universal Periodic Review (UPR) Working Group session took place on February 3, 2009. A total of 45 states intervened during the three-hour interactive dialogue. These states made recommendations to Canada on a wide range of topics.

The Response of Canada to the Recommendations has been submitted to the United Nations in advance of Canada's appearance on June 9, 2009, before the Human Rights Council. Canada's response was prepared in close collaboration with provincial and territorial governments in accordance with UN guidelines (limit of 2,675 words). The final outcome on Canada's review will be adopted by the Human Rights Council at its June 2009 session. Canada will report on implementation of the accepted recommendations at its next review in 2013.

Canada welcomes and has given careful consideration to the 68 recommendations made during its Universal Periodic Review. Canada has also considered recommendations from States that did not have an opportunity to speak due to time constraints.

The Government of Canada met with civil society and Aboriginal organizations and solicited comments on the recommendations through an electronic consultations exercise. Views expressed through these processes have informed the following response and will inform Canada's implementation of the accepted recommendations. As demonstrated by these actions, Canada therefore accepts recommendation 63.

The Government of Canada commits to tabling the outcome of its Universal Periodic Review in Parliament.

Human Rights Council

Canada has supported the work of the United Nations human rights system. Canada has already accepted the request for a visit referred to in recommendation 18 and maintains a standing invitation to all Special Rapporteurs.

While Canada's term at the HRC is ending, Canada sincerely hopes that the Human Rights Council's founding principles are upheld, including impartiality, objectivity, non-selectivity, and the elimination of double standards and politicization. The defence of these principles has underpinned Canada's inaugural term on the Council. Canada therefore accepts and has implemented recommendations 66, 67, and 68.

Recommendation 65 cannot be accepted. Canada does not accept that the Council violate its founding principles by including, as part of the institution-building package, a permanent agenda item that singles out a particular situation and by devising exceptional rules for one Special Rapporteur. Canada will associate itself with an institution-building package that respects the principles upon which the Council was founded.

International Instruments

Canada accepts recommendations 2 and 3 as it is conducting the required analysis of its domestic legislation and policies in considering the possible signature/ratification of the CRPD and the OP-CAT.

Canada accepts recommendation 7 and will request assistance from the OHCHR should the need arise.

Recommendations 1, 4, 5, 6, and 8 cannot currently be accepted. At present, Canada is not considering becoming a party to the OP-ICESCR, CED, ACHR, ICRMW, or ILO Convention 169. These treaties may be reviewed at a later date.

Canada does not accept recommendation 9. Canada's two reservations to the CRC were entered following consultations with all governments and with national Aboriginal organizations.

Canada does not accept recommendation 52, the related part of recommendation 45 or those of Ireland and Zambia. Canada continues to have concerns with respect to the wording of the UN Declaration on the Rights of Indigenous Peoples, including the provisions on lands, territories and resources, and free, prior and informed consent. Canada remains strongly committed to the rights of indigenous peoples. The rights of Aboriginal people in Canada are protected by the Canadian Constitution and other domestic laws, and Canada is committed to making progress on issues of particular concern to Aboriginal people in Canada.

Effective Implementation of International Human Rights Treaties

Canada accepts recommendation 11 and continues to promote and protect human rights through policies, programs and legislation that reflect Canadian values and evolving international human rights standards.

Canada accepts recommendation 12. Federalism is not a barrier to the effective implementation of international human rights obligations in Canada. To the contrary, each government designs and delivers programs and services to best address regional and local priorities and circumstances. Ongoing intergovernmental discussions contribute to the advancement of human rights protections throughout Canada.

Canada accepts in part recommendations 14, 15, 62 and 64, recognizing that there may be opportunities for improving established processes, including with respect to follow-up to treaty body and UPR recommendations. Canada commits to considering options for enhancing existing mechanisms and procedures related to the implementation of international human rights obligations. Canada welcomes the views of civil society and Aboriginal organizations in identifying practical means to fulfil this commitment.

Canada commits to enhancing information sharing with Canadians about its international human rights treaty-adherence process and the status of the review of treaties under consideration for possible signature/ratification.

The Government of Canada commits to enhancing mechanisms to promote awareness and understanding of international obligations within the federal public service.

