



HUMAN RIGHTS



FROM PROMISE TO REALITY: **Amnesty International’s Recommendations for the 2017 Federal/Provincial/Territorial Human Rights Meeting**

Any system for protecting human rights which does not ensure compliance with the obligations governments have assumed is, in the end, nothing but illusory promises and betrayal. That is what is at stake when federal, provincial and territorial ministers responsible for upholding human rights across Canada meet between December 11-12, 2017, the first such meeting in 29 years. This historic occasion offers a long overdue opportunity to address serious shortcomings in the approach taken by governments in Canada to ensure compliance with the country’s international human rights obligations.

Amnesty International urges the sixteen¹ Ministers who will gather in Gatineau, Quebec between December 11-12, 2017 to commit to an “International Human Rights Implementation Agenda for Canada” that will substantially strengthen the country’s record of implementing obligations enshrined in United Nations and Inter-American human rights instruments. By making that commitment, federal, provincial and territorial governments will improve human rights protection in Canada. They will also set a global example that effective implementation is a cornerstone to protecting human rights; sorely-needed at a time when governments around the world continue to commit devastating human rights violations with utter disregard for their obligations, and widespread impunity for the consequences.

In this briefing paper Amnesty International lays out ten core principles to guide the development of an International Human Rights Implementation Agenda for Canada:

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| <p>1 Recognition and respect for the rights of Indigenous peoples</p> | <p>6 A role for federal, provincial and territorial human rights institutions</p> |
| <p>2 Universality and interdependence of all human rights</p> | <p>7 Engagement with civil society</p> |
| <p>3 Feminist approach to upholding human rights</p> | <p>8 Transparency, monitoring and reporting</p> |
| <p>4 Strengthened coordination</p> | <p>9 Access to justice and effective remedies for all human rights</p> |
| <p>5 Engagement of Parliament and legislatures</p> | <p>10 Political accountability and regular meetings</p> |

¹ In addition to thirteen Ministers representing provincial and territorial governments, the federal Ministers of Justice, Foreign Affairs and Canadian Heritage are expected to attend the meeting.

2017 has been a significant year of human rights anniversaries in Canada, including 35 years since the Charter of Rights and Freedoms was adopted and 40 years since the Canadian Human Rights Act was enacted. The year also marks the 10th anniversary of the adoption of the UN Declaration on the Rights of Indigenous Peoples and next year will be the 70th anniversary of the Universal Declaration of Human Rights, adopted in 1948. The time is ripe for a bold vision and revitalized commitment from federal, provincial and territorial governments to ensuring that the promise of universal human rights respect leads to a reality of human rights protection.

BACKGROUND

In 1948, in the aftermath of the genocide and bloodshed of World War II, states came together at the newly established United Nations and adopted the Universal Declaration of Human Rights. They affirmed that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” The sixty-nine years to follow have been marked by the development of a comprehensive international human rights system that has progressively extended that promise of universal human rights protection through a range of important treaties, declarations, principles, commissions, councils, committees and special procedures, including notably the adoption of the 2007 UN Declaration on the Rights of Indigenous Peoples, the first international human rights instrument to be developed through the direct participation of rights holders. Sadly, however, the promise of these important human rights instruments has been matched by decades of glaring failure to live up to the crucial obligations states have assumed.

Canada has engaged actively in the elaboration of human rights norms, as well as the establishment of human rights bodies and resulting human rights review processes within the UN over the past seven decades. There are both global and domestic dimensions to that engagement. Globally, Canada seeks to improve human rights protections around the world, through strong principles and effective enforcement. Domestically, Canada – like any state – faces UN scrutiny of its own record and must demonstrate a willingness not only to participate fully in those reviews, but actively take up the resulting recommendations. The two are integrally connected. Strong domestic implementation demonstrates respect for and helps shore up the international system more widely. The converse is also true. A failure to take our international obligations seriously at home undermines the global system, and ultimately serves to let other states off the hook.

