

TOGETHER FOR HUMAN RIGHTS

**Submission to the United Nations Committee on
Economic, Social and Cultural Rights
In Connection with its Review of
Canada's 4th and 5th Periodic Reports**

Submitted by:

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A) UNIVERSALITY OF HUMAN RIGHTS

Under the International Covenant, Canada has committed itself to make every possible effort to advance the economic, social and cultural rights contained in the Covenant.

Canada's obligations do not extend only to its own citizens. The Covenant requires Canada to assist in the progressive realization of these rights in other countries, particularly through economic and technical assistance and co-operation.¹

The Covenant emphasizes "the essential importance of international co-operation based on free consent" (Article 11) and upholds the right of countries to "freely pursue their economic, social and cultural development." (Article 1)

In this era of corporate globalization, the international dimensions of Canada's obligations under the Covenant take on increased significance.

Governments are losing their democratic powers to set and implement policies for the benefit of their citizens. Instead of being made through an open, accountable, democratic process, decisions affecting the economic, social and cultural rights of citizens are increasingly made outside the country's boundaries and behind closed doors by institutions such as the G8, the WTO, the World Bank, and the IMF. These institutions are dominated by wealthy countries, such as Canada.

Instead of respecting the right of developing countries to freely pursue their own economic, social and cultural development, Canada is supporting the imposition of policies which undermine human rights, such as the deregulation, commodification and privatization of water for profit.

Instead of assisting developing countries with technical assistance to achieve basic human rights, Canada is promoting trade rules that forbid the transfer of technical knowledge and excessively protect profitable patent monopolies of corporations over the right to health of people.

In the international examples provided below, Canada is putting the interests of corporations ahead of its obligations under articles 1, 2 and 11 of the Covenant.

Vulnerable people in developing countries, whose economic, social and cultural rights are harmed by Canada's actions, have no recourse against a powerful foreign country. The Canadian government is unlikely to include these issues in its Report. It is therefore important that these issues be raised when Canada appears before the Committee.

WE THEREFORE REQUEST THAT THE COMMITTEE ASK CANADA TO:

¹ Article 2

- PUT THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF PEOPLE IN DEVELOPING COUNTRIES AHEAD OF THE INTERESTS OF TRANSNATIONAL CORPORATIONS**
- MEET THE U.N. TARGET TO PROVIDE .7% OF GROSS NATIONAL INCOME FOR INTERNATIONAL AID, WITH THAT AID TARGETED AT BASIC HUMAN RIGHTS UNDER THE COVENANT**
- RESPECT THE RIGHT OF COUNTRIES TO FREELY PURSUE THEIR ECONOMIC, SOCIAL AND CULTURAL DEVELOPMENT**
- TAKE A STRONG STAND AGAINST POLICIES THAT DISREGARD HUMAN RIGHTS, SUCH AS DEREGULATION AND PRIVATIZATION, BEING IMPOSED ON COUNTRIES BY THE WORLD BANK, THE WTO, AND THE IMF.**

B) CLOSED, UNDEMOCRATIC PROCESS IS RESULTING IN RETROGRADE HUMAN RIGHTS POSITIONS

Human rights are core values for Canadians. Polls regularly show that Canadians give top priority to social and economic rights, such as the right to health care, the right to education, an end to poverty, water as a human right.

But citizens are being increasingly excluded when the government of Canada takes positions on crucial human rights issues. Many of the decisions the government has taken go contrary to Canada's commitments under the International Covenant on Economic, Social & Cultural Rights. Instead of advancing human rights, many of these decisions are downgrading and disappearing human rights both domestically and internationally.

Democracy is the oxygen of human rights and vice versa. Where decision-making takes place in a closed, secretive manner, the interests of the powerful tend to prevail and human rights are likely to deteriorate.

A healthy democracy requires the informed consent and participation of citizens. It is characterized by open process, democratic debate and civil society participation.

The Covenant stresses that both civil and political rights, as well as social, economic and cultural rights, must be respected in order for human rights progress to be achieved.²

Numerous U.N. human rights Declarations and Plans of Action in recent years have emphasized that it is essential for governments to practice openness and full inclusion of civil society organizations. Canadian governments have signed these Declarations and Plans of Action and made the commitment to practice such openness and inclusion.

