



**Submission to the Committee on the Rights of Persons with Disabilities
For the 17th Session of the Committee on the Rights of Persons with Disabilities
(20 Mar 2017 – 12 Apr 2017)**

**Submission Raising Issues Related to Maximum Available Resources, Domestic
Implementation and Effective Legal Remedies of Economic, Social, and Cultural Rights under
Article 28 of the Convention**

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I. INTRODUCTION

Canada Without Poverty (CWP) submits this brief to the Committee on the Rights of Persons with Disabilities (the Committee) in preparation for the review of Canada under the Convention on the Rights of Persons with Disabilities (the Convention) for the 17th session of the Committee.

Founded in 1971 and operating as a leading national anti-poverty organization, CWP has represented low-income populations in Canada for over 40 years. Many of CWP's members are living in poverty and our Board of Directors is comprised of people with direct, personal experience of poverty, both past and present. As is common among many in Canada, **many of our Board of Directors have lived experience of disability as well as poverty**. CWP has sought to provide meaningful and effective representation of people living in poverty. We promote a

better understanding of the lived experience of poverty in Canada and work to address problems of stigmatization and discrimination against people living in poverty.

CWP has a network comprised of over 9,000 supporters across the country including individuals living in poverty and organizations representing low-income individuals. With a pan-Canadian reach, CWP is often called upon by parliamentary committees, civil society, and the media to speak about poverty as it relates to various stages of the life-cycle and vulnerable demographic groups.

Under our former name, the National Anti-Poverty Organization, **CWP was the first NGO to undertake an oral presentation before the UN Committee on Economic, Social and Cultural Rights, in 1993.** CWP continues to promote the implementation of human rights as the fundamental basis for the eradication of poverty and acts as a central resource point on poverty and human rights in Canada.

Further to this written report, CWP will be present on the 3rd and 4th of April 2017 at the 17th session of the Committee.

II. THE INTERSECTION OF POVERTY AND DISABILITY IN CANADA

Despite urging from various United Nations treaty body committees, governments in Canada have failed to implement economic and social rights to ensure an adequate standard of living for persons with disabilities.

1. Considering the significant wealth and resources of the State Party, a disproportionate number of people in Canada are living in poverty. **1 in 7 (4.9 million) people in Canada live in poverty**, including 1.34 million children.¹ **Canada ranked 21st out of 27 OECD countries in terms of poverty levels in 2011.**²
2. As noted in concluding observations by the Committee on the Elimination of Discrimination Against Women (CEDAW), the Human Rights Committee, the Committee on Economic, Social, and Cultural Rights (CESCR) and the Committee on the Rights of the Child, persons with disabilities are disproportionately marginalized by poverty, hunger and homelessness in Canada.³

¹ Statistics Canada. Table 111-0015-Family characteristics, Low Income Measures (LIM), by family type and family type composition, annual, CANSIM

² OECD Data (2011), "Poverty Rate, Total, Ratio, 2011", available here: <https://data.oecd.org/inequality/poverty-rate.htm#indicator-chart>.

³ Committee on the Elimination of Discrimination Against Women, Concluding Observations to Canada 2008 and 2016; Human Rights Committee, Concluding Observations to Canada 2006; Committee on Economic, Social, and Cultural Rights, Concluding Observations to Canada 1998, 2006, 2016; Committee on the Rights of the Child Concluding Observations to Canada 2012.