Implementation is where Canada falls short. This shortcoming arises as a concern virtually every time Canada’s record is reviewed internationally.² Findings are made, conclusions reached and suggestions for reform formulated; but in the face of the challenges of federalism, a lack of clear political responsibility and accountability, and a system shrouded in a lack of transparency, those expert international-level recommendations languish more often than not.

² Canada’s human rights record is regularly reviewed by 7 UN committees which oversee the human rights treaties Canada has ratified, the Universal Periodic Review process through which other states make human rights recommendations to Canada at regular intervals of approximately 4 ½ years, and visits to Canada by individual experts or expert bodies with mandates from the UN Human Rights Council and the Inter-American Commission on Human Rights. Additionally, reviews take place through individual complaints about human rights violations made before the UN Human Rights Committee, UN Committee against Torture, UN Committee on the Elimination of Discrimination against Women and the Inter-American Commission on Human Rights.

The impatience of international human rights experts and bodies with respect to Canada's "implementation gap" is apparent. That was evident most recently when the UN Committee on the Elimination of Racial Discrimination reviewed Canada's anti-racism record in August, 2017:

*The Committee requests detailed information on the work of the intergovernmental committee on supporting domestic implementation of the Convention and its efforts to ensure the equal application of the Convention at the federal, provincial and territorial levels. The Committee recommends that the State party create an accountability mechanism and ensure equal distribution of resources for the implementation of the Convention at the federal, provincial and territorial levels.*³

Six other UN committees, overseeing human rights treaties ratified by Canada dealing with civil and political rights, economic, social and cultural rights, discrimination against women, the rights of children, torture and other forms of ill-treatment, and the rights of persons with disabilities, regularly express the same frustration and make similar recommendations.⁴ Special procedures mandate holders have reiterated this predominant concern after missions to Canada.⁵ This concern has been highlighted by parliamentary committees as well, including the Senate Committee on Human Rights.⁶ At the time of the 2009 and 2013 Universal Periodic Reviews of Canada, carried out by the UN Human Rights Council, statements calling for a strengthened approach to international human rights implementation in Canada were endorsed by over sixty Indigenous Peoples organizations and civil society groups.⁷

The consequences of this "implementation gap" are very real. In many instances concerns and recommendations have been raised by numerous UN experts and bodies, often repeating the outcomes of previous reviews. The reasons for a failure to implement are rarely made clear to the public. In fact it is often not possible to determine whether governments have accepted or rejected a particular recommendation, which government or governments are responsible for implementation and whether there is a specific Ministry taking the lead. The number of UN and Inter-American human rights recommendations made to Canada that have not been implemented has mounted considerably over the years and cuts across a wide array of groups and issues in the country, including:

- Adopting a comprehensive national action plan to end violence against Indigenous women and girls
- Respecting Indigenous peoples' right of free, prior and informed consent in resource development decisions
- Upholding the equality rights of First Nations children
- Ending unacceptable levels of homelessness, poverty and hunger among disadvantaged groups

³ UN Committee on the Elimination of Racial Discrimination, *Concluding observations: Canada*, UN Doc. CERD/C/CAN/CO/21-23, 13 September, 2017, para. 8.

⁴ UN Committee on the Rights of Persons with Disabilities, *Concluding observations: Canada*, UN Doc. CRPD/C/CAN/CO/1, 8 May, 2017, para. 10; UN Committee on the Elimination of Discrimination against Women, *Concluding observations: Canada*, UN Doc. CEDAW/C/CAN/CO-8-9, 25 November, 2016, paras. 8-11; UN Committee on Economic, Social and Cultural Rights, *Concluding observations: Canada*, 23 March, 2016, paras. 5-8; UN Human Rights Committee, *Concluding observations: Canada*, UN Doc. CCPR/C/CAN/CO/6, 13 August, 2015, para. 20; UN Committee on the Rights of the Child, *Concluding observations: Canada*, UN Doc. CRC/C/CAN/CO/3-4, 6 December, 2012, paras. 10-15; UN Committee against Torture, *Concluding observations: Canada*, UN Doc. CAT/C/CAN/CO/6, 25 June, 2012, para. 24.