Canada does not accept recommendations 10, 13 and 41. Canada agrees that all human rights are universal, indivisible, interdependent and interrelated and strives to give the same importance to all rights. However, Canada does not accept that all aspects of economic, social and cultural rights are amenable to judicial review or that its international human rights treaty obligations require it to protect rights only through legislation. Some ESC rights are addressed by legislation in Canada. Various administrative and judicial bodies provide domestic remedies for violations of certain ESC rights and strong equality rights protection ensure their non-discriminatory application.

Aboriginal Peoples

Canada accepts recommendation 19, and in part recommendation 54 as we must strengthen and improve Aboriginal programs, and related recommendations from South Africa and Djibouti. Canada accepts in part recommendation 45. Canada continues to take important steps to address fundamental inequalities between Aboriginal and non-Aboriginal Canadians.

Federal, provincial and territorial governments, Aboriginal governments and communities, and learning institutions are working together to improve education outcomes of First Nations, Métis and Inuit students. The Government of Canada recently announced new investments to improve performance of students in First Nations and provincial schools, and, in April, signed the first Inuit Education Accord. Tripartite partnership agreements are in place in British Columbia and New Brunswick.

Canada is working with Aboriginal organizations to better respond to employer and labour market demands and reduce the gap between Aboriginal employment levels and those of other Canadians. At the federal level, the new two-year Aboriginal Skills and Training Strategic Investment Fund will complement the existing Aboriginal Human Resources Development Strategy and the Aboriginal Skills and Employment Partnership program.

Canada accepts recommendation 46. It recognizes that strategic investments in a child's early years lead to greatly improved long-term health outcomes in Indigenous communities. The focus of government programs includes pregnant women, new parents and children under six years of age, and supports the growth of healthy families. The Government of Canada is providing new funding for Indigenous health programs, health facilities and infrastructure.

Canada accepts recommendation 55. As part of a comprehensive Action Plan on Aboriginal Consultation and Accommodation, Interim Consultation Guidelines are in place for federal officials. Provinces also ensure that their arrangements are consistent with provincial consultation duties. Canada is continually seeking to improve land claims processes, whose goal is not to restrict the progressive development of Aboriginal rights, but rather to reconcile competing interests in a manner that allows for harmonious co-existence of Aboriginal and non-Aboriginal Canadians.

Canada accepts recommendation 56, noting that modern treaty negotiations are tripartite negotiations that involve complex issues and often a lengthy process. Twenty-two modern treaties have been reached to date. An independent specific claims tribunal was established by statute. Procedural efficiencies resulted in 117 specific claims being addressed in 2008-2009.

Canada commits to consider the future recommendations of the Indian Residential Schools Truth and Reconciliation Commission.

Poverty and Homelessness

Canada accepts recommendation 49 and is undertaking measures to respond to the social and economic needs of Canadians. Canada acknowledges that there are challenges and the Government of Canada commits to continuing to explore ways to enhance efforts to address poverty and housing issues, in collaboration with provinces and territories.

Canada accepts in part recommendation 45 and commits to giving appropriate attention to vulnerable groups in policy development. The Government of Canada also commits to giving greater prominence to the Market Basket Measure as one of the tools used to measure low income.

Canada does not accept recommendation 17 or the related recommendation from Ghana to develop a national strategy to eliminate poverty. Provinces and territories have jurisdiction in this area of social policy and have developed their own programs to address poverty. For example, four provinces have implemented poverty reduction strategies. The Government of Canada supports these measures, notably through benefits targeting children and seniors. These efforts are having a

positive impact: low-income rates for seniors, women, and children have fallen considerably in the past decade.

Canada accepts recommendations 47 and 48. Canada is working to improve housing choice and affordability. Governments are making substantial investments in housing through programs targeting affordability, housing renovation, homelessness and support for existing social housing units. Addressing Aboriginal housing issues on reserve remains a priority. Canada provides support through programs targeting the construction of new housing units, the renovation of existing housing stock, and subsidies for existing rental housing. Since 2006, new funding for Aboriginal people has been dedicated to resolving challenges of poverty and housing.