3. **25% of people living in low-income households are people with disabilities.**⁴ These statistics are significantly higher when accounting solely for those with disabilities who are working-age adults (15-64). Working-age people with disabilities are approximately **twice as likely to live in poverty than others without disabilities.**⁵ The prevalence of poverty among those with specific disabilities is particularly noticeable among some groups. For example, **half of adults with vision loss report a gross annual income of less than \$20,000.**⁶
4. Persons with disabilities who are also members of other marginalized groups experience even higher levels of poverty. For example, women with disabilities disproportionately experience poverty.⁷ According to DAWN Canada, a **woman with a disability lives with an average income of \$8,360** while a man with a disability has an average income of \$19,250. **Women with disabilities are also more affected by cuts to social spending** than both women without disabilities or men with disabilities. Women with disabilities are three times more likely to rely on government programs than men.⁸
5. Access to adequate and nutritious food is a barrier to rights guaranteed under article 28 of the Convention. This is particularly problematic in those provinces that have cut back on their special diet allowances in the context of social assistance benefits for persons with disabilities. For example, **in Ontario, 36% of households receiving help from food banks are on disability-related income supports.**⁹
6. As explained in further detail in submissions by the Social Rights Advocacy Centre, ARCH, and the Wellesley Institute, persons with disabilities are disproportionately represented among those experiencing homelessness or inadequate housing. In fact, estimates suggest that **as many as 45% of the overall homeless population in Canada have physical or mental disabilities.**¹⁰

⁴ DAWN-RAFH, "Women with Disabilities and Poverty", available here: <http://www.dawncanada.net/issues/issues/fact-sheets-2/poverty/>.

⁵ Crawford, Cameron (2013), "Looking into poverty: Income sources of poor people with disabilities in Canada", available here: <http://www.homelesshub.ca/sites/default/files/Income%20Sources%20Report%20IRIS%20CCD.pdf>

⁶ CNIB (2009), "Paying the Price: What Vision Loss Costs Canadians and What We Should Do About It", available here: www.cnib.ca/eng/cnib%20document%20library/research/paying_the_price.doc.

⁷ Council of Canadians with Disabilities, available here: <http://www.ccdonline.ca/en/socialpolicy/poverty-citizenship/demographic-profile/poverty-disability-canada>.

⁸ DAWN-RAFH, "Women with Disabilities and Poverty", available here: <http://www.dawncanada.net/issues/issues/fact-sheets-2/poverty/>.

⁹ Food Banks Canada, "Hunger Count 2016", available here: <https://www.foodbankscanada.ca/hungercount2016>.

¹⁰ Homeless Hub, "Poverty", available here: <http://homelesshub.ca/about-homelessness/education-training-employment/poverty>.

III. MAXIMUM AVAILABLE RESOURCES TO SATISFY OBLIGATIONS UNDER ARTICLE 28 OF THE CONVENTION

7. **As noted in recent reviews of Canada under the CESC and CEDAW, federal social spending is at its lowest level since 1949.**¹¹ Every year between 1950 and 2007, federal government expenditures exceeded 15% of GDP.¹² Federal program spending for 2017 is at 14.6% of GDP.¹³ If Canada were to inch towards a similar percentage of GDP in government spending as nine years ago, even by a single percentage point (15.6%), this would make available \$21.6 billion to invest in Canada's international human rights obligations to ensure the rights guaranteed under article 28. For example, with the additional \$21.6 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 (\$5 billion), national pharmacare (\$4 billion), improvements to homecare (\$3 billion), a national housing and homelessness strategy (\$3 billion), a national poverty strategy (\$2.6 billion) and a violence against women strategy (\$0.5 billion).
8. According to the Canadian Centre for Policy Alternatives, **in Canada's overall tax system, the top 1% pays a lower share of their income in tax than the poorest 10%.**¹⁴ Areas of taxation which benefit the wealthy are taxed at lower rates. For example, capital gains are taxed at half the rate of employment income. 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. and Australia for example.
9. In comparison to subnational governments (i.e. provinces and territories), the federal government's debt load is low. While subnational governments bear a significant obligation to address socio-economic disadvantage (they are limited by their ability to take on debt load. In order to meet international human rights law obligations, better cost-sharing arrangements must be made between the federal and subnational governments.
10. Despite efforts by civil society organizations to ensure that budgetary and other government decisions are understood as mechanisms to ensure compliance with international human rights obligations, such as article 28, governments have failed to make this connection. Concretely, while CWP is encouraged by recent efforts by the federal government to establish both a National Housing Strategy and Canadian Poverty Reduction Strategy, these initiatives do not yet incorporate a rights-based approach and there appears to be resistance to do so. These two strategies could have significant bearing on the living conditions of persons with disabilities; it is important