²Preamble to Covenant: "Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."

The government of Canada is not, however, practicing openness and inclusion, with destructive consequences for human rights in Canada and abroad.

Here are some examples showing how the Canadian government has taken retrograde, anti-human rights positions on crucial issues without even informing the Canadian public, far less allowing any opportunity for democratic debate or citizen participation.

1) Human Right to Water

In 2000 and 2003 at meetings sponsored by the for-profit water industry and the World Bank, the Canadian government took the position that there is no human right to water.³

At the 2002 meeting of the U.N. Human Rights Commission, Canada was the only country to vote against a resolution to appoint a Special Rapporteur to promote the right to water, saying "Canada does not accept that there is a right to drinking water and sanitation."⁴

Civil society groups and the general public were given no opportunity to participate in this decision, nor were members of the House of Commons, supposedly the guarantee of parliamentary democracy.

The Canadian government made this decision on one of the world's most important human rights issues - the human right to water - through a closed, unaccountable process.

The Canadian government has not been willing to even provide citizens with the documentation on which it is basing its position. Even though the new Prime Minister, the Hon. Stephen Harper, has promised that a new policy of transparency is in effect, the new government has not responded to requests for the documentation. It will only be provided when the government is forced to do so under the Freedom of Information Act.

2) Proposed Treaty Outlawing Forced Disappearances

Canadians have always taken pride in the positive leadership role Canadian governments have at times played in advancing human rights at the United Nations. Canadians are proud, for example, of the positive role played by a Canadian Conservative government in helping bring about the Convention on the Rights of the Child and, more recently, the role of a Canadian Liberal government in initiating the Ottawa Convention Banning Anti-Personnel Land Mines.

It is extremely disappointing to now witness the Canadian government playing a negative role to water down human rights protections.

People who take action to promote economic, social and cultural rights are often subjected to intimidation and violence, such as forced disappearances. Supporting U.N. treaties against such violence is an important way for a country to meet its obligation under the Covenant to advance economic, social and cultural rights.

³ 2nd World Water Forum in The Hague in 2000 and 3rd World Water Forum in Kyoto in 2003

⁴ *Canadian Perspectives, Winter 2005, p.13*, Council of Canadians, www.canadians.org

As reported by Human Rights Watch in its 2006 World Report, Canada hindered recent efforts at the United Nations to bring about a Treaty Outlawing Forced Disappearances: "Canada compounded the lack of human rights leadership by trying to undermine critical international provisions... Canada sought to dilute a new treaty outlawing forced disappearances."⁵

Canadians support human rights and believe in law-based, international action to stop horrific human rights abuses, such as forced disappearances. Given a chance to participate, Canadians would want their government to show positive human rights leadership and support a strong treaty.

Regrettably, the government allowed for no public participation and no democratic debate on the question of a Treaty to Ban Forced Disappearances.

3) Follow-up to U.N recommendations to Canada

The government has not taken action to set up a mechanism with responsibility to follow up on recommendations made to Canada by various U.N. human rights bodies, such as the Committee on Economic, Social & Cultural Rights, the Committee on the Elimination of All Forms of Discrimination against Women, the Human Rights Committee.

These reports disappear down a black hole in Ottawa. No open process has been put in place to ensure the reports are seriously examined and acted upon, indicating a shallow commitment to Canada's human rights obligations and preventing citizen participation.

4) Terminator Seed Technology

Farmers groups and citizens groups in Canada and around the world have expressed strong opposition to terminator technology (seeds genetically engineered by transnational seed companies to be sterile after the first harvest). They see this technology as a serious threat to the right to food and the right to development, contained in article 11 and article 1 of the ICESCR.

1.2 billion small farmers around the world depend on saving their seed for the next year's harvest in order to survive and feed their families. Indigenous peoples have saved seed for millennia and see their role as stewards of the earth's biodiversity as a profound part of their economic, social, cultural and spiritual existence.