Disadvantaged Groups

Canada accepts recommendation 51 as it relates to international human rights treaties to which it is a party. Canada also accepts recommendations 16, 20, 43, and 44, and accepts in part recommendation 53. Measures to promote equality for disadvantaged groups include anti-discrimination provisions in federal and provincial/territorial legislation, and policies and programs with Aboriginal governments and organizations and the private sector. Governments ensure equal pay for equal work through a combination of pay equity legislation, labour standards, human rights legislation and policies.

Canada commits to working on identifying gaps in available data in order to better assess and report on its international human rights obligations.

Canada will continue to work to improve the situation of vulnerable groups, which are defined by socio-economic measurements as having a lower standard of living than most Canadians. These groups are a focus when designing public policies and programs. Current measures to reduce unemployment target Aboriginal people, persons receiving employment assistance payments, persons with disabilities, older workers, recent immigrants, and some segments of youth.

Canada accepts recommendation 50 in principle but recalls that programmes to facilitate access to post-secondary institutions, including loans, grants, scholarships, tax credits and registered savings plans have been significantly improved through measures announced in recent years.

Canada is working to increase the representation of women, Aboriginal people, members of visible minority groups and persons with disabilities in employment. All governments have employment policies that promote the hiring of disadvantaged groups within the public service.

Police forces in Canada use diversity and cultural awareness training to promote the equitable treatment of all persons by law enforcement officials. In most jurisdictions, police forces are overseen by independent civilian review agencies.

Within the Canadian electoral system, various levels of government play a role in encouraging representation of minority communities in Parliament and the Provincial Legislatures. Canada believes that this role should be fulfilled primarily by political parties and NGOs, some of which have specific programs to encourage minority and women candidates.

Canada accepts recommendation 29. The rights and freedoms addressed by the Yogyakarta principles will continue to be considerations in the implementation of international human rights obligations in Canada.

Racism, Racial Discrimination and Xenophobia

Canada accepts recommendations 22 and 28, as Canada already combats racism and discrimination against all groups, including Aboriginal people, with an emphasis on initiatives that strengthen inter-cultural and interfaith understanding.

Canada does not accept recommendation 21. Canada did not participate in the 2009 Durban Review Conference, and was the first nation state to indicate that it would not attend, out of concern that the Review Conference would manifest intolerance and anti-Semitism in a manner similar to what transpired at the first Durban Conference. In the end, that concern was well-founded.

Canada accepts recommendation 23 and 24, but does not accept the proposed creation of an offence of racial violence in recommendation 58. Canadian criminal law criminalizes violence, whether hate-motivated or not. Moreover, the *Criminal Code* provides that evidence that any offence is motivated by hate is deemed to be an aggravating factor in sentencing the offender. The *Criminal Code* also prohibits hate propaganda and human rights legislation prohibits the publication or display of material that is discriminatory or likely to expose a person or a group of persons to hatred or contempt.

Canada does not fully accept recommendations 25, 26, 60 and 61. Canada disagrees that its national laws on security are discriminatory and does not accept the presumption that Canada engages in racial or religious profiling. Canada's law enforcement and security intelligence professionals investigate threats to national security and criminality and do not target any community, group, or faith. Canada does not agree that the *Anti-terrorism Act* should contain a specific anti-discrimination clause. The Act in its content and application is subject to the constitutional prohibition against discrimination set out in the Canadian *Charter of Rights and Freedoms*.

Canada accepts in part recommendation 59. With the introduction of special advocates, Canada considers that procedural aspects of its system of security certificates in immigration are consistent with its international human rights obligations. To the extent that the security certificate process may result in the removal of persons from Canada in exceptional circumstances, see the response below to recommendation 31.

Immigrants, Migrant Workers and Refugees

Canada accepts in part recommendation 31. With respect to Canada's non-refoulement obligations, the application of immigration legislation in this regard is carefully monitored. Canada's Constitution prohibits, except in exceptional circumstances, the removal of persons to a substantial risk of torture. To date, Canada has not removed anyone that has been assessed as facing a substantial risk of torture. Canada does not accept the final component of recommendation 2 relating to *non-refoulement*.

Canada accepts in part recommendation 57 and the related parts of 58, recognizing that there may be opportunities for improving established processes. Existing laws, programs and policies implement many aspects of these recommendations and are regularly reviewed to ensure that the rights of immigrants, migrant workers and refugees are protected. Family reunification is an integral part of Canada's refugee protection and immigration programs. It is not viewed as a 'right', although Canada recognizes a State obligation with respect to children. Regular meetings are held, including with civil society organizations, to discuss programs and services related to migration.