¹¹ Statistics Canada, "Fiscal Reference Tables – 2015: Part 2 of 9", available here: <http://www.fin.gc.ca/ftr-trf/2015/ftr-trf-1502-eng.asp#tbl8>

¹² Statistics Canada, "Historical Statistics of Canada", available here: <http://www.statcan.gc.ca/pub/11-516-x/3000140-eng.htm>

¹³ Statistics Canada catalogue 11-516-X, Fiscal reference tables, Update of Economic and Fiscal Projections (November 2015).

¹⁴ Canadian Centre for Policy Alternatives, "Alternative Federal Budget 2016", available here:

https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2016/03/AFB2016_Main_Document.pdf

that they are consistent with and promote the rights in the CRPD. As it stands, however, **there is a real disconnect between Canada's recognition of economic and social rights and the use of these rights to guide the development and implementation of domestic policies.**

RECOMMENDATIONS

WE RECOMMEND THAT THE STATE PARTY BE REQUIRED TO ENSURE THAT MAXIMUM AVAILABLE RESOURCES ARE DEDICATED TO HUMAN RIGHTS OBLIGATIONS FOR PERSONS WITH DISABILITIES UNDER ARTICLE 28 OF THE CONVENTION INCLUDING HALTING RETROGRESSIVE SPENDING PATTERNS, INCREASING EXPENDITURES AS A PERCENTAGE OF GDP AND REVIEWING CORPORATE TAXATION POLICIES.

WE RECOMMEND THAT THE STATE PARTY TAKE STEPS TO ENSURE THAT COST SHARING ARRANGEMENTS BETWEEN FEDERAL AND SUBNATIONAL GOVERNMENTS ARE SUFFICIENT TO FULFILL OBLIGATIONS UNDER ARTICLE 28.

WE RECOMMEND THAT THE STATE PARTY URGENTLY RESPOND TO DISPROPORTIONATE LEVELS OF POVERTY EXPERIENCED BY PERSONS WITH DISABILITIES BY DEVELOPING A HUMAN RIGHTS BASED NATIONAL ANTI-POVERTY STRATEGY IN COLLABORATION WITH THE PROVINCES, TERRITORIES, AND INUIT LAND CLAIM ORGANIZATIONS, FIRST NATIONS, AND MÉTIS GOVERNMENTS, AND CIVIL SOCIETY ORGANIZATIONS.

WE RECOMMEND THAT THE STATE PARTY ENSURE THAT CANADA'S NATIONAL HOUSING AND HOMELESSNESS STRATEGY PROTECT THE RIGHTS OF PERSONS WITH DISABILITIES BY USING A RIGHTS BASED APPROACH AND ENSURING HUMAN RIGHTS OUTCOMES.

IV. LACK OF ACCESS TO LEGAL REMEDIES FOR VIOLATIONS OF ESC RIGHTS AND FAILURE TO IMPLEMENT ESC RIGHTS FOR PERSONS WITH DISABILITIES

While this is the first opportunity for Canada to be reviewed by the Committee since ratification of the Convention in 2010, Canada's failure to implement article 28 rights has been a critical component of other reviews of Canada by United Nations treaty bodies.

a) Access to Legal Remedies for Violations to Economic and Social Rights for Persons with Disabilities

11. People in Canada face increasing barriers to claiming economic and social rights. It is nearly impossible to ascertain by what means and mechanisms those who are marginalized can hold the government to account for article 28 type claims.