A worldwide de facto moratorium on terminator technology has been in place under the U.N Convention on Biodiversity.

At the March 2006 meeting of the Parties to the Convention on Biodiversity in Curitiba, Brazil, Canada - together with Australia, New Zealand and the United States (which has not ratified the Convention and so is not a Party) - sought to overturn the ban, showing no concern for the economic, social and cultural rights of farmers in Canada and around the world or for the wishes of Canadians and people around the world, who have strongly and clearly expressed their support for the moratorium on terminator technology.

⁵ Human Rights Watch World Report 2006, www.hrw.org

No public debate took place, no civil society involvement was permitted, no parliamentary process was involved on this crucial issue affecting the right to food and the right to development of people everywhere on the planet.

The decision to try to overthrow the moratorium was taken behind closed doors. The Canadian government is listening to and prioritizing the interests of powerful transnational seed corporations, such as Monsanto and Cargill, rather than caring about the human rights of people.

Luckily, Canada's irresponsible and non-democratic efforts to overthrow the ban were defeated. "The CBD (the meeting of the Parties to the Convention on Biodiversity) has soundly rejected the efforts of Canada, Australia and New Zealand – supported by the US government and the biotechnology industry – to undermine the moratorium on suicide seeds," said Maria Jose Guazzelli of Centro Ecológico, a Brazil-based agro-ecological organization.⁵

"This is a momentous day for the 1.4 billion poor people world wide, who depend on farmer saved seeds," said Francisca Rodriguez of Via Campesina a world wide movement of peasant farmers, "Terminator seeds are a weapon of mass destruction and an assault on our food sovereignty. Terminator directly threatens our life, our culture and our identity as indigenous peoples", said Viviana Figueroa of the Ocumazo indigenous community in Argentina on behalf of the International Indigenous Forum on Biodiversity.⁶

5) CONCLUSION

The government holds a human rights consultation in Ottawa each year. Clearly, with regard to the economic, social and cultural rights of Canadians and vulnerable populations around the world, the consultation is token, allowing no genuine sharing of information or meaningful participation.

The above four examples illustrate how the government made decisions that deeply affect economic, social and cultural rights in Canada and in other countries with no public discussion, no debate in House of Commons, no democratic process of any kind, no possibility for civil society groups to be informed or to participate.

These decisions lack democratic legitimacy. Decision-making carried out in a closed, secretive, dictatorial manner offends the most basic, essential principles of democracy and diminishes human rights.

These four examples graphically document how the Canadian government is harming the human rights of Canadians and people living in developing countries.

⁶ Statements of March 24, 2006 and March 31, 2006 by the Ban Terminator campaign, a movement supported by more than 500 civil society organizations around the world. The statements, list of supporting civil society organizations and the two citations can be found at www.banterminator.org

WE THEREFORE REQUEST THAT THE COMMITTEE ASK THE CANADIAN GOVERNMENT TO:

- ESTABLISH AN OPEN, EFFECTIVE MECHANISM ALLOWING FOR CIVIL SOCIETY PARTICIPATION AND PARLIAMENTARY INVOLVEMENT TO MONITOR AND PROMOTE IMPLEMENTATION OF CANADA'S HUMAN RIGHTS COMMITMENTS**
- MEET WITHIN THE NEXT SIX MONTHS WITH CIVIL SOCIETY GROUPS AND HUMAN RIGHTS EXPERTS TO DRAW UP SUCH A MECHANISM**
- COMMIT TO A PUBLIC COMMENT SYSTEM WHEREBY THE GOVERNMENT WOULD POST INFORMATION ON ITS PLANNED POSITIONS OR ACTIONS ON SIGNIFICANT HUMAN RIGHTS ISSUES 60 DAYS IN ADVANCE OF TAKING SUCH POSITIONS OR ACTIONS AND ALLOW FOR PUBLIC INPUT**
- HOLD AN ANNUAL HUMAN RIGHTS DEBATE IN THE HOUSE OF COMMONS, DURING WHICH THE GOVERNMENT WOULD REPORT ON WHAT PROGRESS CANADA HAS MADE IN ACHIEVING HUMAN RIGHTS TARGETS IN CANADA AND INTERNATIONALLY.**

C) RIGHT TO DEVELOP

Article 1 of the ICESCR⁷ recognizes the right of all peoples to freely pursue their economic, social and cultural development.