⁵ See, for example: Report of the Special Rapporteur on the right to food, Olivier De Schutter, Mission to Canada, UN. Doc. A/HRC/22/50/Add.1, 24 December, 2012, at para. 12.

⁶ Senate Standing Committee on Human Rights, *Promises to Keep: Implementing Canada's Human Rights Obligations*, December 2001, <https://senCanada.ca/content/sen/committee/371/huma/rep/rep02dec01-e.htm>.

⁷ Empty Words and Double Standards: Canada's Failure to Respect and Uphold International Human Rights, submitted to UN Human Rights Council in October, 2012, <http://www.amnesty.ca/get-involved/lead-in-your-community/empty-words-and-double-standards-canadas-failure-to-respect-and->; Promise and Reality: Canada's International Human Rights Implementation Gap, submitted to UN Human Rights Council in September, 2008, http://socialrightscura.ca/documents/UPR/JS1_CAN_UPR_S4_2009_SocialRightsAdvocacyCentre_Etal_JOINT.pdf.

- Improving accessibility standards for persons with disabilities and better ensuring compliance
- Upholding the absolute ban on refoulement to a risk of torture
- Strengthening the accountability of Canadian extractives companies operating abroad
- Addressing disproportionate rates of incarceration of Indigenous women, men and youth
- Restricting the use of solitary confinement
- Ensuring access to essential health care for undocumented migrants
- Ratifying or acceding to outstanding international human rights treaties
- Promoting interpretations of the Charter of Rights and other laws consistent with Canada's international human rights obligations

Several factors contribute to these failures to ensure effective implementation:

- In the context of federalism, failure to clearly allocate responsibility and coordinate implementation among federal, provincial and territorial governments.
- Federal, provincial and territorial governments come together through the mid-level Continuing Committee of Officials on Human Rights, established in 1975, which meets regularly but does not report publicly, has no decision-making authority and has little influence on policy.
- Federal level responsibility for human rights is spread across a range of departments, with no specific Minister bearing ultimate responsibility and accountability.
- There are few opportunities for public engagement, such as through parliamentary and legislative hearings or regular public reporting.
- Economic, social and cultural rights are frequently treated by governments and courts as merely aspirational without meaningful accountability or access to justice and effective remedies, as required under international law.
- Steps have not been taken to establish appropriate partnerships with First Nations, Inuit and Métis peoples to ensure domestic implementation of Indigenous peoples' internationally-protected human rights.

CLOSING THE INTERNATIONAL HUMAN RIGHTS IMPLEMENTATION GAP: AN AGENDA FOR CANADA

Amnesty International calls on Ministers to make a joint commitment to developing an international human rights implementation agenda for Canada which will ensure effective implementation of the country's international obligations, in keeping with the ten principles outlined below.

1 Recognition and respect for the rights of Indigenous peoples

By any measure, violations of the rights of Indigenous peoples constitute the most serious and entrenched of Canada's human rights failures and continuing challenges. Measures undertaken to fulfill Canada's international obligations must accord with the numerous specific obligations in respect to Indigenous peoples set out in international human rights instruments, the Canadian Constitution, and Treaties and other agreements, as well as the underlying values of justice and reconciliation. The UN Declaration on the Rights of Indigenous Peoples, especially its repeated call for collaboration and respect for free, prior and informed consent, should be the guiding framework. Particularly in consideration of the role played by First Nations, Inuit and Métis governments and institutions in upholding human rights within their own respective jurisdictions, Indigenous peoples should be full partners in the development of priorities and plans for implementation of Canada's international obligations.

