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."[1]
- 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."[2]
- 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."[3]
- 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."[4]

The Standing Committee on Human Rights of the Senate of Canada has similarly recommended that the "federal government – with the provinces, territories,

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[1] *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.
[2] *Concluding Observations of the Human Rights Committee*, CCPR/C/CAN/CO/5, 20 April 2006, para. 6.
[3] *Report of the Committee on the Elimination of Discrimination against Women*, A/58/38, Twenty-eighth session (13-31 January 2003), para. 350.
[4] *Concluding observations: Canada*, CRC/C/15/Add.215, 27 October 2003, para. 11.

Parliamentarians and interested stakeholders - … establish a more effective means of negotiating, incorporating and implementing its international human rights obligations."[5]

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.

[5] 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:

L'Association québécoise des organismes de coopération internationale
Canadian Association of Elizabeth Fry Societies
Canadian Paraplegic Association
Communication, Energy and Paperworkers' Union
Entraide missionnaire
Maritimes-Guatemala Breaking the Silence Network
National Union of Public and General Employees
Parkdale Community Legal Services
Quebec Native Womens Inc / Femmes Autochtones du Québec
Safe Drinking Water Foundation
Social Justice Committee of Montreal
Social Rights Advocacy Centre

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 Friends Service Committee (Quakers)
Centre for Equality Rights in Accommodation
Council of Canadians with Disabilities
First Nations Summit
Independent Living Canada
La Ligue des droits et libertés
PEN Canada
The Wellesley Institute
Women's Housing Equality Network