This right is denied when wealthy nations, such as Canada, use the World Bank, the IMF, the G8 and the WTO to force developing countries to privatize key areas of economic, social and cultural development, such as water.

According to the Canadian Catholic Organization for Development & Peace, "almost two-thirds of World Bank 'structural adjustment' loans to poor countries between 1996 and 1999 required the privatization of publicly-owned sectors of the economy. After 1990, a third of World Bank loans were conditional upon some form of privatization of water services. This trend is growing."⁸

More than 230,000 Canadians have sent cards to the Canadian government, asking that it recognize the human right to water and stop imposing water privatization on developing countries.

Civil society organizations around the world have documented the disastrous results of these water privatization experiences, which have cut off poor people from water, resulting in illness and death, have been carried out in a climate of non-transparency and non-accountability, and have frequently involved bribes and corruption. For example, in its 2003 Report, *Water, Land & Labour: The Impacts of Forced Privatization on Vulnerable Communities*, the Halifax Initiative (a Canadian Coalition of development, environmental, faith, rights and labour groups) examines how the World Bank and the IMF have used their considerable power to force countries to privatize natural and public resources. The report documents some of the impacts,

⁷ 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

⁸ Development & Peace, Current Campaigns, Water, Backgrounder 2, *Water Privatization*, www.devpc.org

ranging from reduced access to essential services, loss of jobs and increased corruption.⁹

"Water privatization in developing countries is an ongoing disaster," says the U.K. World Development Movement.¹⁰

"The conditions that the World Bank and IMF impose as criteria to qualify for debt cancellation have done far more harm than good in Zambia and have led to increases in poverty and less access to services," notes Emily Sikazwe, Executive Director of Women for Change in Zambia. "Countries like Zambia need to be able to implement their own national development strategies, rather than those imposed by Washington."¹¹

WE THEREFORE REQUEST THAT THE COMMITTEE ASK THE CANADIAN GOVERNMENT TO:

- RESPECT THE RIGHT OF DEVELOPING COUNTRIES TO FREELY CHOOSE THEIR OWN DEVELOPMENT STRATEGIES.**
- TAKE LEADERSHIP ACTION WITHIN THE WORLD BANK, IMF, G8, WTO AND OTHER POWERFUL INSTITUTIONS TO STOP PRESSURING COUNTRIES TO PRIVATIZE WATER AND OTHER RESOURCES AND ACTIVITIES.**
- PROMOTE THE IMMEDIATE AND UNCONDITIONAL CANCELLATION OF 100% OF THE MULTILATERAL AND BILATERAL DEBT OWED BY THE POOREST COUNTRIES AND ENSURE THAT DEBT CANCELLATION HAS NO STRINGS ATTACHED, ENABLING DEVELOPING COUNTRIES TO IMPLEMENT THEIR OWN NATIONAL PLANS TO END POVERTY (AS RECOMMENDED BY THE MAKE POVERTY HISTORY CAMPAIGN).¹²**
- ASK THE AUDITOR GENERAL TO CARRY OUT AN AUDIT ON CANADA'S FINANCIAL PARTICIPATION IN THE WORLD BANK AND IMF, AS CALLED FOR BY THE HALIFAX INITIATIVE.¹³**
- WORK WITH CIVIL SOCIETY ORGANISATIONS IN CANADA AND ABROAD SO AS TO PROVIDE TECHNICAL AND OTHER ASSISTANCE TO ENABLE IMPOVERISHED COUNTRIES TO ACHIEVE BASIC ECONOMIC, SOCIAL AND CULTURAL RIGHTS.**

D) RIGHT TO AN ADEQUATE STANDARD OF LIVING AND TO THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

Two million people die unnecessarily every year from lack of access to clean water. 6,000 children die each day from water-born diseases. The United Nations estimates

