

# Consolidation/Summary of Key Issues for the 6<sup>th</sup> Periodic Review of Canada under the ICESCR\*

February, 2016

- GENERAL INFORMATION** ..... 1
- DOMESTIC IMPLEMENTATION AND EFFECTIVE LEGAL REMEDIES** ..... 1
  - 1. ESC rights in Canadian Charter Interpretation ..... 1
  - 2. Justiciability of ESC rights ..... 1
  - 3. Litigation against Indigenous Peoples ..... 2
  - 4. Failure to Implement court decisions favourable to First Nations..... 2
  - 5. Access to justice..... 3
    - i) Federal Court Challenges Programme ..... 3
    - ii) Inadequate civil legal aid ..... 3
    - iii) Criminal justice system and impacts on Covenant rights of vulnerable groups ..... 4
    - iv) Fees Barring Access to Administrative Justice..... 5
  - 6. Federal/Provincial/Territorial agreements ..... 5
  - 7. Municipal Obligations ..... 6
  - 8. Continuing Committee of Officials on Human Rights (CCOHR)..... 6
- MONITORING AND ACCOUNTABILITY** ..... 6
  - 9. Data collection ..... 6
    - i) Census and other data ..... 6
    - ii) Measuring homelessness..... 7
  - 10. Role of human rights commissions..... 7
  - 11. Elimination of the National Council of Welfare..... 8
  - 12. Restrictions on the political activities of charities through the Income Tax Act..... 8
  - 13. Restrictions on funding for women's organizations..... 8
- ARTICLES 1-5: ISSUES RELATING TO GENERAL PROVISIONS OF THE COVENANT** ..... 9
  - ARTICLE 1 – FREE DISPOSAL OF NATURAL WEALTH AND RESOURCES** ..... 9
    - 1. The right to Free Prior and Informed Consent (FPIC) for Indigenous peoples ..... 9
    - 2. Extra-territorial accountability for Covenant rights..... 9
    - 3. Trade and investment agreements..... 10
    - 4. Failure to protect Indigenous rights in legislation and extinguishment of rights ..... 10
    - 5. Customary land rights ..... 10

<b>ARTICLE 2(1) – MAXIMUM AVAILABLE RESOURCES</b> .....	11
1. Cuts to social expenditure.....	11
2. Tax injustice.....	11
3. Tax avoidance.....	11
4. Provincial fiscal capacity and cost-sharing agreements.....	12
5. Municipal fiscal capacity.....	12
6. Unnecessary austerity measures.....	12
7. Discriminatory tax policy.....	13
8. Realizing economic, social and cultural rights through international development cooperation.....	13
<b>ARTICLE 2(2) – NON-DISCRIMINATION</b> .....	13
1. Social condition as a ground of discrimination.....	13
2. Gender identity and expression.....	14
3. Immigration status.....	14
4. Workplace discrimination and national security.....	15
<b>ARTICLE 3 – EQUAL RIGHTS OF MEN AND WOMEN</b> .....	15
1. Poverty and homelessness.....	15
2. Violence against women.....	15
3. Violations of ESC rights leading to violence against Indigenous women and girls.....	16
4. Sex discrimination under the Indian Act.....	17
5. Discrimination against women with disabilities.....	17
6. Spousal vulnerability and conditional permanent residency.....	17
<b>ARTICLES 6-9: ISSUES RELATING TO WORK, UNIONS AND SOCIAL SECURITY</b>	18
<b>ARTICLE 6 – THE RIGHT TO WORK</b> .....	18
1. Part-time and precarious employment.....	18
2. Access to work for persons with disability.....	18
3. Access to work for young people.....	19
4. Immigration status and the right to work.....	19
5. Indigenous peoples’ access to jobs.....	19
6. Record checks.....	20
<b>ARTICLE 7 – THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK</b> .....	20
1. Wage gap and pay equity.....	20
2. Inadequate minimum wage.....	21
3. Migrant domestic workers and Temporary Foreign Workers.....	21
4. Seasonal agricultural workers.....	22
5. Racial and gender disparities in income and employment.....	22
6. International credentials recognition.....	22
7. Workers’ compensation.....	22
<b>ARTICLE 8 – TRADE UNION RIGHTS</b> .....	23
1. Right to organize and bargain collectively.....	23

<b>ARTICLE 9 – THE RIGHT TO SOCIAL SECURITY .....</b>	<b>23</b>
1. Refugee access to social assistance.....	23
2. Social security for persons with disabilities.....	23
3. Access to employment insurance.....	24
4. Old age security .....	25
5. Child benefits .....	25
6. Disability Tax Credit (DTC).....	26
<b>ARTICLES 10-12: ISSUES RELATING TO ASSISTANCE TO FAMILIES, STANDARD OF LIVING, PHYSICAL AND MENTAL HEALTH .....</b>	<b>26</b>
<b>ARTICLE 10 - PROTECTION OF THE FAMILY, MOTHERS AND CHILDREN .....</b>	<b>26</b>
1. First Nations child removals and foster care.....	26
2. African Canadian child removals and foster care .....	27
3. Access to affordable child care .....	27
4. Possible retrogressive measures in childcare programs in Quebec .....	28
5. Barriers to family reunification.....	28
6. Family members with disabilities denied access to Canada .....	28
<b>ARTICLE 11 – THE RIGHT TO AN ADEQUATE STANDARD OF LIVING .....</b>	<b>29</b>
1. Housing and homelessness .....	29
2. Criminalization of homeless people.....	30
3. Eviction into homelessness .....	31
4. First Nations housing .....	31
5. Tenants with disabilities .....	31
6. Lack of community based housing for people with mental health disabilities.....	32
7. Tanudjaja v. Canada – Homelessness and Access to Justice.....	32
8. Poverty .....	32
i) Poverty and Indigenous peoples .....	33
ii) Poverty and Women.....	33
iii) Poverty and recent immigrants .....	33
iv) Poverty and disability .....	33
v) Poverty among racialized groups.....	33
vi) Poverty in BC.....	34
9. Social assistance.....	34
10. Food security.....	35
11. Food security of Indigenous peoples .....	36
12. Environmental protection and food security.....	36
13. Right to clean water and sanitation.....	36
14. Shoal Lake #40: Lack of access to a range of ESC rights .....	37
<b>ARTICLE 12 - THE RIGHT TO PHYSICAL AND MENTAL HEALTH .....</b>	<b>37</b>
1. The Canada Health Act.....	37
2. Pharmaceutical coverage .....	38
3. Continuing, long-term, palliative and respite care.....	39
4. Social determinants of health.....	39
5. Mental health .....	39

6.	Indigenous health .....	40
7.	Refugee and migrant health .....	40
8.	Access to Safe Injection Services .....	41
9.	Non-Consensual Sterilization and Treatment of Incarcerated Mothers.....	41
10.	Access to abortion.....	42
11.	Mental health services for refugees and immigration detainees .....	42
12.	Mercury poisoning at Grassy Narrows First Nation .....	43
13.	Environmental determinants of health .....	43
14.	Extra-territorial application of the right to healthcare .....	43
15.	Solitary confinement.....	44

**ARTICLES 13-15: ISSUES RELATING TO EDUCATION, CULTURAL LIFE AND SCIENCE..... 44**

<b>ARTICLES 13 AND 14 – THE RIGHT TO EDUCATION.....</b>	<b>44</b>
1. Access to post-secondary education .....	44
2. Education and people with disabilities .....	45
3. First Nations education .....	45
4. Access to education and immigration status .....	45
5. African Canadian children and access to education .....	46
6. Sexual and reproductive health education .....	46

<b>ARTICLE 15 – CULTURAL RIGHTS .....</b>	<b>46</b>
1. Indigenous languages.....	46
2. Traditional occupations.....	47
3. Affordable access to the internet by disadvantaged populations .....	47

**Compilation based on contributions from the following organizations:**

Action Canada for Sexual Health and Rights  
African Canadian Legal Clinic  
Amnesty International Canada  
Assembly of First Nations  
Asubpeechooseewagong Netum Anishinabek, Treaty Three territory (Grassy Narrows)  
BC - CEDAW Group  
Canada Without Poverty  
Canadian Civil Liberties Association  
Canadian Council for Refugees  
Centre for Equality Rights in Accommodation  
Charter Committee on Poverty Issues  
Colour or Poverty/Colour of Change  
Council of Canadians with Disabilities,  
David Suzuki Foundation  
Feminist Alliance for International Action  
First Nations Child and Family Caring Society of Canada  
Food Secure Canada  
FRAPRU  
Human Rights Watch  
Income Security Advocacy Centre  
Indigenous Bar Association in Canada  
International Human Rights Association of American Minorities  
Ligue des droits et libertés du Québec  
Maytree Foundation  
Metro Toronto Chinese & Southeast Asian Legal Clinic  
Ontario Council of Agencies Serving Immigrants  
Pivot Legal Society  
Right to Housing Coalition  
Social Rights Advocacy Centre  
South Asian Legal Clinic Of Ontario  
The Hamilton Roundtable for Poverty Reduction and the Hamilton Community Legal Clinic

Full Submissions available online at

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1012&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1012&Lang=en)

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## General information

### Domestic Implementation and Effective Legal Remedies

#### 1. ESC rights in Canadian Charter Interpretation

The Charter has been affirmed as the primary vehicle for the implementation of international human rights in Canada – particularly the rights to life and security of the person in section 7 and the right to the equal benefit and protection of the law in section 15. Canada has assured the Committee in past reviews that section 7 of the Charter at least provides protection from being deprived of basic necessities and can be interpreted to include Covenant rights. In the 2006 review of Canada the Committee reiterated concerns that in litigation, the federal and provincial governments have opposed interpretations of the Charter that would provide effective remedies to Covenant rights. This pattern has become worse. In recent cases such as *Tanudjaja v. Canada (Attorney General)* [challenging failure to address homelessness]; and *Toussaint v. Canada (Attorney General)* and *Canadian Doctors For Refugee Care v. Canada (Attorney general)* [on access to health care for migrants and refugees] the Government of Canada urged courts to interpret the Charter in a manner that denies protection of Covenant rights to homeless people, irregular migrants and refugee claimants.<sup>1</sup> Governments have also argued, contrary to the Committee’s General Comment 20, that discrimination on the grounds of immigration status or poverty should not be recognized as a prohibited ground of discrimination under the Charter.

#### Recommendations:

Governments should review all arguments advanced in litigation to promote interpretations of the Charter consistent with the Covenant. Sections 7 and 15 of the Charter in particular should be interpreted as imposing positive obligations on governments to ensure that vulnerable groups have access to basic necessities including housing, food, clean water and health care.

Immigration status and “social and economic situation” or “social condition” (including poverty or homelessness) should be recognized as prohibited grounds of discrimination.

#### 2. Justiciability of ESC rights

In both international forums and in domestic courts Canada has taken the position that ESC rights should not be considered justiciable. Canada has not signed or ratified the OP-ICESCR. In past reviews the Committee has urged federal, provincial and territorial governments to incorporate Covenant rights into human rights and other legislation so as to provide effective remedies but no action has been taken to implement these recommendations.

#### Recommendations

The government should review and revise its position on the justiciability of ESC rights and consider signing and ratifying the OP-ICESCR.

Federal and provincial governments should revise human rights legislation to include Covenant rights and adopt other legislative measures necessary to ensure that Covenant rights are subject to effective remedies in all jurisdictions.

<sup>1</sup>[Tanudjaja v. Canada \(Attorney General\)](#), 2014 ONCA 852 [Toussaint v. Canada](#), 2011 FCA 213; [Canadian Doctors for Refugee Care v. Canada \(Attorney general\)](#), 2014 FC 651.

### 3. Litigation against Indigenous Peoples

Indigenous rights have been subjected to constant government challenge and negotiations. Even a successful court case is often subject to yet more negotiations. The length of time required to pursue land rights can deprive Indigenous peoples of an effective remedy.

An example is the complaint filed in 2007 by the First Nations Child and Family Caring Society and the Assembly of First Nations challenging systemic underfunding of child welfare services in First Nations reserves as discrimination under the *Canadian Human Rights Act* (CHRA). The Federal Government spent 5.3 million dollars in its numerous unsuccessful attempts to get the case dismissed on jurisdictional grounds and deployed at least 189 civil servants to follow the personal movements and selected electronic communications of Dr. Cindy Blackstock, the Executive Director of the First Nations Child and Family Caring Society to try to find “other motives” for the case. The Privacy Commissioner of Canada found the collection of private information about Dr. Blackstock to be a violation of the *Privacy Act* and in June of 2015, the Canadian Human Rights Tribunal found that Canada wilfully and recklessly retaliated against Dr. Blackstock for filing the complaint.<sup>2</sup> The tribunal’s decision, finding a violation of the rights of First Nations families and children, was released on January 26, 2016.

#### **Recommendation**

Governments should stop opposing Indigenous rights in litigation and instead ensure that positions advanced in litigation are consistent with their obligations under the Covenant and with the UN Declaration on the Rights of Indigenous People.

### 4. Failure to Implement court decisions favourable to First Nations

Fisheries are a central source of economic development for First Nations, as a healthy and nutritious food source and as a key cultural resource but are too often contested in courts. For example in 2014 the Special Rapporteur on the rights of Indigenous peoples noted, “the Nuu-chah-nulth Nation’s litigation over a commercial aboriginal right to fish has taken 12 years, including three years of trial and successive appeals. In the meantime, the Nuu-chah-nulth have been permitted to access very little of the fishery.”<sup>3</sup>

Five Nuu-chah-nulth Nations are back in the British Columbia Supreme Court to begin the next phase of the legal process to have their Aboriginal fishing rights implemented. The 2009 Nuu-chah-nulth decision (Ahousaht et al) found that the five Nations have Aboriginal rights to fish and sell fish from their territories.<sup>4</sup> The trial decision, subsequently upheld through appeals to the Supreme Court of Canada, also found that the Aboriginal fishing rights of Nuu-chah-nulth Nations have been infringed by the Department of Fisheries and Oceans’ policies and regulations. Canada and Nuu-chah-nulth Nations were provided two years to negotiate a “new fisheries regime”. Over five years later, it seems there is no interest yet on Canada’s part to accommodate the fundamental rights of the Nations.<sup>5</sup> A trial is now necessary and is expected to last for several months.

<sup>2</sup> [http://www.fncaringsociety.com/sites/default/files/CHRT\\_info\\_sheet\\_14-07\\_v3f\\_0.pdf](http://www.fncaringsociety.com/sites/default/files/CHRT_info_sheet_14-07_v3f_0.pdf)

<sup>3</sup> Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, A/HRC/27/52/Add.2 at para 64.

<sup>4</sup> This case took over 100 trial days and subsequently resulted in a number of appeals and a failed court-ordered negotiation process.

<sup>5</sup> For more information on this particular case, see Uu-a-thluk, online: <http://uuathluk.ca/wordpress/litigation/fishingrights>.

Even when First Nations have won Supreme Court of Canada judgments, the judgments have not been implemented.<sup>6</sup> First Nations who have obtained court judgments often face the same challenges as First Nations who have opted to negotiate – non-implementation.

### **Recommendations**

Ratify the Optional Protocol to the Covenant to enhance access to justice for First Nations on economic, social and cultural rights.