12. Canadian courts and government lawyers continue to argue against the justiciability of economic and social rights such as those contained in article 28. For example, in a

recent Ontario Court of Appeal decision, *Tanudjaja v. Attorney General of Canada*¹⁵, the Attorneys General of Canada and Ontario argued that people living in poverty should be denied the ability to claim their right to housing (which does not appear in Canada's Charter of Rights) in court, even when their claim is articulated as a violation of enumerated rights guaranteed by the *Canadian Charter of Rights and Freedoms* (*Charter*), like the right to life or to equality. Effectively, the governments of Canada and Ontario argued and the court agreed that **the Charter is intended to protect the rights of people as long as they do not seek to improve their socio-economic conditions.**

13. This resistance was addressed in the 2016 Concluding Observations of the CESCR which noted that Canada has failed to take adequate steps to ensure access to effective legal rights and domestic implementation of economic and social rights for persons with disabilities. Specifically, the CESCR commented that they were "concerned at the limited availability of legal remedies for victims in the event of a violation of Convention rights, which may disproportionately impact disadvantaged and marginalized groups and individuals, including homeless persons, indigenous peoples and **persons with disabilities**"(*emphasis added*).
14. To address this concern, the CESCR recommended that Canada "implement its commitment to review its litigation strategies in order to foster the justiciability of economic, social and cultural rights. The State party should engage civil society and organizations of Indigenous peoples in that revision, with a view to broadening the interpretation of the Canadian Charter of Rights and Freedoms, notably sections 7, 12 and 15, to include economic social and cultural rights, and thus ensure the justiciability of Convention rights. The Committee also recommends that the State party improve human rights training programmes in order to ensure better knowledge, awareness and application of the Convention, in particular among the judiciary and law enforcement and public officials".¹⁶
15. **Without access to remedies for violations of economic and social rights, individuals are often left with nowhere to turn when they are denied rights** such as access to adequate housing or social security benefits. For example, far too often, Canada Without Poverty staff and board members are approached by individuals who have fallen short of excessively high standards for subnational social assistance disability benefits which are considered programs of "last resort". Many of these applications for social assistance benefits are denied. For example, in 2014 in Ontario, of the 42,700 applications for Ontario Disability Support Program benefits, only half were granted access to the program.¹⁷ Benefits under disability programs are significantly higher than general welfare programs, with benefits under Ontario Works set at \$681

¹⁵ *Tanudjaja v. Attorney General (Canada)*, 2013 ONSC 5410

¹⁶ Committee on Economic, Social and Cultural Rights, Concluding Observations to Canada 2016.

¹⁷ Fiorito, Joe, "Hard Times on ODSP in Toronto: Fiorito" (2015), available here:

<https://www.thestar.com/news/gta/2015/04/23/hard-times-on-odsp-in-toronto-fiorito.html>.

for a single person in comparison to \$1,110 for ODSP.¹⁸ After facing a dehumanizing, long, and expensive appeals process for these benefits, **if applicants continue to be denied access to the program, they have no legal recourse to otherwise exercise their economic and social rights.**

16. For more information regarding the gap in implementation of human rights in Canada, please see the attached letter signed by over 50 organizations (See **Appendix**).

RECOMMENDATION

WE RECOMMEND THAT THE STATE PARTY LAUNCH A PROCESS OF LAW REFORM TO ESTABLISH A FORMAL MECHANISM FOR TRANSPARENT, EFFECTIVE AND ACCOUNTABLE IMPLEMENTATION OF CANADA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS. AN *INTERNATIONAL HUMAN RIGHTS IMPLEMENTATION ACT* SHOULD BE DEVELOPED THROUGH A PROCESS OF EXTENSIVE CONSULTATION WITH PROVINCIAL AND TERRITORIAL GOVERNMENTS, INDIGENOUS PEOPLES AND ORGANIZATIONS AND CIVIL SOCIETY GROUPS.

b) Social Condition as an Enumerated Ground of Discrimination in the *Canadian Human Rights Act*