⁹ For example, Water, Land & Labour: The Impacts of Forced Privatization in Vulnerable Communities (Report – June 2003), www.halifaxinitiative.org

¹⁰ World Development Movement

¹¹ Canadian Council for International Co-operation, News Release, June 15, 2005. www.ccic.ca

¹² Make Poverty History campaign, Cancel the Debt, www.makepovertyhistory.ca

¹³ Halifax Initiative, letter of November 8, 2005 to the Auditor General of Canada, www.halifaxinitiative.org

that if current trends continue, by 2025, more than two-thirds of the world's population will not have enough access to water.¹⁴

Lack of access to clean water is the major cause of all illness and death in developing countries. A significant factor preventing girls from attending school is the necessity for them to walk great distances to bring back water for their family.

In Canada, many aboriginal communities continue to experience ill health because of lack of clean water. In Walkerton, Ontario, as a consequence of privatization and lack of government regulation, a number of people died and others became permanently ill because of contaminated water.

The ICESCR contains the right to an adequate standard of living, including food, clothing and housing (article 11) and the right to the highest attainable standard of physical and mental health (article 12).

Access to clean water is clearly essential for these rights to be realized and essential for life itself.

The right to water is referred to in the Convention on the Rights of the Child (article 24c) and in Convention on the Elimination of All Forms of Discrimination against Women (article 14h). Canada has ratified both Conventions.

General Comment 15 (2002) by the Committee on Economic, Social and Cultural Rights states that the human right to water exists under the provisions of the Covenant. UNESCO has likewise recognized the human right to water.

Canada's position that the human right to water and sanitation do not exist would gut the Covenant, rendering it empty and ineffective in upholding the most basic, essential human rights.

It is a sad commentary that Canada, a country deeply involved in the writing of the Covenant, should today be playing a role to destroy it.

WE THEREFORE REQUEST THAT THE COMMITTEE ASK THE CANADIAN GOVERNMENT TO:

- RECOGNIZE THE HUMAN RIGHT TO WATER AND SANITATION
- WORK WITH CIVIL SOCIETY ORGANISATIONS TO SPECIFICALLY INCLUDE THE HUMAN RIGHT TO WATER AND SANITATION IN NATIONAL AND INTERNATIONAL LAW.

E) PRIORITY OF HUMAN RIGHTS VERSUS POWER OF TRADE AGREEMENTS

Trade agreements, such as the North American Free Trade Agreement, the General Agreement on Trade in Services and other agreements under the World Trade Organization, protect the interests and profits of corporations. They do not protect the human rights of people or the environmental wellbeing of the planet.

¹⁴ Corporate Accountability International, *Water: Life, Death and Profits*, www.stopcorporateabuse.org

The scope and powers of trade agreements have increased dramatically over the past couple of decades. The purpose of these agreements is to promote privatization, deregulation and corporate globalization.

International trade agreements contain specific mechanisms to adjudicate issues affecting corporate interests, hand down rulings and enforce these rulings.

International human rights agreements lack enforceable, adjudicative powers.

Corporate profits under trade agreements are being given priority over the economic, social, cultural and democratic rights of citizens.

For example, in order to protect the health and lives of Canadians, the Canadian government planned to introduce legislation in the House of Commons to require plain packaging of cigarettes. Powerful tobacco companies threatened to use the provisions of NAFTA to overthrow such legislation and sue the Canadian government for hundreds of millions of dollars.¹⁵

In the face of this threat, the Canadian government abandoned the legislation.

The enforceable powers of NAFTA to protect corporate profits took priority over the health of citizens and over the democratic right of Canadians to pass the laws they wish.

There are examples from all over the world where corporate profits, protected by enforceable trade agreements, are overriding the economic, social and cultural rights of citizens and annulling the democratic rights of citizens to enact or enforce their laws.

The Canadian government has failed to show leadership to introduce an Optional Protocol to the ICESCR, which would allow a committee to hear and make non-binding recommendations on complaints brought forward by individuals regarding violations of economic, social or cultural rights.

The Canadian government has taken the position that Canadian courts should not give force to the provisions of international human rights covenants when adjudicating cases in Canada.