Work expeditiously and in a non-adversarial manner with First Nations to implement court decisions upholding Indigenous rights.

Develop, jointly with Treaty First Nations, Treaty implementation strategies, on a nation-to-nation basis.

Work with First Nations to develop a National Action Plan and other measures to ensure implementation of the Declaration on the Rights of Indigenous Peoples.

## **5. Access to justice**

### **i) Federal Court Challenges Programme**

Funding for language and equality rights cases under the Court Challenges Program was cancelled shortly after the last review of Canada. Funding was subsequently only reinstated for language rights cases to settle a constitutional challenge. The new government has committed to reinstating and updating the Court Challenges Programme. Many ESC rights cases arise under s. 7 as well as under s. 15 of the Charter and often apply to provincial legislation. Section 7 cases and provincial/territorial cases were not included in the previous Court Challenges Programme.

### **Recommendations**

Restore the equality component of the Court Challenges Program and extend eligible cases to include Charter challenges linked to Covenant rights of disadvantaged groups under section 7 of the Charter and to challenges to provincial/territorial legislation.

### **ii) Inadequate civil legal aid**

In 2006 the Committee noted that cuts to legal aid have left poor people, in particular poor women, without access to effective remedies for Covenant rights under domestic law. This has not been corrected. Reduced coverage and low eligibility thresholds drastically restrict access to family law services, primarily affecting women. The Committee also expressed specific concern over the “drastic cuts” in British Columbia. Instead of addressing this concern, the BC government has taken further retrogressive measures, eliminating all funding for poverty law matters such as housing/eviction, welfare, disability pensions, debt and reducing coverage of family law.

Inadequate legal aid was challenged by the Canadian Bar Association in *Canadian Bar Assn. v. British Columbia, 2008 BCCA 92*. The Government of British Columbia brought a motion to have the claim dismissed without a hearing into the evidence, arguing that the Bar Association lacked standing, international human rights law should be ignored because it is not enforceable by courts and that a

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<sup>6</sup> AFN Resolution 67/2010, *Implementation of Supreme Court of Canada Judgments*.

challenge to the systemic inadequacy of legal aid is non-justiciable. Their arguments were accepted and the claim was dismissed by the British Columbia Court of Appeal without a full evidentiary hearing.

In its 2015 report on its inquiry under Article 8 of the Optional Protocol into the murders and disappearances of Indigenous women in Canada, the CEDAW Committee found that Canada has failed to comprehensively address the challenges faced by Aboriginal women in accessing justice, including lack of access to legal aid. The BC Government has failed to implement CEDAW's specific recommendations to provide sufficient funding for legal aid and make legal aid accessible to Aboriginal women.

In a complaint to the CEDAW Committee in *Cecilia Kell v. Canada* under the OP-CEDAW involving discrimination in housing against an Aboriginal mother of three who had been evicted while seeking protection from domestic violence, the Committee found that the author was denied access to effective legal remedies because of inadequate legal aid and recommended that more Aboriginal women be trained to provide legal aid to women from their communities and that the legal aid system be reviewed to ensure that Aboriginal women who are victims of domestic violence have effective access to justice. None of these recommendations have been implemented.

#### **Recommendations**

Adopt measures to ensure adequate civil legal aid in all provinces and territories and in all areas including family law and poverty law and all cases involving Covenant rights and adopt positions in future cases regarding access to justice consistent with General Comment 9.

Adopt necessary measures to ensure access to justice for Aboriginal women, including implementing the recommendations of the CEDAW Inquiry and the views of the CEDAW Committee in *Cecilia Kells v. Canada*.

#### **iii) Criminal justice system and impacts on Covenant rights of vulnerable groups**

Canada's criminal justice system has been significantly altered by the enactment of several concerning laws that particularly affect the Covenant rights of already disadvantaged and/or vulnerable groups, including Aboriginal peoples, individuals struggling with mental illness or addictions, and individuals who are homeless. These laws include the *Truth in Sentencing Act*, the *Abolition of Early Parole Act*, and an omnibus statute known as the *Safe Streets and Communities Act*. The *Safe Streets and Communities Act* introduced new mandatory minimum sentences of which there are now nearly 100. The Act also removed conditional sentences that had frequently been used to allow impoverished single parents to remain at home with children, thereby negatively impacting both single parent homes and Aboriginal communities. Moreover, although sentencing judges are required, under the *Criminal Code*, to respond to the unique circumstances of Aboriginal offenders, mandatory minimum sentences of imprisonment curtail judges' ability to consider alternatives to incarceration and restrict their ability to craft proportionate, sensitive sentences for Aboriginal offenders.

Despite a steadily declining crime rate in Canada, there are more people in Canada's prison system and in remand detention than at any time before. Research shows that inequities in the bail system have a disproportionate impact on vulnerable populations, including individuals living in poverty, with addictions, mental illness, and/or with marginal social support. If such persons are released on bail, the conditions of their release are often onerous, particularly for those living with addiction, mental health disabilities, homelessness or and poverty. Breaching a bail condition constitutes a criminal offence; in this way, the bail system effectively criminalizes poverty, mental illness and addiction.

**Recommendations**

Commit to reviewing the *Truth in Sentencing Act*, the *Abolition of Early Parole Act*, and the *Safe Streets and Communities Act* and striking down provisions that disproportionately affect members of vulnerable groups and Aboriginal peoples, restoring judicial discretion, and meaningfully committing to considering Canada's particular obligations to Aboriginal peoples in all subsequent legislation relating to the criminal justice system in Canada.

Mandate review and reform of bail practices across Canada to alleviate the discrimination and ensuing harms experienced by Canada's most vulnerable groups.

**iv) Fees Barring Access to Administrative Justice**

High processing fees for immigration and citizenship applications, including family reunification, and for humanitarian and compassionate consideration, deny low-income families equal access to citizenship and other rights. In *Toussaint v. Canada* (AG),<sup>7</sup> an impoverished applicant for humanitarian and compassionate consideration of an application for permanent residence challenged the Federal Government's refusal to consider waiving the fee of \$550 on the grounds that it discriminated against applicants living in poverty and denied access to justice. Canada argued that discrimination on the grounds of poverty is permitted and that denial of access to justice is permitted in cases of discretionary administrative decisions, even where fundamental rights are at stake.

**Recommendation**

Adopt positions in litigation that accord with Covenant obligations to ensure that administrative remedies for Covenant rights are accessible, affordable and timely, that provisions are made for fee waiver for those in poverty and recognize poverty as a prohibited ground of discrimination.

**6. Federal/Provincial/Territorial agreements**

In a federal system such as Canada's, inter-governmental agreements and federal arrangements clarifying obligations of different levels of government are critical for the implementation of ESC rights. The Committee has raised concerns in past reviews that ESC rights were treated as mere policy objectives in a proposed constitutional accord in 1992 and subsequently in the Social Union Framework Agreement of 1999. Canada's Core Document points to the joint commitment of federal, provincial and territorial governments in Section 36(1) of the *Constitution Act, 1982* to providing "essential public services of reasonable quality to all Canadians" as "particularly relevant in regard to Canada's international obligations for the protection of economic, social and cultural rights."<sup>8</sup> However, this constitutional commitment has not, to date, been enforced by courts.

**Recommendations**

Review Federal/Provincial/Territorial agreements, including the Canada Social Transfer, to provide for better protection of Covenant rights, consider new accountability mechanisms for Covenant rights such as a social charter and ensure judicial enforcement of the constitutional commitments in section 36 of the *Constitution Act, 1982*.

Convene a meeting of federal, provincial, and territorial ministers responsible for human rights to

<sup>7</sup> *Toussaint v. Canada*, 2011 FCA 146.

<sup>8</sup> Core Document (Canada) HRI/CORE/CAN/2013 at para 169.

initiate a process of law, policy, and institutional reform for effective, transparent, and politically accountable implementation of Canada's international human rights obligations by all levels of government in Canada.

## **7. Municipal Obligations**

Municipal levels of government within Canada are also bound by Canada's international human rights commitments. In many provinces and territories, municipal governments have been delegated important responsibilities for the implementation of Covenant rights, including authority for water, sanitation and infrastructure and in some cases, such as Toronto and other municipalities in Ontario, administering housing, social assistance, child care, social services, child protection services and other programs.

Where municipal governments have been accorded full or partial responsibility for the implementation of Covenant rights, municipalities have not been made aware of or held accountable to their Covenant obligations. Covenant rights have not been adequately protected in municipal law and policy. Some cities have adopted charters of rights or strategies for the implementation of Covenant rights, these have not provided for effective monitoring, accountability and access to justice.

### **Recommendations**

Provinces should adopt necessary enabling legislation and encourage municipalities to incorporate Covenant rights in bylaws, official plans and city charters.

Funding and program administration agreements between municipalities and provincial or federal governments should incorporate accountability mechanisms for Covenant rights.

## **8. Continuing Committee of Officials on Human Rights (CCOHR)**

Concerns have been raised in past reviews by the Committee about the ineffectiveness of the Continuing Committee of Officials on Human Rights (CCOHR) in ensuring meaningful follow-up to the Committee's concluding observations, particularly within provinces and territories. There has been no meaningful engagement by parliament or provincial/territorial legislatures in reviewing concerns and implementing recommendations.

### **Recommendations**

Improve the effectiveness of intergovernmental processes for domestic implementation of the Covenant and follow-up to concerns and recommendations.

Ensure that a parliamentary committee is charged with reviewing the concerns and recommendations emerging from the present review and that open and transparent processes are put in place in all provinces and territories for following up on concerns and recommendations.

## **Monitoring and Accountability**

### **9. Data collection**

#### **i) Census and other data**

The commitment to reinstating the long-form census is welcomed, as is the new Canada Survey on Disability. However, a number of specialized surveys (SLID and Aboriginal Peoples' Surveys for example) have been discontinued in recent years and much more needs to be done to link data collection with monitoring of ESC rights. The Canadian Government does not, as a matter of practice, collect disaggregated data in order to analyze the impact of its laws, policies, programs and practices on marginalized populations. The collection of disaggregated data is critical for many Canadian communities to monitor disparities between groups and develop successful initiatives to address these disparities.

**Recommendations**

Review and refurbish data collection on a disaggregated basis to develop appropriate indicators and effective monitoring of the implementation of Covenant rights, particularly in relation to equality seeking and marginalized groups as a necessary component of the Government's planned Canadian poverty reduction strategy.

Base progress toward achieving the SDGs in Canada on disaggregated data on disability, racialized groups, newcomers, Indigenous peoples, immigrants, and women.

**ii) Measuring homelessness**

The government has announced a point-in-time count of those who are sleeping on the street or in shelters as a vehicle to inform policy. Such counts under-represent homelessness generally and fail to capture hidden homelessness, especially among women, children and youth. Further, Canada has relied on shelter data to estimate the size and composition of the homeless population, which excludes people who cannot access many shelter services because they are not gender appropriate, safe or do not meet the needs of particularly vulnerable people. Failures to identify systemic causes of homelessness have distorted policy responses to homelessness.

**Recommendations**

Commit to implementing qualitative, longitudinal and other methodologies for assessing the extent of homelessness among marginalized groups and its systemic causes, with full inclusion of stakeholders in the design and implementation of studies.

Develop appropriate benchmarks and indicators to assess progress toward the full realization of the right to adequate housing and ensure that data collected includes indicators of overcrowding, affordability, security of tenure, access to services and cultural appropriateness.

**iii) Environmental monitoring and data collection**

Cut-backs in federal environmental monitoring and data collection, including in fisheries and oceans, has had a negative impact on a number of Covenant rights, including the right to food and to health.

**Recommendations**

Restore adequate funding for monitoring of marine environments for industrial contamination and climate change affects.

**10. Role of human rights commissions**

The Committee has previously recommended that Canada “expand protection in human rights legislation to include social and economic rights and to protect poor people in all jurisdictions from discrimination

because of social or economic status.” No action has been taken to implement this recommendation. Human rights commissions currently play a minimal role in relation to accountability and monitoring ESC rights implementation. Canada has also failed to designate an independent mechanism for the monitoring of implementation of the CRPD as per article 33(2) of the CRPD. BC eliminated its Human Rights Commission altogether.

**Recommendations**

Extend the mandate of federal and provincial human rights commissions to include ESC rights monitoring and accountability mechanisms and designate the Canadian Human Rights Commission to work in conjunction with provincial/territorial commissions as an independent mechanism to monitor and promote the implementation of the CRPD and the ICESCR.

Reinstate British Columbia’s Human Rights Commission.

**11. Elimination of the National Council of Welfare**

In the past, all levels of government, policy makers and NGOs have relied extensively on data and analysis from the National Council of Welfare to present an accurate picture of Canada’s welfare system from a national viewpoint, factoring in taxation, benefits, disability related costs, etc. The CESCR has relied on the NCW’s data in past reviews. The Council was abolished by the previous government after it continued to express strong concerns about inadequate social assistance rates and the extent of poverty across the country.

**Recommendation**

Commit to restoring the National Council on Welfare or creating a new independent statutory body to replace it which has authority to monitor the adequacy of income assistance programs, assess compliance with Covenant rights in all provinces and territories and assist in monitoring the implementation of a national poverty elimination strategy.

**12. Restrictions on the political activities of charities through the *Income Tax Act***

Organizations promoting the alleviation of poverty and the promotion of other Covenant rights usually rely on charitable status to receive tax-deductible donations. However, the *Income Tax Act* prohibits these organizations from spending more than a small percentage of time and resources on non-partisan “political activities” – defined as promoting changes to or retention of any laws or policies. The previous government utilized this provision to fund intrusive audits of organizations promoting ESC rights, threatening to or revoking charitable status and creating a chilling effect to prevent democratic participation by people living in poverty and other human rights defenders.

**Recommendation**

Repeal the restrictions on non-partisan political activities of charities in the *Income Tax Act*.

**13. Restrictions on funding for women's organizations**

In 2006, restrictions were placed on public funding for women's organizations through the federal Women's Program of Status of Women Canada. Program funds can no longer be used for research or advocacy for women’s Covenant rights; they are principally available for direct service provision.

**Recommendation**

Restore funding for advocacy and research for women’s human rights under the Women's Program of

Status of Women Canada and restore the Status of Women Canada Independent Policy Research Fund for feminist research.

## **Articles 1-5: Issues relating to general provisions of the Covenant**

### **Article 1 – Free disposal of natural wealth and resources**

#### **1. The right to Free Prior and Informed Consent (FPIC) for Indigenous peoples**

Canadian civil servants commonly oppose inclusion of FPIC in norm-setting documents or guidance documents related to the resource sector, or seek to interpret FPIC in ways that are not in keeping with the full intent of the principle. Examples include the authorization of private exploitation of natural resources and industrial/commercial activity in the coastal and marine territories traditionally occupied or used by coastal First Nations, where Canada has failed to protect ESC rights of coastal peoples. The Canadian government has also failed to consider the specific and disproportionate impacts of industrial/commercial activity on indigenous women and girls.

#### **Recommendations**

All levels of government must recognize the right of free, prior and informed consent of Indigenous peoples and fully incorporate FPIC in all laws, policies, and practices, including those related to extractive industries at home and abroad. Strengthen environmental protection, oversight and assessment and ensure protection of Aboriginal and treaty rights.