2 Universality and interdependence

The international community has repeatedly recognized that "all human rights are universal, indivisible and interdependent and interrelated."⁸ The implementation of Canada's international human rights obligations cannot and must not be selective. Instead, the commitment to respect, protect and fulfill human rights must apply fully and equally to the entirety of the country's international obligations, including economic, social and cultural rights and the rights enshrined in the UN Declaration on the Rights of Indigenous Peoples. UN treaty bodies have urged governments and courts in Canada to recognize the interdependence of human rights and ensure that those whose rights to life, security of the person or equality are violated by systemic homelessness and poverty have equal access to justice and effective remedies. A commitment to universality requires a commitment to substantive equality. UN bodies have repeatedly emphasized the need for Canadian governments to address systemic racial discrimination, Islamophobia, discrimination against migrants, the continued marginalization and exclusion of persons with disabilities and violations of the rights of children.

3 Feminist approach to upholding human rights

Women, girls, lesbian, gay, bisexual, transgender, intersex, and non-binary people in Canada do not enjoy substantive equality. Gender-based discrimination manifests itself in many ways, from lower rates of pay for equal work, to elevated levels of violence. Concern about gender inequality in Canada is reflected in every review of Canada's human rights record, be it the work of human

⁸ Vienna Declaration and Programme of Action, article 5, adopted by the World Conference on Human Rights, 25 June, 1993. States further agreed that, "the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."

rights treaty bodies, the experts of the UN Human Rights Council's Special Procedures system, the Universal Periodic Review conducted by other governments, or the Inter-American Human Rights Commission. A feminist approach to implementing Canada's international human rights obligations across government is needed to shift the balance toward gender equality. It is not enough to rely on the fact that there is a specific treaty dealing with discrimination against women.⁹ A feminist approach means ensuring standalone expertise and capacity on women's rights, sexual orientation and gender identity at all levels of government, taking an intersectional approach which recognizes that gender discrimination is compounded by discrimination based on ethnicity, religion, socio-economic status, and many other factors. Such an approach must be complemented by full integration of a gender perspective into all aspects of Canada's approach to implementing international human rights obligations.

4 Strengthened and streamlined coordination

The Continuing Committee of Officials on Human Rights was established in 1975, to prepare for Canadian accession to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. More than forty years later it remains the only body or process that brings federal, provincial and territorial governments together to discuss international human rights matters, including treaty ratification and UN human rights reviews. The Committee's mandate and working methods have not evolved substantially, despite significant changes both internationally and nationally in terms of human rights obligations and review processes. The Committee's effectiveness has been hampered by a lack of transparency, a mandate that does not include decision-making authority and a history of being largely ignored by governments. The Continuing Committee needs to be replaced by a more effective and accountable mechanism which can ensure meaningful accountability and follow-up to reviews and recommendations from regional and international human rights bodies. Its role, powers and membership need to be reviewed and reforms adopted to ensure that it facilitates more effective international human rights coordination among federal, provincial and territorial governments, including with respect to treaty ratification and implementation. That may require a parallel process and forum with well-defined authority to make decisions.

5 Engagement of Parliament and legislatures

Parliament and legislatures across Canada should be centrally engaged in ensuring compliance with the country's international human rights obligations. Those obligations are of central importance and direct consequence to most laws that are debated and adopted, be it with respect to social, environmental, economic, criminal, cultural or other matters. To date, the engagement of parliamentarians and legislators with Canada's international human rights obligations has been minimal, largely confined to a limited number of federal parliamentary committees.¹⁰ Steps should be taken to broaden and deepen the role of Parliament and legislatures in overseeing the implementation of Canada's international human rights obligations.

⁹ UN Convention on the Elimination of Discrimination against Women, ratified by Canada on International Human Rights Day, December 10, 1981.

¹⁰ House of Commons Standing Committee on Foreign Affairs and International Development and its Sub-Committee on International Human Rights and the Senate Standing Committee on Human Rights.