17. Canada does not recognize discrimination on the basis of social condition (e.g. socio-economic disadvantage) in federal human rights legislation. This provides a major obstacle for people with disabilities living in poverty to assert rights protected by article 28. Social condition is recognized as a ground of discrimination in provincial and territorial human rights legislation, though it narrowly adheres to discrimination in the housing sector and does not extend to employment or services¹⁹

In 2016, Member of Parliament Brigitte Sansoucy tabled a Private Member's Bill entitled *Poverty Reduction Act*²⁰, which would have added social condition as a ground of discrimination in the Canadian Human Rights Act. Despite recommendations from other UN committees to include social condition in the *Canadian Human Rights Act*, the bill was defeated in the House of Commons by the government and the official opposition party. In light of the ongoing discrimination and stigma experienced by people with disabilities because of their poverty, this is a gross omission from our human rights protections.

¹⁸ Income Security Advocacy Centre, "OW & ODSP Rate Increases and the Ontario Child Benefit as of September 30, 2016", available here: <http://yourlegalrights.on.ca/sites/all/files/OW-and-ODSP-rates-and-OCB-as-of-Sept-2016-ENGLISH.pdf>.

¹⁹ Government of Québec, "Charter of Human Rights and Freedoms," available here:

http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_12/C12_A.htm

²⁰ *Poverty Reduction Act*, available here: <https://openparliament.ca/bills/42-1/C-245/>.

RECOMMENDATION

WE RECOMMEND THAT CANADA AMEND THE CANADIAN HUMAN RIGHTS ACT TO ENSURE PROTECTIONS FOR PERSONS WITH DISABILITIES WHO EXPERIENCE DISCRIMINATION BASED ON SOCIO-ECONOMIC STATUS, WITH A VIEW TO ENSURING COMPLIANCE WITH ARTICLE 28.

c) Ratification of the Optional Protocol of the Convention

18. In December 2016, the government of Canada announced that they are beginning consultations on Canada's accession to the Optional Protocol to the Convention. We are encouraged as this could be the first step to establishing a critical mechanism by which individuals with disabilities can exercise their economic and social rights as guaranteed by article 28.²¹

RECOMMENDATION

WE RECOMMEND THAT THE COMMITTEE COMMEND THE GOVERNMENT ON THEIR RECENT COMMITMENT TO RATIFY THE OPTIONAL PROTOCOL AS A CRITICAL RIGHTS CLAIMING MECHANISM TO FULFILL OBLIGATIONS UNDER ARTICLE 28.

d) Defunding and Closing Down of Important ESC Rights Accountability Programs for Persons with Disabilities: the National Council of Welfare

19. Since 1962, the National Council of Welfare (NCW) had held up a mirror to the nation, highlighting the reality of poverty and warning policy-makers of the consequences of neglecting those in need. The NCW was a government-created, arm's length agency specifically mandated to report to the appropriate minister and was unique in its research collection and reporting, providing accurate pan-Canadian data that was used by various organizations. The **NCW also had the statutory authority to create opportunities for the poor to participate in the national decision-making process.**²² **The elimination of the NCW essentially ended national reporting and monitoring on the depth and breadth of poverty in Canada.**
20. Such substantive reporting on social wellbeing is necessary in order to not only identify the cross-Canada trends and emerging issues, but also to help map out regional needs and develop targeted solutions for marginalized groups, including those living with disabilities. Civil society organizations who are privately funded have taken up the gap left by the National Council of Welfare. These civil society organizations are not funded by the government nor are they given the same role in reporting to people in power.

²¹ Government of Canada, "Canada makes further commitment to support rights of persons with disabilities", available here: <http://news.gc.ca/web/article-en.do?nid=1163849>.