Commit to developing and fulfilling, with the full and effective participation of Indigenous peoples, a framework for implementing the United Nations Declaration on the Rights of Indigenous Peoples.

Resource development in the traditional territories and ecosystems of Pacific Coastal First Nations should not be approved without FPIC, ensuring the participation of Indigenous women and addressing the impacts of industrial activity on the rights of Indigenous women and girls.

#### **2. Extra-territorial accountability for Covenant rights**

Canadian companies are committing serious violations of Covenant rights abroad. One of many examples is a Canadian mining company's excessive use of water at a mining operation in Guatemala causing a water shortage that negatively affected local communities' rights to water, food and health.<sup>9</sup>

In 2014, Bill C-584, a private member's Bill calling for the creation of an ombudsperson for the corporate social responsibility (CSR) of Canadian extractive corporations working outside Canada was defeated.

#### **Recommendations**

Create an independent Ombudsperson to investigate human rights complaints against transnational corporations operating abroad and enact a legislative framework to provide legal recourse for people who have been harmed by the international operations of Canadian companies.

<sup>9</sup> FIAN International, "Guatemala - Marlin Mine Report", (November 11, 2012), available at: <http://www.fian.org/what-we-do/case-work/guatemala-marlin-mine/>.

### 3. Trade and investment agreements

Canada has negotiated numerous bilateral and multilateral trade and investment agreement with investor-state dispute procedures to permit corporate investors to challenge regulatory measures and receive massive compensatory awards. Measures which may have been adopted for the purpose of better protecting Covenant rights such as the right to health or the right to work are subject to challenge and to compensatory awards without any consideration of Canada's obligations under the Covenant. The Trans Pacific Partnership has recently been negotiated and will include an investor-state dispute procedure.

#### **Recommendation**

Include ESC rights impact assessments in the review of any proposed trade and investment agreement; ensure that trade and investment agreements negotiated by Canada recognize the paramourcy of Canada's international human rights obligations over investors' interests and protect measures adopted for the implementation of Covenant rights from investor-state challenges.

### 4. Failure to protect Indigenous rights in legislation and extinguishment of rights

In the 2006 review of Canada the Committee urged the government to re-examine its policies and practices towards the inherent rights and titles of Aboriginal peoples to ensure that they do not result in extinguishment of those rights and titles.<sup>10</sup> Since then the Canadian Parliament has routinely adopted legislation without scrutinizing the potential impact on the rights of Indigenous peoples and without adequate consultation with those whose rights may be affected – most recently in the form of omnibus legislation which was found by the Federal Court to have breached the government's constitutional obligations to consult with Indigenous peoples prior to altering environmental protections.<sup>11</sup>

#### **Recommendation**

Re-examine policies and practices towards the inherent rights and titles of Aboriginal peoples and review all legislation to ensure that these do not result in extinguishment of Aboriginal rights and titles.

### 5. Customary land rights

Despite concerns raised by many Indigenous peoples about the potential harmful impacts of large-scale resource development, the federal government has failed to establish sufficiently rigorous formal mechanisms and processes to ensure that Indigenous peoples are meaningfully consulted and their rights adequately protected when large scale resource development projects affect their traditional territories.

In June 2014, the Supreme Court of Canada recognized that the Tsilhqot'in people in British Columbia retained ongoing title to a large area of their traditional lands and decisively rejected a number of the government's arguments, many of which have informed government policy on the negotiation of outstanding land disputes. These include the assertion that Indigenous title was unilaterally extinguished by the act of colonization and the assertion that State interests should automatically take priority over recognition of Indigenous title.

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<sup>10</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN Doc. E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 (22 May 2006) at para 37.

<sup>11</sup> The court declined to order any measures to address this breach. *Courtoreille v. Canada (Aboriginal Affairs and Northern Development)*, 2014 FC 1244, 19 December 2014. [http://decisions.fct-cf.gc.ca/fc cf/decisions/en/item/100287/index.do](http://decisions.fct-cf.gc.ca/fc%20cf/decisions/en/item/100287/index.do)

In 2014, the federal government unilaterally adopted an interim policy on resolution of comprehensive claims, which fails to incorporate the standards established in the *Tsilhqot'in* decision and those of international human rights law such as the *UN Declaration on the Rights of Indigenous Peoples*.

**Recommendation**

Ensure that the positions taken by counsel for governments in negotiations or litigation over Indigenous land disputes are consistent with the obligation to respect, protect and fulfil the rights of Indigenous peoples under Canadian and international law and adopt a policy on comprehensive claims which incorporates the standards established in the *Tsilhqot'in* decision and those of international human rights law including the UN Declaration on the Rights of Indigenous Peoples.

**Article 2(1) – Maximum available resources**

**1. Cuts to social expenditure**

Federal government spending, as a share of GDP, is at its lowest level since 1949. Every year between 1950 and 2007, federal government expenditures exceeded 15% of GDP. Federal spending for 2016-17 is projected to be 13.3 % of Canada's GDP.

If Canada were to inch towards a similar percentage of GDP in government spending as at the time of its last review before the Committee in 2006, even by a single percentage point (to 14.3%), this would make available \$19.5 billion to invest in Canada's international human rights obligations. For example, with the additional \$19.5 billion, Canada could invest in: on-reserve housing (\$1 billion), on-reserve drinking water (\$0.5 billion), on-reserve schools (\$2 billion), improvements to health care (\$4 billion), national pharmacare (\$4 billion), improvements to homecare (\$3 billion), a national housing and homelessness strategy (\$2 billion), a national poverty strategy (\$2 billion) and a violence against women strategy (\$0.5 billion).

**Recommendation**

Restore social spending to pre-2007 level of 15% of GDP.

**2. Tax injustice**

Canada's overall tax system has become so regressive that the top 1% pays a lower share of their income in tax than the poorest 10%. Capital gains are taxed at half the rate of employment income. Corporate tax rates have been cut from 29.1% in 2000 to 15% in 2008. Over that time corporations amassed over \$600 billion in surpluses and excess cash. Corporate tax rates in Canada are extremely low in comparison to most other countries, less than half of the rate applied in the U.S., Australia and other countries.

**Recommendation**

Raise corporate tax rates to 2000 level, comparable to U.S. and other similar economies and take measures to reduce income inequality through the tax system.

**3. Tax avoidance**

Canada is losing billions of dollars through tax avoidance and tax evasion, including to tax havens. An investment of \$30 million in boosting the Canada Revenue Agency's capacity in the international compliance division in 2005 yielded \$2.5 billion over four years. Future investments could yield even greater revenues. Canadian direct foreign investment in tax havens increased to \$199 billion in 2014.

Applying a 1% withholding tax on Canadian assets held in tax havens would raise revenue of about \$2 billion.

**Recommendation**

Increase measures to combat tax evasion and avoidance to increase revenue for social spending.

**4. Provincial fiscal capacity and cost-sharing agreements**

While provincial/territorial governments bear a significant obligation to address socio-economic disadvantage and provide critical social programs such as social assistance, they are limited by their ability to take on debt load. Enhanced cost sharing arrangements between the federal and provincial/territorial governments are necessary to ensure adequate resources for social programs in Canada.

Some provinces and territories have ample fiscal capacity to ensure the realization of covenant rights. For example, the BC is a wealthy province, forecasting a surplus of \$879 million for 2015 2016.

**Recommendation**

Cost-sharing agreements with provinces should be enhanced to ensure that all provinces and territories have fiscal capacity to meet their Covenant obligations. Provinces and territories should implement budgetary review processes to ensure that the implementation of Covenant rights are prioritized according to the requirements of article 2(1) of the Covenant.

**5. Municipal fiscal capacity**

Cities and other municipalities have been delegated important responsibilities for Covenant rights but lack the fiscal capacity to meet their obligations under the Covenant. Municipal governments are generally barred from levying income and sales taxes, and have a high reliance on property tax and development charges. Municipal revenues have grown at a much slower pace in recent decades than federal and provincial revenues. Consequently, for any major expenditure for things like affordable housing or public transit, municipalities have to go to another level of government for significant financial support. In 2010, the province of Ontario began an eight-year process of uploading some of the costs associated with public transit and social assistance back to the provincial level of government but these changes have not addressed the significant unmet needs in social services, housing and other areas.

**Recommendation**

Adequate funding must be provided to cities and municipalities with funding formula that are responsive to changes in needs as well as to available resources.

Considering giving municipalities the power to levy a broader range of excise taxes and allowing cities to set the level of the taxes.

**6. Unnecessary austerity measures**

Canada was not affected by the recent fiscal crisis in the way European countries were. Austerity measures were therefore not necessary. Unnecessary austerity measures have been adopted in a number of province, with a disproportionate effect on women and marginalized groups. In B.C. massive and sustained cuts to social programs have aggravated the already disadvantaged social, economic, and cultural status of women in British Columbia society.

**Recommendation**

Governments such as BC should reverse unnecessary austerity measures that have had an adverse effect on disadvantaged groups and on the implementation of Covenant rights.

**7. Discriminatory tax policy**

Two decades of continuous tax cuts and attendant program cuts have severely impaired Canada's capacity to meet its domestic and international obligations to women. Canada's tax policies - including "structural detaxation cuts" which have resulted in large sequential cuts to the three primary sources of federal revenue—personal income tax, corporate income tax, and the goods and services tax (VAT); expanded use of tax exemptions and deductions; increased use of joint tax-benefit measures benefitting high income households; disproportionate support for capital, investment, and business sectors; and spending cuts - all consistently benefit men more than women and penalize women more than men. Furthermore, unnecessary austerity measures introduced after 2008 recession have had a disproportionately harmful effect on women, particularly in the areas of access to unemployment insurance, enforcement of pay and employment equity laws and programs, and access to public pension benefits.

**Recommendations**

The Government of Canada should undertake a gender-based analysis of its tax policy and review its tax policy in light of women's Article 2 and 3 Covenant rights.

**8. Realizing economic, social and cultural rights through international development cooperation**

In recent years, Canada's spending on aid has plateaued at 0.24% Gross National Income (despite commitment to a minimum target of 0.7%). Compared to its G7 counterparts, Canadian ODA, and specifically funding for sexual and reproductive rights, is among the lowest - behind the UK, Germany, Japan, the Netherlands, France, and others.<sup>12</sup> Canada's overall support for sexual and reproductive health and rights is far below the 10% of official development assistance repeatedly agreed upon during International Parliamentary Conferences on the Implementation of the International Conference on Population and Development (ICPD, IPCI/ICPD). Figures from 2013-2014 demonstrate Canada is spending only 4.97% of an already small ODA budget on reproductive health care and family planning.

**Recommendations**

The government should increase foreign aid to meet the international commitment of 0.7% of GNI to official development assistance and meet Canada's commitment of 10% of ODA for sexual and reproductive health information and services

**Article 2(2) – Non-discrimination****1. Social condition as a ground of discrimination**

In previous reviews the Committee has strongly recommended the inclusion of "social and economic situation" or "social condition" (including poverty and homelessness) as a prohibited ground of discrimination in the Canadian Human Rights Act and all provincial/territorial human rights legislation. This has also been recommended by many other bodies, including the Canadian Human Rights Act Review Task Force chaired by former Supreme Court of Canada Justice Gérard La Forest. Further,

<sup>12</sup> EuroMapping 2013. [http://www.dsw.org/uploads/tx\\_aedswpublication/Euromapping\\_2013.pdf](http://www.dsw.org/uploads/tx_aedswpublication/Euromapping_2013.pdf)

homeless people are amongst the most vulnerable and marginalized in Canada, yet are not protected against discrimination.

#### **Recommendations**

The *Canadian Human Rights Act* and, where necessary, provincial/territorial human rights legislation should be amended to prohibit discrimination because of social or economic situation or condition, including poverty and homelessness.

Governments should recognize social condition and homelessness as an analogous ground of discrimination under s.15 of the Charter and promote that recognition in litigation.

### **2. Gender identity and expression**

In a 2011 nationwide survey, over three-quarters of transgender youth reported experiencing verbal harassment in school and 1 in 3 reported experiencing physical violence. Discrimination and harassment on the ground of gender identity and expression results in reduced income, reduced mobility, inability to stay in school or access decent employment, refusals of housing and avoidance of health care and other services because of stigma and discrimination. In Ontario, self-reported HIV prevalence among trans persons was ten times the overall provincial prevalence estimate. A 2011 study found that 27.7% of trans women in Canada were living with HIV. Trans persons face barriers in accessing the services and information required to proceed with the medical treatment they might need as part of their transition. New Brunswick and PEI do not fund sex reassignment surgeries through provincial insurance plans as do all other provinces.

Only Ontario, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Manitoba and Northwest Territories have listed gender identity as a prohibited ground of discrimination. Federal leadership on this issue is required to ensure that all trans persons across the country have the same human rights protections.

#### **Recommendation**

Introduce legislation to add real or perceived gender identity and gender expression to the list of prohibited grounds for discrimination in the *Canadian Human Rights Act* and all provincial/territorial human rights legislation and make it illegal to willfully or publically incite hatred based on these grounds in the Criminal Code.

### **3. Immigration status**

Immigration status is often a basis for denying ESC rights in Canada. Where such discrimination has been challenged, governments have argued that immigration status should not be recognized as a prohibited ground of discrimination under section 15 of the Charter.

Since the last review, the federal government has taken a number of steps to deny migrants access to social security programs. In 2014 Canada made amendments to its national employment insurance program that deny parental benefits to migrant workers, even though these workers pay into the employment insurance program with every paycheck. In its 2014 Budget, Canada made amendments that would deny income supports to seniors living in poverty for the first 20 years of Canadian residence if their immigration was sponsored by their children or grandchildren. In 2015 Canada amended the Canada Social Transfer to allow provinces to deny social assistance to those without regularized immigration status, including refugee claimants. Although this last amendment has not yet come into force, Canada has not signaled an intention to back away from this very harmful legislative change.

**Recommendations**

End all forms of discrimination in the enjoyment of ESC rights on the basis of immigration status and take the position in court cases that such discrimination ought to be recognized as an analogous ground under s. 15 of the Charter.

Reverse all recent measures that denied equal access to income supports or social assistance on the ground of immigration status.

**4. Workplace discrimination and national security**

Canadian employees who may have been born in, or have ties to, certain enumerated foreign countries have experienced discrimination when Canadian employers or agencies apply the US *International Traffic in Arms Regulations* (ITAR).

**Recommendation**

Prevent discrimination resulting from foreign national security programs in Canada.

**Article 3 – Equal rights of men and women****1. Poverty and homelessness**

Lower earnings, lower levels of employment and a higher burden of unpaid care work mean that women are consistently more likely to live in poverty than men in Canada. Inadequate welfare rates, homelessness and poverty are massive barriers to women's equality and often prevent women from leaving abusive relationships. A lack of alternative housing options forces many women to accept accommodation and economic support from abusive male partners. The specific needs and human rights of homeless women and girls escaping violence are not addressed in the current Homelessness Partnering Strategy of the federal government.