6 A role for federal, provincial and territorial human rights institutions

At federal level and within every province and territory, there exist human rights commissions, human rights tribunals or both, with legislated authority to promote human rights, address systemic discrimination and inequality, and resolve complaints about human rights violations within their respective jurisdictions. Their role, and related powers, in ensuring compliance with Canada's binding international human rights obligations varies and is often unclear. The *Paris Principles relating to the status of national human rights institutions*¹¹, adopted by the UN General Assembly in 1993, mandate human rights institutions with the responsibility, "to promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation." Steps should be taken to ensure that all human rights commissions and tribunals in the country have the resources and a clear mandate and responsibility to monitor and promote the implementation of Canada's international human rights obligations.

7 Engagement with civil society

Canada has a vibrant and dynamic community of human rights defenders, working individually and in local and national civil society groups, coalitions and movements to educate, research, document, mobilize and advocate for more effective human rights protections across the country. As steps are taken to improve inter-governmental coordination and bolster the role of parliament and legislatures, a clear commitment to frequent, meaningful and timely engagement with civil society is imperative. That requires governments working with civil society to ensure an enabling environment, including adequate resources, is in place to support human rights work.

8 Transparency, monitoring and reporting

There should be nothing secretive about human rights protection. People in Canada must have easy access to regular reporting as to where things stand with respect to ratifying and implementing international obligations dealing with their rights. There may be fourteen federal, provincial and territorial governments in Canada, but there is only one set of international human rights obligations and information about progress in complying with those obligations should be readily available and updated regularly. Where rights require time and resources to fully realize, clear goals and timelines should be established in rights-based strategies or action plans, with independent monitoring and complaints procedures.

¹¹ Paris Principles relating to the status of national human rights institutions, article 3(b), adopted by UN General Assembly Resolution 48/134, 1993.

9 Access to justice and effective remedies

Central to implementing and complying with international human rights obligations is ensuring that effective remedies are available and accessible when violations occur. In fact the international human rights system recognizes that access to an effective remedy is a right in itself.¹² Closing Canada's international human rights implementation gap also necessitates closing Canada's remedies gap. Governments must provide access to meaningful remedies by ensuring access to justice for all human rights violations, including violations of economic, social and cultural rights. Effective remedies must also be available to address the human rights impact of Canadian companies operating abroad. In a Canadian context this often requires governments and courts to adopt interpretations of the Charter of Rights and other laws that are consistent with international human rights law. It is also important that Canada ratify all individual petition procedures within the UN system.¹³

10 Political accountability and regular ministerial meetings

Effective implementation requires clear political accountability. Governments in Canada do not traditionally have dedicated Ministers of Human Rights. At a minimum, however, there should be clear and explicit acknowledgement that Ministers – all Ministers – are responsible for ensuring compliance with international human rights obligations related to their respective mandates. It has been 29 years between this inter-ministerial human rights meeting and the previous one, held in 1988. Federal, provincial and territorial meetings of ministers are held regularly with respect to a wide array of pressing issues of national importance, including healthcare, finance, justice and the environment. The same should be true of human rights. Amnesty International urges Ministers to agree to meet again in December 2018 on the occasion of the 70th anniversary of the Universal Declaration of Human Rights and at intervals of at least once every two years thereafter.

¹² For example, the International Covenant on Civil and Political Rights, article 2(3)(a), obligates Canada, "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy."

¹³ Canada has recognized the individual complaint procedures of the Human Rights Committee, Committee against Torture and Committee on the Elimination of Discrimination against Women and is preparing to accept individual complaints to the Committee on the Rights of Persons with Disabilities. Canada has not yet accepted individual complaints to the Committee on Economic, Social and Cultural Rights, Committee on the Rights of the Child or the Committee on the Elimination of Racial Discrimination.

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INTERNATIONALE**



Amnesty International Canada (English Branch)

312 Laurier Avenue East, Ottawa, ON K1N 1H9

1-800-AMNESTY (1-800-266-3789)

www.amnesty.ca

Amnistie internationale Canada francophone

50 rue Ste-Catherine Ouest, bureau 500,
Montréal QC H2X 3V4

1-800-565-9766

www.amnistie.ca