Canada accepts the principle of recommendation 60. The *Immigration and Refugee Protection Act* sets out principles for the application of the Act, including accountability and transparency, as well as equality and non-discrimination.

Women and Violence against Women and Children

Canada accepts recommendation 27 and the related recommendation from Hungary, and is working to advance equality of women across Canada and ensure the protection of their rights. Governments are addressing women's economic security, including the distinct obstacles faced by

Aboriginal women. Canada is committed to legislation to end a clear inequality, often adversely affecting Aboriginal women and children, to ensure that, in the event of a marriage or common law relationship break down, Aboriginal people on reserve are afforded the same rights and protections that all other Canadians currently enjoy.

Canada accepts the underlying principles in recommendations 33, 34, 35, 36, 37 and 38 and the related recommendations from Sweden, New Zealand, Germany and South Africa.

Legislation and programs are in place in Canada to ensure access to protection and redress for victims of domestic violence. For example, provincial and territorial domestic/family violence legislation provides for emergency protection orders and other civil restraining orders, and domestic violence courts have been established in seven jurisdictions. There are also a variety of victims' services and programs that address domestic violence, including police-based and compensation programs. Some provinces and territories have specialized programs that provide culturally-appropriate responses in cases of domestic violence involving Aboriginal victims and offenders.

Domestic violence is addressed by a comprehensive range of offences in the Criminal Code. A specific criminal offence of domestic violence is not required in Canada and would not improve rates of successful prosecutions, as it would impose an additional evidentiary burden on the prosecutor to prove the spousal or intimate partner relationship. Nonetheless, the unique nature of spousal abuse and the abuse of a young person under the age of 18 years is recognized at the sentencing stage where acts of spousal and child abuse are considered as aggravating factors for sentencing purposes.

The issue of missing and murdered Aboriginal women is a pressing concern for Canada. Governments have dedicated resources to investigate and solve cold cases involving murdered Aboriginal women. For example, in British Columbia, under Project E-PANA, a dedicated team of investigators continue to review a number of files involving missing and murdered women.

Canada commits to identifying the causes of violence against Aboriginal women and developing appropriate responses in consultation with Aboriginal and civil society organizations. Governments are working together to strengthen preventative measures and improve criminal justice system responses to violence against all women, including Aboriginal women. Governments have developed spousal abuse risk assessment tools for intervention in such cases. In addition, the First Nations Family Violence Prevention Program supports community-based projects aimed at preventing and reducing family violence in First Nation communities.

Trafficking and Sexual Exploitation

Canada accepts recommendations 39 and 40.

Canada monitors the implementation of its legislation, programs and services related to the protection of victims of trafficking. The federal Interdepartmental Working Group on Trafficking in Persons brings together 17 departments and agencies that work together to strengthen Canadian anti-trafficking responses.

The protection of children from all forms of sexual exploitation remains a continuing priority for Canada. Canada pursues a multi-pronged approach which includes: a comprehensive legal framework to deter such exploitation and to hold offenders accountable; the development of tools and strategies for law enforcement agencies; and support of community-based projects fostering prevention and supporting victims.

Clemency

Canada does not accept recommendation 30. The Government of Canada continues to consider whether to seek clemency for Canadians facing the death penalty abroad as these cases arise. Canadian citizens detained abroad continue to receive consular assistance.

Use of Conducted Energy Weapons

Canada accepts recommendation 32 since Canada's legislative framework already governs Conducted Energy Weapons (CEWs). A considerable degree of consistency exists among Canadian jurisdictions with regard to policies and procedures on the police use of these devices. The Government of Canada facilitates the ongoing exchange of information among provinces and territories regarding the use of CEWs so that updates to policies and procedures can be considered, as new information becomes available.

Detainees and Prisoners' Rights

Canada accepts recommendation 42. Canada strives to ensure the effective protection of detainees' and prisoners' rights and personal safety. Facilities at the federal and provincial/territorial levels are governed by policies and protocols that are gender sensitive and address the gender needs of detainees.