**Recommendations**

Commit to rights-based poverty elimination and housing strategies at all levels of government that addresses the specific needs and circumstances of women and girls and ensure that an emphasis on the addressing visible homelessness does not lead to the neglect of women's right to housing.

**2. Violence against women**

Economic insecurity is a central contributing factor to the vulnerability of women to intimate partner violence. On any given day, more than 4000 women and over 2000 children will reside in a domestic violence shelter.<sup>13</sup> More than 500 women and children are turned away from shelters on a typical day, with overcrowding being the primary reason.<sup>14</sup> Rates of violence against women have remained largely unchanged over the past two decades. A million women report having experienced sexual or domestic violence in the past five years.<sup>15</sup> By the federal government's own account, violence against women costs in excess of \$12 billion annually.

<sup>13</sup> *Shelter Voices*. Ottawa: Canadian Network of Women's Shelters and Transition Houses, 2014.

<sup>14</sup> Hutchins, Hope and Sara Beattie (2015). *Shelters for Abused Women 2014*. Ottawa: Statistics Canada.

<sup>15</sup> *General Social Survey: Victimization*. Ottawa: Statistics Canada.

**Recommendations**

Commit to rights-based National Action Plan on Violence Against Women with adequate financial support and the direct and meaningful involvement of rights holders.

**3. Violations of ESC rights leading to violence against Indigenous women and girls**

Indigenous women and girls in Canada face a significantly heightened risk of being subject to violence, including disappearances and murders. The IACHR and the CEDAW Committee have identified social and economic marginalization as root causes of violence against Indigenous women in British Columbia and Canada respectively.<sup>16</sup> Both Committees have concluded that federal and provincial governments must design and implement a coordinated national action plan to address the social and economic factors that prevent Indigenous women from fully realizing their rights.<sup>17</sup> Despite specific recommendations made to British Columbia by the IACHR and treaty monitoring bodies, that province has failed to alleviate poverty and to address violence against women, including extreme violence against Indigenous women and girls.

The Government of Canada recently decided to establish an inquiry into murders and disappearances of Indigenous women and girls and is currently engaged in pre-inquiry consultations to determine its design and mandate. It is extremely important that this inquiry include examination of the social and economic marginalization of Indigenous women and girls, which is a root cause of the violence, and that all levels of government are included in its scope – federal, provincial and territorial.

**Recommendations**

The Government of Canada should ensure that the mandate of the national public inquiry on murders and disappearances of Indigenous women and girls:

- Includes full examination of failures to fulfill the economic, social and cultural rights of Indigenous women and girls as identified by the IACHR and the CEDAW Committee (including poverty, lack of adequate housing, underemployment, failures in the child welfare system and over-criminalization)
- Is national and not just federal in scope in order to ensure that the conduct of officials and institutions, and the policies, laws, programs and services of all levels of government can be scrutinized, and a comprehensive plan to address the violence can be co-ordinated effectively across institutions and jurisdictions;
- Includes the development of concrete strategies and a comprehensive plan for addressing these failures;

The Government of British Columbia should:

- Fully implement the Missing Women Commission of Inquiry, the IACHR and CEDAW recommendations and establish an implementation mechanism that is independent, participatory and accountable to the public, to Aboriginal women and to Aboriginal communities.

The Government of Canada and all provincial and territorial governments, including the Government of British Columbia, should:

<sup>16</sup> Missing and Murdered Indigenous Women in British Columbia, Canada , Inter-Am Ct HR OEA/Ser.L/V/II. Doc.30/14, (21 December 2014), at para 3, online: OAS

<http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf> at paras 11, 13, 306; Committee on the Elimination of Discrimination against Women, Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination , UN Doc CEDAW/C/OP.8/CAN/1, 6 March 2015, online: OHCHR

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656&LangID=E> at paras 203, 210.

<sup>17</sup> Ibid.

- Immediately develop rights-based anti-violence plans, in consultation with women's anti-violence organizations, to address: i) the failed police response to violence against women; and ii) economic and social policy omissions and failures, including inadequate social assistance rates, inadequate housing, and inadequate access to justice, that make women vulnerable to violence and less able to escape it.

#### **4. Sex discrimination under the *Indian Act***

The passage of Bill C-3 in 2010 failed to fully rectify inequalities in the *Indian Act*, continuing to exclude significant groups of Aboriginal women from recognition under the legislation. In 2006, the Committee expressed concern about this barrier to First Nations women's and children's enjoyment of Covenant rights, and the IACHR and the CEDAW Committee have linked *Indian Act* sex discrimination to the murders and disappearances of Indigenous women.

#### **Recommendations**

The Government of Canada should immediately eliminate the remaining discrimination against Aboriginal women and their descendants from the *Indian Act*.

#### **5. Discrimination against women with disabilities**

Women with disabilities continue to disproportionately live in poverty, suffer discrimination in the workplace and be subjected to violence. One fifth of women with disabilities live below the low-income cut-off. Among working-age women with disabilities who live in low-income households, only one in four (24.2%) are working at a job or business. 44% of women with disabilities living in low-income households have one or more unmet needs for disability-related help with everyday activities.

#### **Recommendations**

All levels of government should commit to remedying the multiple forms of discrimination experienced by Canadian girls and women with disabilities and adopt specific strategies to address poverty and barriers to employment among women with disabilities.

Canada should ratify the CRPD Optional Protocol and ensure that the national independent body responsible for monitoring the implementation of the CRPD collects data disaggregated according to gender, with regard to both absolute numbers and percentages, so that information on the situation of women with disabilities across Canada is known.

#### **6. Spousal vulnerability and conditional permanent residency**

As of October 25, 2012, spouses and common law partners sponsored to Canada are subject to a two-year condition, which requires them to reside with their sponsor in a conjugal relationship or risk losing their status. Women are disproportionately over-represented among the sponsored spouses class. They are also more likely to be victims of domestic violence. The two-year conditional permanent resident (CPR) thus has the impact of keeping sponsored women trapped in an abusive relationship, notwithstanding the possibility of exemption for cases of neglect and abuse. The new CPR status disproportionately affects women of colour from the Global South, who made up the majority of sponsored spouses and common law partners. Many women victims of violence do not report their violence or seek help. They fear deportation for themselves or their child, family separation, homelessness, poverty and losing child custody.

**Recommendation**

Repeal the Conditional Permanent Residency (CPR) provision and apply the revocation to all immigrants who are currently subject to the CPR.

**Articles 6-9: Issues relating to work, unions and social security****Article 6 – The Right to Work****1. Part-time and precarious employment**

Recent years have seen a dramatic rise in part-time and precarious employment without access to benefits. One third of part-time workers are in positions with low wages, no union and no pension. Women, racialized persons, immigrants, Aboriginal persons, persons with disabilities, older adults and young people are disproportionately represented among those relying on precarious employment.

**Recommendations**

Commit to a national employment strategy that engages both federal and provincial/territorial governments aimed at creating long term employment opportunities with adequate pay and benefits.

Implement laws to ensure that part-time employees have equitable pro-rated occupational benefits in all jurisdictions.

**2. Access to work for persons with disability**

The Organization for Economic Co-operation and Development (“OECD”), in its 2010 report on disability support programs in Canada, found that “more than one in five Canadians with a disability are neither employed nor receiving any public benefit” – a figure much higher than in other OECD countries. In Ontario, the last resort Ontario Disability Support Program (ODSP) has complex rules, including around employment income, which create barriers to employment.

In 2011, the employment rate among persons aged 25 to 64 with a reported disability was 49% compared to 79% among those without a disability. The single largest source of income for working-age poor people with disabilities is social assistance.

**Recommendations**

Commit to an Inclusive Workplace Tax Credit and other measures to promote access to employment for persons with disabilities.

Make new investments in programmes for young people with disabilities moving from school to work and implement targeted wage subsidies and supported employment and job retention measures for persons with disabilities.

### 3. Access to work for young people

The unemployment rate among young people in Canada aged 15 to 24 is 13% compared to 7% among the general population.<sup>18</sup> Youth unemployment rates are significantly higher among historically marginalized groups such as Aboriginal peoples, immigrant groups, racialized groups and individuals with disabilities.<sup>19</sup> African Canadian youth face widespread discrimination and high unemployment. Young people are unable to gain the necessary work experience and are being forced into precarious and unpaid work. Many young people have abandoned their search for work and are therefore not included in unemployment rate calculations. Youth employment rates were only 56% in 2015 compared to 79% in the general working age population.

#### **Recommendations**

The Government of Canada, jointly with federal/provincial/territorial governments and stakeholders, should implement a national strategy to ensure access to full time, permanent employment for young people, targeting those belonging to marginalized groups, with clear goals and timelines that are enforceable within both the public and private sector.

### 4. Immigration status and the right to work

Refugee claimants from “designated countries of origin” are ineligible for work permits for the first 6 months after they made their claim. Many non-nationals, including refugee claimants, are issued work permits valid for only 6 months, even though they are expected to be in Canada for longer than 6 months. The short duration of the permit, combined with significant delays involved in renewals, leads to people losing their employment because they are unable to provide proof of their right to work.

#### **Recommendation**

Remove restrictions on access to work permits for refugees from designated countries and amend the policy for issuing work permits to ensure applicants likely to be in Canada for longer are issued minimum one year work permits.

### 5. Indigenous peoples’ access to jobs

Indigenous peoples in Canada have higher unemployment rates than the rest of the population, with Aboriginal youth experiencing especially high rates of unemployment. Unemployment rates on-reserve are not included in national employment measures. However, census estimates put the on-reserve employment rate at 22% --compared to 7.6% for the rest of the country. The Kelowna Accord, negotiated in 2005 with all first ministers and the leaders of five national Aboriginal organizations, included significant funding for measures to promote Aboriginal employment and economic development in but it was never implemented by the federal government.

#### **Recommendation**

In keeping with the Kelowna Accord, provide funding to increase Aboriginal employment levels by 30% over the next five years and by 50% within ten years and narrow the median employment income gap by half within five years.

<sup>18</sup> <http://www.statcan.gc.ca/daily-quotidien/160108/dq160108a-eng.htm>

<sup>19</sup> Report of the Standing Committee on Finance “Youth Employment in Canada: Challenges and Potential Solutions” (June 2014) available online: <http://www.parl.gc.ca/content/hoc/Committee/412/FINA/Reports/RP6658485/finarp06/finarp06-e.pdf> at 24.

## 6. Record checks

Increasingly employers, volunteer managers, educational institutions, licensing bodies and governments are incorporating police record checks into their hiring and management practices. Record checks may include information on non-conviction records, where an individual is not charged with an offence, and also interactions with police due to mental health needs. African Canadians are subjected to heightened scrutiny by police so these records have a disparate and more damaging impact on this community. Aboriginal and other racialized youth are also disproportionately affected. The overuse of record checks leads to discriminatory, stigmatizing exclusion from employment, education and community opportunities, particularly in relation to the release of records relating to mental health.

### **Recommendations**

Adopt legislation forbidding the release of non-conviction records by police forces and law enforcement agencies except in very exceptional circumstances that are clearly articulated in legislation and/or regulations.

Amend provincial and federal human rights legislation where such legislation does not explicitly forbid discrimination on the basis of police contact, non-conviction records and criminal records of conviction.

## **Article 7 – The right to just and favourable conditions of work**

### **1. Wage gap and pay equity**

The gender wage gap for full-time work in Canada is currently increasing rather than decreasing. In 2009 women earned 78% of what men earned, in 2010 it was 77.6%, in 2011 it was 76.7%. The wage gap is greater for some groups of women. Racialized women earn 21% less than racialized men and 32% less than non-racialized men. Immigrant women earn 25% less than immigrant men and 28% less than non-immigrant men. Aboriginal women earn 10% less than Aboriginal men (working full time) and 26% less than non-Aboriginal men. Ironically, the wage gap increases for Aboriginal, racialized and immigrant women who hold university degrees. For example, Aboriginal women with a university degree earn 24% less than Aboriginal men with a university degree and 33% less than non-Aboriginal men with a university degree

In 2009, the Government of Canada introduced the *Public Service Equitable Compensation Act* (PSECA), which restricts the ability of women who are employees of the federal government to claim and obtain pay equity through the Canadian Human Rights Commission. PSECA also restricts the right of trade unions to represent women who have pay equity claims, and women are compelled to engage in a bargaining process to secure pay equity, before they can make a claim for pay equity, despite the fact that it is a human right enshrined in law. Only Ontario and Quebec have pay equity laws that apply to both the private and public sectors.

### **Recommendations**

The Government of Canada should:

- Repeal the *Public Service Equitable Compensation Act* and replace it with a proactive federal pay equity law;
- Implement strategies to address the structural inequality of women in employment in all jurisdictions, including employment equity programs, higher minimum wages and ‘living wage’ strategies, increased access to unionization, and enhanced resources and legal capacities for human rights institutions and law to address systemic discrimination in employment.

The governments of all provinces and territories should:

- Ensure that there is effective, proactive pay equity legislation in place in their jurisdiction that will address and correct the lower pay assigned to ‘women’s work.

## **2. Inadequate minimum wage**

In its 2006 Concluding Observations, the Committee noted that “the minimum wages in all provinces and territories of the State party are below the Low-Income Cut-Off and are insufficient to enable workers and their families to enjoy a decent standard of living.” Minimum wage rates in all provinces fall well below what it is required to maintain an adequate standard of living, and the majority of minimum wage workers are women, immigrants and racialized community members. New Brunswick and BC have the lowest minimum wage rates. There has been no federal minimum wage since 1996. In a number of provinces, employment programs for people with disabilities have been exempted from minimum wage and other protections.

### **Recommendations**

Increase provincial and territorial minimum wage rates to provide workers and their families with a decent living, consistent with living wage calculations.

Re-establish a federal minimum wage including for Temporary Foreign Workers and those working in disability employment initiatives.

## **3. Migrant domestic workers and Temporary Foreign Workers**

In 2006, the Committee urged that effective measures be adopted to eliminate exploitation and abuse of women who are migrant domestic workers. The Canadian Government implemented significant changes to the Live-In Caregiver Program in 2014. While some aspects of the changes were positive, such as the removal of the mandatory live-in requirement, the changes also significantly narrowed the pathway to permanent residency for live-in-caregivers, who are overwhelmingly women of colour. The total number of applications for the program has also been capped.

Caregivers who want to work in Canada must now apply for a work permit through the Temporary Foreign Workers' Program (TFWP) and satisfy new language requirements. Under the new Citizenship Act that came into force in June, 2015, live-in-caregivers, among others, must also wait for several more years before they can apply for Canadian citizenship, as their residency in Canada prior to becoming permanent residents is no longer counted towards their citizenship eligibility. There have been many incidents where foreign workers were injured or killed on the job, were denied wages, placed in sub-standard and unsafe housing, and face discrimination and harassment by the employer. Provincial governments are responsible for employment and workers’ health and safety laws, but enforcement is insufficient.

### **Recommendations**

Remove the restrictions on access to permanent residence status for live-in-caregivers and repeal the cap on the program, permitting domestic workers to come to Canada as regular immigrants; eliminate restrictions of work permits to a particular employer; work with the provinces to improve regulation of recruitment agencies, and develop mechanisms to monitor workplace health and safety in this context.

Ratify the ILO Domestic Workers Convention and bring domestic laws into alignment.