²² Carol Goar, "Harper Throws National Council on Welfare on the scrap heap", available here: <http://www.thestar.com/opinion/editorialopinion/article/1160732--harper-throws-national-council-of-welfare-on-the-scrap-heap>

RECOMMENDATION

WE RECOMMEND THAT THE STATE PARTY REINSTATE THE NCW OR A SIMILARLY SITUATED ENTITY, TO ENSURE THAT POVERTY, SOCIAL ASSISTANCE RATES AND OTHER SOCIAL AND ECONOMIC DISADVANTAGES ARE ADEQUATELY MONITORED FOR PERSONS WITH DISABILITIES.

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

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

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

1. EMPTY WORDS: THE IMPLEMENTATION GAP CONTINUES

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

The stakeholders that endorsed the 2009 statement reflected a broad range of human rights concerns and represent many different sectors of Canadian society including Indigenous Peoples, women, children, people living in poverty, people living with disabilities, lesbian, gay, bisexual and transgendered people and refugees. All find that Canada's deficient approach to implementation is one of the most serious obstacles they face in advancing stronger protection within Canada of the rights enshrined in UN human rights instruments, and, indeed, the *Canadian Charter of Rights and Freedoms*. Organizations that work in the areas of international development and international human rights also supported the statement because they believe that Canada can and must set a much stronger example to the international community and demonstrate best practices with respect to implementing international human rights obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDATIONS:

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

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

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

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

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

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

During the past nine months this has included:

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

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

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

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

RECOMMENDATION:

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

- Aboriginal Council of Winnipeg
- Action Canada for Population and Development
- Amnesty International Canada (English Branch)
- Amnistie Internationale Canada francophone
- Asian Canadian Labour Alliance
- Assembly of First Nations
- Barbra Schlifer Commemorative Clinic
- Campaign 2000
- Canada Without Poverty
- Canadian Association of Elizabeth Fry Societies
- Canadian Association of Refugee Lawyers
- Canadian Association of University Teachers
- Canadian Auto Workers
- Canadian Auto Workers Local 88 Human Rights Committee
- Canadian Coalition for the Rights of Children
- Canadian Council for International Cooperation
- Canadian Council for Refugees
- Canadian Feminist Alliance for International Action
- Canadian Friends Service Committee (Quakers)
- Canadian Labour Congress
- Canadian Union of Public Employees
- Centrale des Syndicats du Québec
- Centre for Equality Rights in Accommodation
- Coalition of Black Trade Unionists
- Communications, Energy and Paperworkers Union of Canada
- Confédération des Syndicats Nationaux
- Council of Canadians
- Disabled Women's Network
- First Call: BC Child and Youth Advocacy Coalition
- First Nations Summit
- Front d'Action Populaire en Réaménagement Urbain
- Grand Council of the Crees (Eeyou Istchee)
- Halifax Initiative
- Inter Pares
- International Association of Machinists and Aerospace Workers
- International Civil Liberties Monitoring Group
- International Human Rights Program, University of Toronto Faculty of Law
- Justice, Peace and Integrity of Creation Committee, Sisters of Providence of St. Vincent de Paul
- Kairos: Canadian Ecumenical Justice Initiatives
- Latin American Trade Unionists Coalition
- Law Union of Ontario
- Lawyers' Rights Watch
- Maritimes-Guatemala Breaking the Silence Solidarity Network
- McLeod Group
- Mining Watch
- National Union of Public and General Employees
- Native Women's Association of Canada
- Native Youth Sexual Health Network
- New Brunswick Common Front for Social Justice
- Oxfam Canada
- Pivot Legal Society
- Public Interest Alberta
- Public Service Alliance of Canada
- Refugee Forum
- Social Issues Networking Group
- Social Rights Advocacy Centre
- Society for Children and Youth BC
- Table de Concertation des Organismes au Service des Personnes Réfugiées et Immigrantes
- Treaty Four First Nations
- United Church of Canada
- Wellesley Institute
- Yukon Status of Women Council

ANNEX

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

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

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

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

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

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

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

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

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

Numerous UN level bodies have raised these concerns.

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

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

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

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

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

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

The Solution

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

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

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

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

Endorsed by:

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

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

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