#### **4. Seasonal agricultural workers**

Workers brought into Canada under the Seasonal Agricultural Workers Program are vulnerable to exploitation by employers and restricted labour mobility. A negative employer evaluation can result in suspension from the program and workers are reluctant to report abuse despite documented cases of dangerous working conditions, extremely long workdays without overtime pay, lack of necessary breaks and unacceptable housing conditions. Migrant agricultural workers also risk “medical repatriation”, immediate involuntary deportation, when their employment contracts are terminated due to health conditions or workplace injury. Monitoring and enforcement protections against such abuses are inadequate.

##### **Recommendations**

Ensure that seasonal agricultural workers have the same legal protections as other workers and ensure adequate monitoring and enforcement procedures to protect the rights of this vulnerable group of workers.

#### **5. Racial and gender disparities in income and employment**

The National Household Survey in 2011 showed that University educated visible minority workers take home 20% less than their non-visible minority counterparts. In the private sector, visible minority workers with a high school diploma make 27% less than their peers (working full-time, full year).

Changes were made to the federal *Employment Equity Act* in 2012 rendering compliance voluntary for federal contractors.

##### **Recommendations**

Amend the *Employment Equity Act* to instate mandatory compliance by federal contractors and establish an Employment Equity Commission to effectively enforce and monitor the implementation of the *Employment Equity Act*.

Adopt employment equity legislation and other measures in all provinces and territories.

#### **6. International credentials recognition**

Despite the introduction of the federal government’s Pan-Canadian Foreign Credential Recognition Framework and Program, immigrants continue to encounter systemic barriers to international credentials recognition, including institutional barriers, burdensome and discriminatory requirements and financial barriers. There has been little government investment in initiatives that lead to employment consistent with experience and credentials for internationally-trained immigrants and refugees, and no investment in initiatives that will address systemic discrimination in the labour market.

##### **Recommendations**

Adopt measures to better address labour market discrimination against immigrants and refugees, particularly those facing racial discrimination.

#### **7. Workers’ compensation**

Significant cutbacks have taken place in workers’ compensation across Canada. 50,000 Canadian workers every year are hurt seriously enough that they end up with a permanent disability. According to a recently completed study led by the Council of Canadians with Disabilities, about half of injured

workers experience serious barriers to participation in the labour market. Approximately 20% live in poverty, while another 25% live in near poverty.

**Recommendations**

Commit to reviewing provincial/territorial workers' compensation programs to ensure that they provide adequate benefits and address the needs of injured workers with long term disabilities.

**Article 8 – Trade union rights**

**1. Right to organize and bargain collectively**

In the case of *Saskatchewan Federation of Labour*, the Government of Canada intervened as a friend of the Court. In that role, the Government could have encouraged the Supreme Court of Canada to interpret the right to freedom of association in the Canadian Charter consistently with article 8 of the ICESCR. However, the Government of Canada joined its provincial counterparts in arguing that the Charter should be interpreted as providing less protection than international human rights law. The Supreme Court of Canada rejected the governments' arguments and opted for an interpretation of the Charter that is consistent with the ICESCR.

. Evidence shows that unionized women enjoy better pay, more job security, and better employment benefits and pensions than non-unionized women. Trade union rights are key for the advancement of women, and for the advancement of women in women-dominated jobs, such as teachers and health workers.

**Recommendation**

All levels of government should commit to promoting and protecting the right to strike and to organize and bargain collectively as a constitutional obligation and an international human right, and as an instrument for the advancement of women..

**Article 9 – The right to social security**

**1. Refugee access to social assistance**

In December 2014, the federal government passed Bill C-43. Provisions 172 and 173 of the Bill repealed a key national standard in the Canada Social Transfer which prohibited the setting by provinces of a minimum period of residence for social assistance eligibility. The amendments removed this prohibition for refugees and others without regularized status. Provinces are now free to impose residency requirements for social assistance eligibility for refugees, without any federal transfer funding consequences. The amendments allow provinces to discriminate against refugees solely because of their immigration status.

**Recommendation**

Reinstate the national standard in the Canada Social Transfer to protect everyone, including refugees from a minimum residency requirement for social assistance eligibility.

**2. Social security for persons with disabilities**

In Canada, there is no coordinated policy response to the poverty of persons with disabilities. Instead, there is a patchwork of local/provincial/territorial and federal programs that overlap, claw back and fail to

provide adequate income and basic supports required to remove barriers associated with disability.<sup>20</sup> The OECD, in its 2010 report on disability support programs in Canada, found that “the biggest challenge in Canada is the high risk of relative income poverty of persons with disabilities.” Compared with other OECD countries, individuals with disabilities in Canada are twice as likely to be living on low household incomes as those without a disability and the single largest source of income for working-age poor people with disabilities is social assistance.

Canada’s social assistance programs for persons with disabilities are woefully inadequate, in some cases comprising only 50% (Alberta) to 56.6% (BC) of the low-income cut-off. In BC, despite the government’s promise to “consider disability assistance rate increases as the fiscal situation allows” and a 1.8 billion budgetary surplus in 2014/15, social assistance rates remain stubbornly unchanged. Rapidly increasing food and housing prices mean that social assistance rates for people with disabilities are falling further and further behind each year across the country.

### **Recommendations**

Include in the Canada poverty reduction strategy specific measures to assist persons with disabilities, ensure that the incomes provided by provincial / territorial disability income benefit programs provide an adequate level of income, and index income benefits to the cost of living in all provinces and territories.

### **3. Access to employment insurance**

In 2006, the Committee expressed concern that the number of youth eligible to receive employment insurance benefits has decreased and that migrant workers and many part time workers, predominantly women, contribute to the plan but have great difficulties in accessing benefits.” No improvements have been made since Canada’s last review and further retrogressive measures have been implemented.

An individual must work sufficient number of hours of insurable work to be eligible for EI and periods of underemployment or unemployment lower the amount of EI benefit entitlement. These requirements have a disproportionate impact on low income people, youth and others in precarious employment and women, all of whom are more likely to work part time, be paid less and experience frequent bouts of employment. From 2012-2014, women in Canada received about 14% less per week for EI employment benefits than men. Access to EI is even more difficult for new entrants to Canada’s work force who have to work hundreds more hours (910 hours) in order to qualify for EI benefits, which is a higher bar for new immigrants, temporary foreign workers and the precariously employed. And once workers qualify, about 25% of all EI claimants run out of benefits before they can find a new job.

About 1/3 of people relying on Employment Insurance sickness benefit exhaust these and do not have eligibility for Canada Pension Plan (CPP) disability benefits. The CPP restriction of eligibility to those with “severe and prolonged impairment” excludes many with episodic disability. OECD’s 2010 report on Canada recommended that Canada extend the sickness benefit from 15 weeks to 30 weeks.

Migrant workers face discrimination in accessing EI benefits even though they pay EI premiums. To qualify, workers need to show that they are in Canada working under a valid work permit. Therefore temporary foreign workers who are issued work permits for a restricted period or that restricts them to certain employers are often unable to access these benefits when they lose their jobs. Additionally, in December 2012, Canada changed its regulations to expressly limit EI

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<sup>20</sup> <http://www.ccdonline.ca/en/socialpolicy/poverty>

parental benefits only to those who are authorized to remain in Canada at that time, disqualifying migrant workers (such as seasonal agricultural workers) who have left Canada.

#### **Recommendations**

Reform the EI system in order to ensure adequate benefits and to meet the needs of Indigenous workers, women, immigrants and refugees, young people, persons with disabilities as well as other workers in precarious and part-time work. Ensure temporary foreign workers access to benefits to which they have contributed.

Review the systemic effects of the requirement of workforce attachment for eligibility for the enjoyment of the right to social security in Canada and consider alternative approaches.

#### **4. Old age security**

Changes to Old Age Security and the Guaranteed Income Supplement announced in 2012 will raise the age of eligibility from 65 to 67 effective in 2023. These changes will prolong poverty for those on social assistance, and are of particular concern to older women and to people with disabilities who disproportionately live in poverty. Increasing the amount of the Guaranteed Income Supplement, returning the age of eligibility to 65 and increasing the Canada Pension Plan's replacement rate could decrease the senior poverty rate by 50%.

In its 2014 Budget Implementation Act (Bill C-31) the federal government barred older sponsored immigrants from receiving three allowances under the Canada Pension Plan and Old Age Security (the Guaranteed Income Supplement, Spousal Allowance and Survivor Allowance). These allowances are available to anyone who has lived in Canada for at least 10 years, except for sponsored immigrants who cannot receive the allowances while under sponsorship. Because sponsorship agreements for parents and grandparents are 20 years, sponsored immigrants will have to wait ten years longer than any other resident before they can qualify for the allowances simply due their immigration status.

#### **Recommendations**

Commit to returning the age of eligibility for Old Age Security to 65 and increase the Guaranteed Income Supplement by the amount required to lift the incomes of all seniors in Canada out of poverty.

Increase and index the basic earnings exemption for employment income when calculating Guaranteed Income Supplement.

Ensure that the proposed changes to eligibility for the Guaranteed Income Supplement, the Spousal Allowance and the Survivor Allowance which discriminate against sponsored immigrants will not be implemented.

#### **5. Child benefits**

The child poverty rate in Canada is 16.5%. By comparison, the child poverty rate in Norway, Finland, Sweden and Denmark is under 5%. Children of immigrants, single mothers, of Aboriginal identity, in racialized families and those with disabilities are at a significantly higher risk for poverty. Half of all First Nations children living on reserve live in poverty.

**Recommendations**

The Government of Canada should work with the provinces and territories to ensure that families in deep poverty, including those relying on social assistance, see the entire benefit of the new federal Canada Child Benefit without clawbacks or rate reductions in social assistance.

The Canada Disability Child Benefit should be increased and eligibility broadened to include young adults.

**6. Disability Tax Credit (DTC)**

The DTC was created as a tax fairness measure to offset the extra costs of disability, subtracting the value of the DTC from federal tax owing. For low-income people with disabilities with little or no tax owing, however, the DTC has no benefit. In 2012 there were approximately 755,000 working age Canadians who qualified for the DTC but did not benefit because their incomes were too low.

**Recommendations**

Convert the Disability Tax Credit (DTC) to a refundable credit.

**Articles 10-12: Issues relating to assistance to families, standard of living, physical and mental health****Article 10 - Protection of the family, mothers and children****1. First Nations child removals and foster care**

First Nations<sup>21</sup> children are dramatically over-represented among children being removed from their families and placed in child welfare care. Factors contributing to the over-representation include poverty, poor housing, substance misuse related to multi-generational colonial harm, residential schools and inequitable child and family services, particularly the lack of prevention services on reserves. Further, state care is often not safe for Indigenous children. Many Indigenous girls flee non-Indigenous foster homes permanently or for periods of time, and become involved in drugs and prostitution, where they are at high risk of violence.

After extensive hearings into alleged discrimination resulting in inferior services for on-reserve families and children, the Canadian Human Rights Tribunal recently found that “First Nations children and families living on reserve and in the Yukon are discriminated against in the provision of child and family services by AANDC [Aboriginal Affairs and Northern Development Canada].”<sup>22</sup> The tribunal ruled that these discriminatory policies “perpetuate historical disadvantages suffered by Aboriginal peoples, mainly as a result of the Residential Schools system.”<sup>23</sup>

**Recommendations**

The government must recognize as a matter of urgency the linkages between the failure to implement the economic, social and cultural rights of First Nations, Inuit and Metis, and the over-representation of

<sup>21</sup> According to the Federal Government definition of Aboriginal peoples in Canada, there are three Aboriginal groups: Inuit, Métis and First Nations.

<sup>23</sup> Ibid at para 404.

their children in foster care and develop a comprehensive and coordinated strategy collaboratively with Indigenous governments and organizations and other actors, to implement in a culturally appropriate way, the full array of economic, social and cultural rights contained in the Covenant.

The government should work with First Nations to eliminate the gap in funding for First Nations child and family services; ensure equitable access to culturally appropriate programmes and support services within families and communities and implement the Truth and Reconciliation Commission of Canada's calls to action.

## **2. African Canadian child removals and foster care**

There is a gross over-representation of African Canadian youth and children in child welfare systems in Ontario. It is reported that 65% of the children and youth in the care of a Children's Aid Society in the Greater Toronto Area are African Canadian. Yet, African Canadians make up only 6.9% of Toronto's population. Not only are African Canadian children removed from their families in circumstances where such action is likely unwarranted, reports to the African Canadian Legal Clinic suggest that they are not being placed in culturally appropriate familial settings.

### **Recommendations**

Ensure that where poverty-based "neglect", as opposed to "abuse" is the reason for the involvement of the child welfare agency, the necessary supports are provided to improve the family's socio-economic security.

Commit to examining the impact of class and poverty-related issues on rates of removal to ensure that children are not being removed from their homes simply due to poor housing or poverty.

## **3. Access to affordable child care**

Canada has among the lowest levels of access to child care and the highest parent fees in the OECD. At 0.25% of GDP, Canada's public investment is about one-half of the OECD average and one-third of the minimum recommended level. The CEDAW Committee urged Canada "to step up its efforts to provide a sufficient number of affordable childcare spaces" and linked this recommendation with the necessity to increase efforts to provide "affordable and adequate housing options."<sup>24</sup> According to the Canadian Centre for Policy Alternatives, "fee subsidies for lower income families are inadequate [and] the proportion of subsidized children has essentially remained static since 2001."<sup>25</sup> Child care in Aboriginal communities has not been a policy priority. Although the federal government has direct responsibility for Aboriginal child care, program funding has been virtually static since 2006, and dropped in 2008/2009. The particular needs of children with disabilities and of their caregivers have not been adequately addressed.

<sup>24</sup> Committee on the Elimination of All Forms of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women, Canada, UN Doc CEDAW/C/CAN/CO/7, 7 November 2008, at para 40, online: OHCHR <<http://www.ohchr.org>> ; Human Rights Council, Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16.21 Canada, UN Doc A/HRC/WG.6/16/CAN/2, 7 February 2013, at para 67, online: OHCHR <http://www.ohchr.org>.

<sup>25</sup> Canadian Centre for Policy Alternatives, *Delivering the Good: Alternative Federal budget 2015* (Ottawa: Canadian Centre for Policy Alternatives, 2015), at 41, online: CCPA <[https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2015/03/AFB2015\\_Mai\\_nDocument.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2015/03/AFB2015_Mai_nDocument.pdf)>.

**Recommendations**

Provide leadership, legislation, and adequate and sustainable funding for provinces, territories and aboriginal communities to build quality, affordable child care.

Commit to a Canada-wide plan for an Early Childhood Education and Care system made up of high quality, affordable programs based on universal entitlement, affordability and inclusion.

Enhance support for caregivers and address the concern that tax credits do not assist the lowest income families with disabilities.

**4. Possible retrogressive measures in childcare programs in Quebec**

Quebec has universal and affordable daycare for preschool children. The daily rate is \$7.30 (compared with approximately \$40 per day in the rest of Canada). As part of its austerity measures, the Quebec government is planning to transform its system to encourage commercialization of private daycares and establishing a two-tier system that favours the wealthiest families.

**Recommendations**

The Quebec government should avoid any retrogressive measures with respect to its universal daycare program and ensure that low-income families do not face new barriers in accessing affordable child care..

**5. Barriers to family reunification**

Canada's immigration processing for family reunification cases is extraordinarily slow. Many children wait over two years before being able to reunite with their parent in Canada. For family members of refugees, overseas processing can take 31 months or longer. A number of unreasonable legal barriers exist. The "excluded family member" rule excludes from sponsorship any family member who was not interviewed by an immigration officer when the sponsor originally applied to emigrate to Canada. There is no right for refugee minors to be reunited with parents and siblings. And the definition of a dependent child as the biological or adopted child results in costly and lengthy DNA tests.

The Minimum Necessary Income (MNI) requirement denies low-income Canadians the right to sponsor their parents and grandparents, and the doubling of the sponsorship period from 10 to 20 years has created additional financial pressure on low-income immigrant families. As the majority of Canadians who seek to sponsor parents and grandparents are people of colour, these measures also disproportionately affect racialized communities members.

**Recommendations**

The government should take measures to ensure that refugees, live-in caregivers and other immigrants are able to be united with their families without unreasonable delay and that children can be reunited with their parents.

The minimum income requirement for family sponsorship should be repealed and the requirements for parents and grandparents sponsorship should be relaxed.

**6. Family members with disabilities denied access to Canada**

The *Immigration and Refugee Protection Act*, includes s. 38(1)(c), which establishes excessive demands by persons with disabilities on health and social services as a criterion for exclusion from immigration. Canada's immigration law treats disabilities as "deficits" or as potential "excessive demand" upon society. This is an outmoded, negative and stereotypical concept of disability which ignores the considerable contributions made by people with disabilities to society.

#### **Recommendations**

Undertake a review of the *Immigration and Refugee Protection Act's* "excessive demand" clause, as a first step toward the removal of its outmoded approach to disability.

### **Article 11 – The right to an adequate standard of living**

#### **1. Housing and homelessness**

At the two previous reviews of Canada, the CESCR recommended "that the federal, provincial and territorial governments address homelessness and inadequate housing as a national emergency." The CESCR and UN Special Rapporteur on adequate housing have strongly recommended that a national strategy be implemented, so as to ensure the right to adequate housing, with clear goals and timelines, independent accountability and complaints mechanisms. These recommendations have not been implemented and Canada remains the only G8 nation without a federal housing strategy.

The Human Rights Committee has expressed concern that in Canada, "homelessness has led to serious health problems and even to death. The Committee recommended that the State party take positive measures required by article 6 (the right to life) to address this serious problem. Yet the number of homeless has not declined. And no programs or policies have been put into place to address the structural causes of homelessness.

Social housing programs have been cut with disastrous results for low income households. Of particular concern, Canada Housing and Mortgage Corporation is withdrawing long terms subsidies to approximately 200,000 social housing units across the Canada. The end of these subsidies in about 25,000 public, coop and non-profit units in 2016 and more in the next few years will likely mean they will be converted to market value units and thus unaffordable for the low-income tenants who are currently living in the units as well as for the individuals and families who will need them in the future.

Canada has no adequate shelter supplement program and the shelter allowance portion of social assistance rates is woefully and increasingly inadequate, set without reference to the actual cost of housing or what's required to have an adequate standard of living.. People with disabilities are not provided with the necessary supports to live in dignity and are often compelled to live in institutional settings. 45% of those who are homeless in Canada have been diagnosed with a mental disability. With 25,000 Syrian refugees coming to Canada's cities this year, Canada's housing deficit is being exposed and may become even more acute.

While the reliance on emergency shelters has increased generally since 2006, the situation is particularly critical for women. Emergency shelters for women and violence against women shelters in Hamilton, for example, turned away women a combined total of 400 times in December 2014 due to the shelter being at full capacity.

Aboriginal peoples, particularly on reserve, often lack access to basic services including safe drinking water, live in severely overcrowded housing that is in poor repair.

## **Recommendations**

Recognize the right to adequate housing as a justiciable, legal right and implement a rights based national housing strategy, as recommended by the Committee (1998, 2006), with complementary and co-ordinated housing strategies at provincial/territorial and municipal levels, with enforceable goals and timelines, and independent monitoring and complaints mechanisms.

Implement previous recommendations of the CESCR (1998, 2006) to address homelessness and inadequate housing by “reinstating or increasing, as the case may be, social housing programmes for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels, providing adequate support services for persons with disabilities, addressing the particular housing needs and barriers to affordable housing for women - including women fleeing violence, improving protection of security of tenure for tenants and improving protection of affordable and accessible rental housing stock from conversion to other uses.”

Renew the federal subsidies for more than 200,000 social housing units that are scheduled to end in the next years to be sure that they remain affordable.

Require legislative measures to address homelessness and ensure adequate housing as a condition of funding under the Canada Health and Social Transfer.

## **2. Criminalization of homeless people**

Setting up a tent, tarp or box does not constitute adequate housing or an adequate standard of living in Canada, a wealthy country. However, for thousands of homeless people who are currently prohibited by local laws from sleeping in parks or setting up basic survival shelter the liberty to sleep in a park and set up a survival structure must be protected. Constructing a temporary shelter provides a level of security, privacy, warmth, sun protection and comfort when one has no other viable, accessible and safe housing options. While establishing adequate housing is ultimately required, the safety and wellbeing of homeless people must be safeguarded in the interim.

## **Recommendations**

All levels of government in Canada should revoke laws that penalize or discriminate against people for engaging in behavior necessary for survival and related to their homelessness and poverty, such as sleeping and erecting shelter in public spaces and ensure that police and justice officials interact constructively and in a non-discriminatory, non-stigmatizing manner to address homelessness.

The federal government should offer incentives for decriminalizing homelessness, including by providing continued financial support to local and subnational authorities that implement alternatives to criminalization, and withdrawing funding from local and subnational authorities that criminalize homeless people.

Commit to ensuring that sub-national governments understand their legal obligations under the Covenant.

### 3. Eviction into homelessness

Systemic evictions into homelessness occur across Canada. In the fiscal year for 2013-2014 landlords filed 67,278 applications to evict their tenants at the Landlord and Tenant Board of Ontario, of which 78.5% are to evict the tenant because of rental arrears – often for as little as one month’s rent. Unfortunately, aside from a general discretion for the Landlord and Tenant Board to refuse or delay the termination of a tenancy, there is no requirement, legislative or otherwise, to ensure that tenants who are evicted have someplace to go. Further, there does not appear to be any research on how many evictions result in homelessness. One can infer from the high levels of emergency shelter usage (which represents but the tip of the iceberg of homelessness) that a great many of these tenants are evicted from their homes with no place to go.

#### **Recommendations**

Procedures for evictions in all provinces should be brought into conformity with the CESCR’s General Comment 7 so as to prevent any evictions into homelessness, as recommended in 2006.

The Government of Ontario should require the Landlord and Tenant Board of Ontario to ensure that tenants have some place to go before evicting them and to make all decisions with some consideration of Canada’s international human rights obligations.

### 4. First Nations housing

Housing issues are particularly dire for First Nations and Inuit populations. 29% of First Nations’ households live in housing requiring major repairs (more than four times the non-Aboriginal population). Nunavut faces a severe housing crisis, with 49% of all existing housing in need of repair and an equal share of residents living in overcrowded housing. The homeless rate for Nunavut is 4%. A study commissioned by Aboriginal Affairs and Northern Development Canada (AANDC) estimated that investment requirements of approximately \$944 million annually for the 2010-2034 time period are needed to meet on-reserve housing needs. Current investments are far below this level.

#### **Recommendations**

The government must address the on-reserve housing crisis on an urgent basis and ensure budgetary allocations in line with assessed need.

### 5. Tenants with disabilities

44% of renters with disabilities live on low incomes compared to 24.7% of their counterparts without disabilities. Among people with disabilities living on a low income, 15.5% live in housing that is in need of major repairs because of plumbing problems and electrical wiring and structural issues, compared with 9.8% of people without disabilities who live on low incomes.

#### **Recommendations**

Ensure that federal, provincial/territorial and municipal housing strategies address the particular concerns and needs of persons with disabilities, based on barrier-free and accessible design and community-based support services, designed and implemented with the participation of stakeholders.

## 6. Lack of community based housing for people with mental health disabilities

A lack of affordable and accessible housing can have especially grave consequences for persons with disabilities. In the *Emerald Hall* case awaiting hearing before a human rights Board of Inquiry in Nova Scotia the complainants allege that individuals have been wrongfully institutionalized in a locked psychiatric ward for years without medical or legal reason, simply because the province has failed to provide suitable community-based housing.

### Recommendations

Ensure that the provinces make available—with suitable accommodation as required—community-based housing and ensure that people with disabilities are not forced to live in institutions because of inadequate supports for community based housing.

## 7. *Tanudjaja v. Canada* – Homelessness and Access to Justice

In *Tanudjaja v. Canada (Attorney General)* 2014 ONCA 852, homeless people and the Centre for Equality Rights in Accommodation, with the support of a large number of CSOs, sought a hearing into whether federal and provincial governments' failure to implement an effective and co-ordinated housing and homelessness strategy violated their rights to life, security of the person and equality under sections 7 and 15 of the *Canadian Charter*. They invoked Supreme Court of Canada jurisprudence and commitments made by Canada before the CESCR that these rights should be interpreted consistently with obligations under the ICESCR. The applicants produced over 10,000 pages of evidence including more than a dozen expert affidavits showing the devastating effects of homelessness in Canada and its disproportionate effect on particular groups. The governments succeeded in convincing courts to deny the applicants a hearing so that the evidence was never considered. The court denied the hearing on the basis that they have no positive obligation to address homelessness or ensure access to adequate housing, even where life and personal health and security is at stake. The court also indicated that because a strategy to address homelessness engages multiple programs and policies, it is beyond the competence of courts to assess.

### Recommendations

Canada and Ontario should formally renounce the positions advanced in court in the *Tanudjaja* case; appoint a panel of constitutional and human rights experts to hear the evidence and make recommendations to governments on appropriate remedies to the human rights crisis of homelessness in Canada.

## 8. Poverty

1 in 7 or 4.9 million people in Canada live in poverty, including 1.34 million children. Canada ranked 21st out of 27 OECD countries in terms of poverty levels in 2011. There has been an increasing polarization of incomes in Canada. Over the past three decades the after tax incomes of the wealthiest 20% of Ontario families have grown at a rate four times the rate as the incomes of the poorest 20%, and their share of income has increased by 13%, while the poorest families share of income fell by 12%. The effects of poverty and income inequality are severe. It has come to light in Hamilton, for example, that there exists a 21 year difference in life expectancy between one of Hamilton's richest neighborhoods and

one of its poorest, representing “an entire generation lost between those neighborhoods at the top and bottom.”

While most provinces and territories (save British Columbia) have adopted provincial poverty-reduction strategies, to date none of these strategies have been based in international human rights law and obligations, and none use human rights standards or principles to monitor or measure success. The federal government has refused to implement a national poverty elimination strategy or to exercise leadership in promoting rights-based strategies at the provincial/territorial and municipal levels as recommended by the CESCR.

**i) Poverty and Indigenous peoples**

Indigenous peoples in Canada experience the highest levels of poverty: A shocking 1 in 4 Indigenous peoples (First Nations, Métis and Inuit) are living in poverty and 4 in 10 or 40% of Canada’s Indigenous children live in poverty.

**ii) Poverty and Women**

About 8.9% of women in Canada live in poverty and women’s rates of poverty are consistently higher than men’s. Particular groups of women have much higher rates of poverty: 37% of First Nations women (off reserve); 23% of Metis and Inuit women; 20% of immigrant women; 28% of women of colour; 27.5% of women with severe disabilities; 28.3% of single women; 23% of single mothers; and 34% of single elderly women.

**iii) Poverty and recent immigrants**

More than 36 per cent of immigrants who have been in Canada for less than five years live in poverty. This compares to 25 per cent in the 1980s. Immigrants face additional barriers to accessing benefits which could lift them out of poverty. The Canada Child Tax Benefit is designed to assist low income families and can make a substantial difference to household income and poverty levels. And yet, this benefit is denied to some of the poorest children in Canada because of their parents’ immigration status. For example, the CTB is not extended to children whose parents are refugee claimants, temporary foreign workers, or applicants awaiting humanitarian and compassionate decision regarding permanent residence.

Refugees resettled to Canada must pay for the required medical exam and their travel to Canada. Unable to afford these expenses, Canada offers refugees a loan to assist them in settling in Canada. However, this means that many refugee families start their new life in Canada with a debt of up to \$10,000CDN which they must repay with interest.

**iv) Poverty and disability**

During working years, people with disabilities are twice as likely to live in poverty. When employed, people with disabilities are 150% more likely to live in low income.

**v) Poverty among racialized groups**

Members of racialized communities are at least two to four times more likely to live in poverty than non-racialized people. While some provinces such as Ontario have introduced poverty reduction strategies, these have not addressed the racialization of poverty even though one-third of Ontario’s population will be racialized by 2017.

## vi) Poverty in BC

BC has had the highest poverty rate in Canada for the last 13 years. 476,000 British Columbians are living in poverty and 93,000 of those are children. B.C. is the only province that has not taken steps to create a poverty reduction strategy.

### Recommendations

All levels of government should implement strategies to reduce and eliminate poverty, with “measureable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms, in keeping with Covenant standards” (CESCR 1996; Special Rapporteur on adequate housing, country mission report, 2009)

All poverty reduction strategies should address the particular circumstances of Indigenous peoples, women, people with disabilities, newcomers, racialized and marginalized groups.

Remove the requirement of permanent residence status for recipients of Child Tax Benefits and allow access to Child Tax Benefits to the residing parents of all Canadian citizen children.

The government of Canada should absorb the costs of transportation and overseas medical expenses for all refugees, and amend the regulations accordingly.

## 9. Social assistance

The Canada Social Transfer (CST) does not have any national accountability standards requiring social assistance levels to meet basic needs. Canada used to have such standards for welfare and social services. As the CESCR has noted in previous reviews of Canada the Canada Assistance Plan, the precursor to the CST, contained a funding condition that required provincial agreement to provide adequate social assistance. This condition was eliminated in the CST. In addition, the funding Canada provided to provinces was drastically reduced and has continued to be eroded from where it stood under the Canada Assistance Plan.

In 2006 the CESCR expressed concern about “the absence of a legally enforceable right to adequate social assistance benefits for all persons in need on a non-discriminatory basis and the negative impact of certain workfare programmes on social assistance recipients.” Yet social assistance rates continue to fall well below any measure of poverty used in this country. Most welfare recipients are worse off than those in past decades because welfare incomes have not kept up with increased inflation. In many cases rates are 20% lower than in the past.

Social assistance recipients live far below the poverty line and real costs of living are not taken into account in setting social assistance rates. Single non-disabled recipients receive between a low of 38.2% (in Manitoba) and a high of 64.7% (in Newfoundland) of the low-income cut-off. In Ontario, in 2014 the annual income for single persons in receipt of Ontario Works was about 42% of the low-income cut-off. Nearly 70% of people using food banks in 2015 in Ontario were social assistance recipients.

The rates of social assistance provided to cover housing costs are sorely inadequate. For example, for a single parent with one child, the maximum shelter allowance was \$602 in 2014, while the average rent for a two-bedroom apartment in the Hamilton Census Metropolitan Area was \$959, representing a \$357 shortfall every month (as compared to \$278 in 2004).

**Recommendations**

Legislate a federal plan to reinstate minimum national standards for provincial income assistance through conditions (to ensure that social assistance is accessible and adequate), with specific consideration for vulnerable populations (persons with disabilities, lone-parent families, immigrants, and women).

Increase provincial social assistance rates to reflect the real cost of living and ensure that people are able to acquire basic shelter, food and other essential needs. Social assistance rates should be indexed to rising costs of living.

Provincial and territorial governments should establish arms-length, permanent and publicly accountable bodies of experts to recommend evidence-based social assistance rates that will allow individuals and families to have an adequate standard of living and to live with dignity.

**10. Food security**

In 2012, the latest year for which information is available, four million individuals in 1.7 million households experienced some level of food insecurity. Close to 900,000 people across the country use foodbanks each month. Alberta saw a 23% increase in food bank usage between 2014 and 2015, the largest increase across the country. Nunavut has the highest food costs in the country and also the highest number of households in Canada that are food insecure at 28.8% with some surveys showing as many as 70 % of children going to bed hungry every night. One-third of female-led lone parent families are food insecure.

During its last review, the Committee recommended that the State party “significantly intensify its efforts to address the issue of food insecurity and hunger in Canada.” The Special Rapporteur on the right to food, following his mission to Canada in 2012, recommended a coordinated national food security strategy, revised social assistance rates and guaranteed “living wage.” None of these recommendations have been implemented.

In his mandate letter to the Minister of Agriculture and Agri-Food, Prime Minister Justin Trudeau asks that the Minister “develop a food policy that promotes healthy living and safe food by putting more healthy, high-quality food, produced by Canadian ranchers and farmers, on the tables of families across the country.” The mandate letter does not reference the right to food or the recommendations of the Special Rapporteur. A comprehensive right to food strategy needs to involve more departments than Agriculture and Agri-Food Canada, and should be elaborated in close coordination with the departments of Health as well as Families, Children and Social Development.

**Recommendations**

Review and act on the recommendations made by the CESCR (2006) and the Special Rapporteur on the right to food following his mission to Canada in 2012.

Formulate a comprehensive rights-based national food strategy clearly delineating the responsibilities of public officials at the federal, provincial/territorial, and municipal/local levels, identifying the measures to be adopted and the associated time frames, and ensuring that initiatives adopted at municipal and provincial levels, particularly for the rebuilding of local food systems, are adequately supported. As part of this strategy, create a nationally funded children and food strategy (including school-feeding food literacy and school garden programmes) and address the food security issues of particular groups, including people with disabilities and northern communities. This should be done in full consultation

with all relevant stakeholders.

### **11. Food security of Indigenous peoples**

Obtaining food security for Indigenous peoples involves providing access to both traditional food and market food. Traditional food is a source of “significant symbolic and spiritual value, and is central to personal identity and the maintenance of culture”, and is generally the most desirable choice. However, access to healthy market food is a necessity due to the environmental contamination and the impact of global climate change. A significant barrier to accessing traditional foods is that provincial wildlife officers continue to arrest Indigenous hunters exercising their constitutionally protected right to hunt for food. First Nations women have much higher rates of food insecurity with 26 % of First Nations women experiencing moderate or severe household food insecurity.

#### **Recommendations**

Accord status to those Aboriginal peoples unrecognized as such under the *Indian Act* in order to enable all Aboriginal peoples to have access to land and water rights to which they are entitled.

Encourage the federal, provincial and territorial governments to meet, in good faith, with Indigenous groups to discuss arrangements to ensure access to land, natural resources, Nutrition North Canada and the right to food, among others.

Ensure that Canadian law properly protects and promotes the right of Indigenous peoples to their traditional foods, including hunting and harvesting flora and fauna.

### **12. Environmental protection and food security**

The health of Canada’s coastal environments is crucial to the food security of coastal peoples, especially First Nations. Climate change impacts, including rising ocean temperatures and ocean acidification, are expected to have major negative effects on fish stocks and food security. Recent research in B.C. indicates that increased sea surface temperatures are likely to affect 98 fish and shellfish species that First Nations groups rely on for food and result in job losses estimated to be worth between \$6.7 and \$12 million per year by 2050.

#### **Recommendations**

The State party must take immediate action, including international co-operation and adoption of legislative measures, to protect the coastal environments. Robust environmental assessment, regulation and monitoring must be fully implemented.

### **13. Right to clean water and sanitation**

In 2006, this Committee strongly recommended that Canada “review its position on the right to water, in line with the Committee’s general comment No. 15 (2002) on the right to water, so as to ensure equal and adequate access to water for people living in the State party, irrespective of the province or territory in which they live or the community to which they belong.”<sup>26</sup> Yet an estimated 20,000 First Nations people living on reserves across Canada still have no access to running water or sewage. The national engineering assessment released by the federal government in 2011 concluded that 73% of First Nation

<sup>26</sup> CESCR Concluding Observations, 2006, supra note 1 at para 64.

water systems are at high or medium risk of negatively impacting water quality. Among First Nations communities, 124 remain on unsafe drinking water advisories, 27 of them in place for a decade or more.

**Recommendations**

Work with and fully support First Nations to ensure that all First Nations communities have access to clean drinking water and adequate sanitation, including through provision of adequate, sustained funding for such services.

Amend the *Safe Drinking Water for First Nations Act* to ensure respect for First Nations self-government rights in regulating First Nations water systems.

**14. Shoal Lake #40: Lack of access to a range of ESC rights**

Shoal Lake #40 community was relocated as part of the development of the city of Winnipeg's water supply system. As a result, the community was cut off from the mainland. While the clean waters of Shoal Lake were diverted to Winnipeg residents, Shoal Lake #40 has been without access to safe, clean, drinking water. Its residents have lived under a boiled water advisory for almost two decades. The community is isolated from many of the necessities of life, from jobs, to groceries, to medical care on the mainland, relying on a small barge to travel off of their artificial island, or driving across the Lake's frozen surface during the winters.

**Recommendation**

Collaborate with the Shoal Lake #40 First Nation to take all necessary measures to ensure access to safe drinking water and safe year-round travel to and from the community.

**Article 12 - The right to physical and mental health**

**1. The Canada Health Act**

The *Canada Health Act* and the Canadian Charter are the primary vehicles for the implementation of the right to health in Canadian law. The *Canada Health Act* requires that federally funded provincial health care programs be publicly administered on a not-for-profit basis and ensure comprehensiveness, universality, portability, and accessibility. Changes to provincial healthcare, however, now threaten the universality and accessibility of healthcare through privatization. Increased user fees for health care services in many provinces (such as Nova Scotia) and legislation permitting extra billing such as through Bill 20 in Quebec have compromised access to health care for low-income households. The Federal Government has failed to enforce the *Canada Health Act* requirements in order to protect the right to health.

**Recommendations**

Recommit to enforcing the *Canada Health Act* so that access to care is not based on ability to pay or place of residence and develop a rights-based accountability mechanism at the federal level for health care decision-making.

In consultation with provinces, territories, and Aboriginal peoples, the federal government should

<sup>27</sup> *First Nations and Inuit Health: Drinking Water and Waste Water*. Health Canada. Online: <http://www.hc-sc.gc.ca/fniah-spnia/promotion/public-publique/water-eau-eng.php#s2d>

immediately negotiate a new 10-year health accord which includes predictable, stable, and adequate funding for health care that is acceptable to all parties.

## 2. The Right to Health and the Canadian Charter

The Canadian Charter protects the right to health primarily by way of the right to life and security of the person in section 7 and the right to equality in section 15. The Quebec Charter also protects the right to life. In *Chaoulli v Quebec*<sup>28</sup> the majority of a divided Supreme Court of Canada held that denying more affluent health care consumers the ability to pay for more timely access to procedures through private health care insurance violated their right to life under the Quebec Charter. Three of 7 judges also found a violation of section 7 of the Canadian Charter. The Court was divided on whether such measures are necessary to preserve Canada's public health care system. Following on the *Chaoulli* case, there is a serious concern that rather than ensuring protection of the right to health through Canada's universal publicly funded health care system, courts may undermine the public health care system by striking down restrictions on private for-profit health care which are critical to preserving a universal public health care system in Canada. A lawsuit is now being brought by private, for-profit health centres to challenge restrictions on for-profit delivery of medically necessary services in order to impose a US-style health care system in Canada.

Disturbingly, in cases where more disadvantaged individuals have relied on the Charter to protect access to health care necessary for life and security, relying on interpretations consistent with article 12 of the ICESCR, lower courts have denied such protection. In *Toussaint v Canada* the Federal Court held that denying access to health care to an irregular migrant placed her life at risk but that the violation of the right to life was in accordance with principles of fundamental justice and therefore permitted under section 7 of the Charter. In *Canadian Doctors for Refugee Care*, the Federal Court held that the manner in which previous coverage of health care was revoked constituted cruel and unusual treatment under the Charter. However, the court held in that case that the right to life only protects those who are able to pay for their own health care and does not impose obligations on governments to provide publicly funded health care for those who need it. The court also held that the right to health is "contested" under international human rights law.

### Recommendation

Canadian courts should be encouraged to interpret the right to life in section 7 of the Canadian Charter consistently with Canada's international human rights obligations to ensure access to health care for all residents.

## 2. Pharmaceutical coverage

Every developed country with a universal health care system offers universal coverage for prescription drugs except Canada. Prescription drug costs are the second largest component of health care spending in Canada, and expenditures on prescription drugs is growing by 10% annually. Lack of pharmaceutical coverage has disproportionate effect on people with disabilities. People with disabilities often find that necessary medication is refused under social assistance programmes. Portions of income that must be paid range from 3% to 10% across provinces with this type of public drug plan. A growing number of

provinces are charging premiums under social assistance; transition to work is difficult because loss of pharmaceutical coverage.

#### **Recommendations**

The government should develop, in collaboration with all levels of government, health organizations and providers, and the public, a new universal, publicly-funded National Pharmacare Program that provides cost-effective prescription drugs at little or no cost to all Canadians, regardless of income, occupation, age, or province of residence.

### **3. Continuing, long-term, palliative and respite care**

The *Canada Health Act* has left long-term care and “continuing care” out of the scope of Medicare. Lack of adequate long-term care and home care affects women in particular, both as persons in need of care and as caregivers. Young people with disabilities are often placed in long term care facilities because of lack of housing and community supports. Lack of adequate home care and respite care is a serious problem for those providing care for persons with disabilities and elderly relatives, the vast majority of whom are women. Palliative care is not covered under the *Canada Health Act* and is acknowledged to be available to only a minority of Canadians who require it.

#### **Recommendations**

Establish a Canadian strategy to provide comprehensive, continuing, long-term and palliative care, establishing consistent minimum standards and benchmarks for nationally available services. Address the needs of caregivers of persons with disabilities for respite care.

### **4. Social determinants of health**

In Canada poverty has a direct impact on health in both its material and social dimensions. The consequences of this are reflected in most social and health indicators: reduced life expectancy and more particularly, in the higher prevalence of disease, stress and psychological problems. There are well-documented barriers to receiving health care services among the poor, including long wait lists, challenges with accessing and affording transportation, and not being able to afford health costs or services that aren't covered by provincial health insurance plans. Inuit, First Nations, and Métis peoples or people with chronic illnesses are the most dramatically affected. The Health Council of Canada reports that life expectancy for First Nations, Inuit, and Metis peoples is far lower than non-Aboriginal peoples at the national, provincial, and territorial level. Doctors have started to prescribe the implementation of an adequate standard of living as a response to many health issues of low income people in Canada.

#### **Recommendations**

Recognize in legislation the social determinants of health, including income, employment, food security, early childhood education and care, and housing as part of its anti-poverty plan and adopt a Health Impact Assessment process as part of its policy-making and evaluation practice across current environmental, social, economic, and service portfolios.

### **5. Mental health**

Despite s. 3 of the *Canada Health Act*, which states that the “primary objective of Canadian health care policy is to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers,” Canadian health care only guarantees Canadians’ access to public coverage of defined and so-called “medically necessary” interventions provided generally by a medical doctor. The risk of mental illness among people who live in

poverty is higher and conversely those living with mental illness are more likely to drift into or remain in poverty.

**Recommendation**

Implement the National Mental Health Strategy developed by the Mental Health Commission of Canada, which includes a national campaign to combat stigma and discrimination, policies and programs that create greater access to needed mental health and addictions supports for vulnerable individuals and families, and tools for monitoring and reporting on mental health and its determinants.

**6. Indigenous health**

In order to have meaningful change in mental wellness, a coordinated systems approach that respects the diversity, self-determination, and cultural healing perspectives of Indigenous peoples across jurisdictions is necessary. Many health initiatives do not address systemic issues such as ensuring coordination of care or address the underlying issues of racism, trauma, mental health, addictions, violence and cultural competency nationally. Access to reproductive health for Indigenous girls and women is severely limited.

The First Nations Technical Institute had its funding cut in half in 2008. The Aboriginal Healing Program was defunded as were the National Aboriginal Health Organization and the Native Women's Association of Canada's women's health programming. The federal government's failure to honour the Kelowna Accord which would have set aside \$5 billion for funding of Aboriginal health, education, housing, and social services has had dire consequences for Aboriginal peoples' health.

**Recommendations**

The government should fund, support, and encourage multi-lateral collaborative ventures designed to improve the health and well-being of Inuit, First Nations, and Métis peoples, working toward the goal of establishing a separate, but equitable First Nations, Métis, and Inuit Health Authority. Such a system would be based on the recognition of the inherent right of Inuit, First Nations, and Métis peoples to control the design, delivery, and administration of health promotion, prevention, and acute care services.

Address the underlying determinants of health, which include systemic stigma and discrimination that lead to disproportionately high rates of sexually transmitted infections among Indigenous communities in Canada.

Restore the previously cut funding for indigenous health research and services and implement the Kelowna Accord commitments. .

Ensure that there are no legal barriers to Indigenous peoples' ability to access, collect and use traditional medicines and healing practices and ensure protection of marine and other environments that provide traditional diets.

**7. Refugee and migrant health**

The Federal Government provides health care for immigrants who are not eligible for provincial health care under the Interim Federal Health Program. However, health care coverage has been denied to irregular migrants under the program, on the grounds of their immigration status, even where life was at

risk. Nell Toussaint challenged this policy in the case of *Toussaint v Canada*.<sup>29</sup> As noted above, the courts found that her life had been put at risk and with long term health consequences but that a violation of the right to life in these circumstances is justified as a means of encouraging compliance with immigration law. In 2012 the Federal Government introduced further restrictions to the IFHP to disqualify refugee claimants from designated countries of origin. The 2012 changes were subsequently reversed after the Federal Court ruled that these changes constituted cruel and unusual treatment and were discriminatory on the ground of national origin.<sup>30</sup> The newly elected federal government withdrew the appeal of the decision regarding refugee health care in November 2015 but has yet to address the issue of access to health care for irregular migrants.

### **Recommendations**

Extend the IFHP to irregular migrants.

Negotiate funding agreements with provinces providing health care to migrants through community health care centres and ensure that community based healthcare is provided in all provinces without discrimination because of immigration status or requirements of disclosure to immigration authorities.

## **8. Access to Safe Injection Services**

In *Canada (AG) v PHS Community Services Society* attempts by the Government of Canada to shut down North America's only safe injection site ('Insite') for intravenous drug users, situated in the most impoverished area of Vancouver. The government's decision to deny an exemption under the Criminal Code necessary for the service to exist was challenged as a violation of the right to life and security of the person in section 7 of the Canadian Charter.<sup>31</sup> The Supreme Court of Canada held that the Minister of Health's failure to grant an exemption for Insite violated the right to life and security of the person of those requiring the services, and was not in accordance with principles of fundamental justice. The Court issued a mandamus order requiring the Minister to grant Insite the necessary exemption "forthwith". The Minister complied and Insite has been able to continue to provide its services. The Supreme Court did not, unfortunately, establish that governments have a positive obligation to ensure access to safe injections services where none exist and the federal government has tried to prevent similar services from starting up elsewhere.

### **Recommendation**

Recognize a positive obligation to ensure access to safe injections sites comparable to Insite in Vancouver wherever these are needed for the protection of the right to life and the right to health.

## **9. Non-Consensual Sterilization and Treatment of Incarcerated Mothers**

In November 2015, media disclosed that Indigenous women in the province of Saskatchewan, for five years had been forced to undergo sterilization procedures.<sup>32</sup> The women reported being pressured by

<sup>29</sup> *Toussaint v. Canada*, 2011 FCA 213

<sup>30</sup> *Canadian Doctors for Refugee Care v. Canada (Attorney general)*, 2014 FC 651.

<sup>31</sup> *Canada (Attorney General) v PHS Community Services Society*, [2011] 3 SCR 134 [Insite].

<sup>32</sup> National Post. "Saskatoon Health Region apologizes after aboriginal women felt pressured by staff to have tubes tied." November 2015. <http://news.nationalpost.com/news/canada/saskatoon-health-region-apologizes-after-aboriginal-women-felt-pressured-by-staff-to-have-tubes-tied>

health professionals and social workers to undergo tubal ligation surgeries. Many advocates believe there are other women in Canada, particularly Indigenous women, who have had similar experiences. Reports indicate violations of incarcerated Indigenous women's right to health, including through the "shackling of pregnant women while in labor, coerced sterilization and sexual violence from prison staff and guards" and the absence of effective facilities for incarcerated mothers.

#### **Recommendations**

Ensure the elimination of non-consensual sterilization, especially within Indigenous communities.

Implement the Guidelines for the Implementation of Mother-Child Units in Canadian Correctional Facilities in all federal prisons.

### **10. Access to abortion**

Lack of access to safe abortion services continues to be a barrier for women who choose to terminate their pregnancies, particularly for women living in rural or remote regions. In the province of Prince Edward Island there are still no abortion providers and women must pay their own travel expenses when going off-Island for a provincially-covered abortion. In January 2016, a pro-choice group, Abortion Access Now P.E.I., gave notice of its intent to file a legal action to address this.

An additional barrier relates to the ability to access a range of abortion services across the country. In July 2015, the federal department of health approved the use of the medical abortion drug RU-486 (mifepristone) but only physicians will be permitted to prescribe it. This will limit the availability of the services as there are many areas throughout Canada where there is a shortage of physicians who will provide certain sexual and reproductive health services on moral or religious grounds.

#### **Recommendations**

The Government of Canada should take the necessary steps to ensure access to abortion across Canada and explore ways to ensure equal access to medical abortion for all women and coordinate provinces to include mifepristone on their provincial drug formularies.

### **11. Mental health services for refugees and immigration detainees**

There are serious gaps in access to mental health services for refugees, including those suffering from PTSD and for immigration detainees with mental health problems. Immigrants and refugees with mental health disabilities are over-represented in detention, may be placed in solitary confinement, and are often transferred to criminal institutions. The Canadian Border Services Agency, which has the authority to place people in detention, is not subject to effective oversight. Mental health is seriously affected by being detained, especially for traumatized persons and children.

#### **Recommendations**

Commit to ensuring adequate mental health services for refugees and immigration detainees.

Develop accountability mechanisms for the Canadian Border Security Agency to ensure that it complies with Canadian and international human rights laws in its treatments of immigrants and refugees.

## 12. Mercury poisoning at Grassy Narrows First Nation

Despite widespread and serious health problems from release of mercury into a river system in northwestern Ontario, the federal and provincial governments have never formally acknowledged that mercury poisoning has taken place or that it has had a severe and direct impact on the health and well-being of affected communities. It is believed that logging practices may be contributing to ongoing release of mercury into the water stream. Limited government compensation provided to some of the community members exhibiting symptoms of mercury contamination has declined 50% in real dollars because the compensation was not indexed to inflation.

### Recommendations

Ensure adequate treatment of and compensation to all victims of mercury poisoning; refrain from licensing logging on the traditional territory of Grassy Narrows without the free, prior and informed consent of the First Nation; carry out a comprehensive epidemiological study to improve the health of the affected First Nations communities; and take measures to effectively reduce the risk of continued exposure to mercury poisoning.

## 13. Environmental determinants of health

The right to health under Article 12 encompasses underlying determinants of health such as access to adequate food and clean water, and environmental conditions that are conducive to the realization of the highest attainable standard of health.<sup>33</sup> In *General Comment 14*, the Committee articulates States' duties to reduce exposure to detrimental environmental conditions that directly or indirectly impact upon human health. Canada has failed to comply with the obligation to protect the right to health against pollution and climate change.

### Recommendation

Canada should reinstate environmental protections and credible environmental assessment procedures; recognize climate change as an urgent and potentially irreversible threat to the right to health and other Covenant rights. The David Suzuki Foundation has urged Canada to cut carbon emissions by 35 per cent below 1990 levels by 2025 and move to 100 per cent renewable energy production (i.e., zero emissions) by 2050. Emissions targets should be enshrined in domestic law.

## 14. Extra-territorial application of the right to healthcare

Recently, Canada has frequently undermined the protection of sexual and reproductive rights in other countries, and in important UN forums dealing with violence against women and reproductive health. Canada has stated publicly that it would not fund safe abortion services for rape survivors in its overseas aid projects.

### Recommendations

The announced commitment to promoting reproductive rights through Canada's development assistance should include funding access to safe abortion services.

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<sup>33</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, para 11.

## 15. Solitary confinement

Despite concerns voiced by the UN Committee against Torture, the CCPR and the ICESCR, the practice of solitary confinement has become widespread in Canada as a “standard tool of population management to maintain the safety and security of the institution.”<sup>34</sup> People with mental health disabilities are particularly affected by punitive responses to mental health, which are also prevalent in the education system, where segregation, restraint and forced confinement to “quiet rooms” is applied to students with disabilities. The constitutionality of federal legislation that permits solitary confinement (The Corrections and Conditional Release Act),<sup>35</sup> is currently being challenged in Canadian courts, partially on the grounds that solitary confinement is a risk to physical and mental health, causing both psychological and physiological harm.

### Recommendations

Commit to limiting the use of solitary confinement as a measure of last resort and prohibit the use of administrative segregation for persons with mental illness.

Commit to abolishing the use of solitary confinement on children and amend the Corrections and Conditional Release Act to prohibit the use of long-term segregation.

## Articles 13-15: Issues relating to education, cultural life and science

### Articles 13 and 14 – The right to education

#### 1. Access to post-secondary education

In its 2006 Concluding Observations, the Committee expressed concern about the discriminatory effects of tuition increases on low-income persons and recommended that the Government ensure that higher education is made accessible to all on the basis of capacity.<sup>36</sup> Tuition and other fees for Canadian undergraduates have tripled since 1993-94, ranging from an increase of 35% in Newfoundland and Labrador to 248% in Ontario. Over roughly the same period (1992–2012), government funding for university operating revenue declined from 77% to 55%.<sup>37</sup> The Canadian Federation of Students estimates current federal funding for post-secondary education is \$2.4 billion less than 1992-93 levels when inflation and enrolment growth are factored in. Lagging federal funding for colleges and universities has resulted in higher tuition fees as costs are passed on to students. As of 2012, Statistics Canada estimated that the total student loan debt was over \$28 billion.<sup>38</sup>

### Recommendations

Take measures to reduce tuition fees and improve access to post-secondary education for low income students and alleviate education-related debt burden in the Canada Student Loans Program.

<sup>34</sup> Office of the Correctional Investigator, Annual Report of the Office of the Correctional Investigator 2011-2012 (2012) online: < <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20112012-eng.aspx> > [OCI Report].

<sup>35</sup> *Corrections and Conditional Release Act* (S.C. 1992, c. 20)

<sup>36</sup> Paras 31 and 64

<sup>37</sup> Shaker, Erika and David Macdonald (2015). What’s the Difference?: Taking Stock of Provincial Tuition Fee Policy. Ottawa: Canadian Centre for Policy Alternatives.

<sup>38</sup> Statistics Canada. CANSIM Table 205-0002: Survey of Financial Security (SFS), composition of assets (including Employer Pension Plans valued on a termination basis) and debts held by all family units, by age group, Canada and provinces.

## 2. Education and people with disabilities

People with physical disabilities continue to be significantly less likely to access post-secondary education than their non-disabled counterparts. Students with disabilities continue to face systemic barriers to accessing quality education at all levels. A universal design approach to education and learning is necessary in order to address these systemic barriers to education.

### Recommendations

All provinces and territories should create a statutory obligation to ensure inclusive education for students with disability, based on universal design and proactive measures to ensure inclusion.

## 3. First Nations education

The federal government significantly underfunds schools in First Nations reserves when compared to provincial funding of schools in predominantly non-Indigenous communities.<sup>39</sup> The Funding commitments for First Nations education has been conditional on First Nations support for proposed legislation known as the *First Nations Control of First Nations Education Act*, which has been widely rejected by First Nations as failing to respect their inherent rights.

### Recommendations

Collaborate with First Nations to enact legislation that fosters on-reserve educational systems consistent with preserving the best interests of the child, protecting and restoring Indigenous languages and cultures, honouring treaty rights, and respecting the inherent rights of self-government and self-determination.

## 4. Access to education and immigration status

Refugees and other recent immigrants without permanent status face many barriers to accessing schooling for children and post-secondary education for young people. For example, if a child or a child's parents or guardians do not have permanent status in Canada, they are sometimes referred to authorities of the local school board who deal with the visa student program and are asked to pay visa student fees in order to attend school in the province. Sometimes children are refused access to school until evidence of permanent status is shown.

Children and youth who do not have permanent status in Canada and who have completed secondary schooling have few opportunities to pursue higher education. Even if universities and colleges recognize their qualifications to attend higher education, they apply admission rules for foreign students to these young people. These rates are many times higher than the regular rates. Moreover, these young people are unable to access the government student loan programs to pay for their further education.

### Recommendations

Enact legislation and policies in all provinces and territories to ensure that all children, regardless of their immigration status, have access to primary and secondary education free of charge and without fear of deportation actions. Governments should make student programs available to young people without permanent status.

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<sup>39</sup> First Nations Child and Family Caring Society. Jordan & Shannen: First Nations children demand that the Canadian Government stop racially discriminating against them. Submission to the UN Committee on the Rights of the Child. 28 January 2011.

## **5. African Canadian children and access to education**

In 2006, the Committee expressed concern about African Canadian students' access to education and disproportionately high drop-out rates. In 2013, it was reported that the dropout rate for African Canadian students in Toronto was approximately 23%. In Canada's largest school board, African Canadian students make up approximately 12% of high school students, but make up 31% of all suspensions. The dropout rate of African Canadians has been referred to as a "national disgrace". According to the research and analysis on the "school to prison pipeline", those students who are disciplined are more likely to drop out, and those students who drop out are more likely to turn to criminality.

### **Recommendations**

Undertake a review of suspension and expulsion rates of African Canadian students and develop an intervention strategy for reversing and eliminating the school to prison pipeline.

Take steps to ensure that parents of suspended and expelled African Canadian students are made fully aware of their rights and the resources, services and programs available to them.

Undertake a comprehensive and properly resourced strategic action plan to introduce and make accessible Africentric educational opportunities for African Canadian children across Canada.

## **6. Sexual and reproductive health education**

The Government of Canada has failed to implement a comprehensive set of national guidelines for sexual health education resulting in severe discrepancies between provinces in related curriculum. This can reinforce the stigma associated with sexual activity of young people, can lead to discrimination and can have negative health outcomes. Currently there are no standards through which sexual health education curricula can be monitored and evaluated. Regular national studies are required in order to determine the effectiveness of sexuality education and ultimately to determine if curriculums are contributing to positive health outcomes and reductions in stigma and discrimination, among other outcomes.

### **Recommendations**

Commit to offering comprehensive, evidence-based, and scientifically accurate sexuality education at all levels of education.

The Government should task the Public Health Agency of Canada with engaging in a multi-stakeholder revision of Guidelines for sexual health education, with full and meaningful participation of a diverse representation of stakeholders.

The Government should conduct regular national monitoring through, inter alia, broad-based surveys, of a robust set of sexual health indicators disaggregated by relevant factors.

## **Article 15 – Cultural rights**

### **1. Indigenous languages**

There is neither federal statutory legislation nor an overarching policy for the recognition and revitalization of Indigenous languages in Canada. A 2005 report by the Task Force on Aboriginal Languages and Cultures proposed a national strategy to preserve, revitalize, and promote Indigenous languages and cultures but shortly after the Minister of Canadian Heritage announced this budget allocation had been cut.

**Recommendations**

Re-allocate funds to implement the recommendations of the Task Force on Aboriginal Languages and Cultures.

Ensure that the Government's recently announced intention to promote Indigenous language and culture should include "concrete plans with relevant benchmarks and time frames" as recommended by the Task Force.

**2. Traditional occupations**

While Canada's sixth report contains several examples of programs and services targeting increased participation by First Nations in the market economy, it does not include jobs in the traditional economy. The traditional economies and the traditional occupations of indigenous peoples are invisible to federal or provincial policy and legislation. This invisibility makes the protection of traditional occupations and economies particularly vulnerable to marginalization as the state expends considerable resources to expand natural resource development.

**Recommendations**

Ensure that the recently mandated commitment to creating jobs for Indigenous Peoples promotes traditional occupations.

**3. Affordable access to the internet by disadvantaged populations**

The internet is "a critical enabler of both economic opportunity and social cohesion"<sup>40</sup> but there are significant differences in affordability and levels of service in rural and remote parts of Canada, particularly in the Canadian north. This disproportionately affects Indigenous peoples.

**Recommendations**

Commit to ensuring that affordable broadband internet is available to all Canadians regardless of geographic location.

Set technical standards at appropriate levels to ensure all Canadians can fully participate in the economic and cultural opportunities the internet facilitates.

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<sup>40</sup> Conference Board of Canada, *Building a Resilient and Prosperous North*, A. Jeffrey, A. Fiser, N. Brender & B. Dowdall, April 2015, p. 15.