Not only is the Canadian government rejecting any meaningful role for international human rights law. It is also discarding Canadian human rights laws and the constitutional rights of Canadians.

In a court case dealing with investor rights under NAFTA, the Canadian government is arguing that "domestic laws and constitutional requirements do not apply to the establishment or the proceedings of the international NAFTA tribunals."¹⁶

¹⁵ Samrat Ganguly, 'The Investor-State Dispute Mechanism and a Sovereign's Power to Protect Public Health' 38 *Colum. J. Transnat'l L.* 113 (1999).

¹⁶ See B. Porter "'Canadian Constitutional Challenge to NAFTA Raises Critical Issues of Human Rights in Trade and Investment Regimes" (2005) 2(4) *ESC Rights Law Quarterly* at <http://www.cohre.org/downloads/Vol3-No1-Quarterly.pdf>; Factum of the Respondent, January 20, 2005 at http://www.dfait-maeci.gc.ca/tnanac/disp/cupw_archive-en.asp

Without any democratic debate, the Canadian government has nullified the human rights protections that Canadians believe they enjoy under Canadian laws and under the Canadian Constitution.

In all of the vast areas of economic, social and cultural activity covered by NAFTA, the Canadian government is arguing that corporate profits must take precedence over the constitutional human rights of Canadian citizens.

Far from advancing human rights, the Canadian government, in too many cases, is following a policy of cut and run with regard to the economic, social, cultural and democratic rights of Canadians.

WE THEREFORE REQUEST THAT THE COMMITTEE ASK THE CANADIAN GOVERNMENT TO:

- HOLD FULL, OPEN DISCUSSIONS INVOLVING THE PUBLIC, CIVIL SOCIETY ORGANIZATIONS, HUMAN RIGHTS EXPERTS AND THE HOUSE OF COMMONS ON THE WAY TRADE AGREEMENTS ARE PRIORITIZING CORPORATE PROFITS OVER HUMAN RIGHTS AND DOMESTIC LAWS**
- TOGETHER WITH THE PARTICIPATION OF CIVIL SOCIETY ORGANIZATIONS, THE PUBLIC, HUMAN RIGHTS EXPERTS AND MEMBERS OF THE HOUSE OF COMMONS, DEVELOP AND IMPLEMENT STRATEGIC ACTIONS TO ENSURE THAT HUMAN RIGHTS AND DEMOCRATIC RIGHTS CLEARLY AND SPECIFICALLY TAKE PRIORITY OVER THE PROVISIONS OF TRADE AGREEMENTS PROTECTING CORPORATE INTERESTS**
- SUPPORT THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW TO CASES BROUGHT BEFORE CANADIAN COURTS**

F) EXAMPLE OF PRIORITY GIVEN TO HUMAN RIGHTS

One area in which the Canadian government played a positive role, putting the right to health above corporate profits, was in supporting the Framework Convention on Tobacco Control (FCTC) at the World Health Organisation.

The World Health Organization estimates that tobacco-related illnesses will kill ten million people each year by 2030, becoming the world's leading cause of death.

Tobacco corporations have made use of international trade agreements to aggressively promote smoking in developing and eastern European countries, causing the massive expansion of tobacco addiction in those regions.¹⁷

The vast majority of smokers become addicted in their teens, when they are particularly vulnerable to advertising campaigns using images that appeal to youth and that portray smoking as being sophisticated, sexy and attractive.

¹⁷ Corporate Accountability International (formerly Infact), *The Marlboro Man: American Icon, Global Killer*, www.sstopcorporateabuse.org

In spite of ceaseless efforts by tobacco corporations and by the United States government to block, derail and undermine the Convention, governments around the world, including Canada, with encouragement from civil society organizations, supported and ratified the Convention, the first ever at the WHO.

Among other measures, the Convention bans tobacco advertising, promotion and sponsorship, thus conflicting with provisions in trade agreements which prevent countries from restricting corporate advertising.

In spite of their strongest efforts, civil society organizations were unable to get specific language written into the Convention stating that the right to health under the Covenant takes precedence over corporate interests under trade agreements.

However, the opening words of the Convention clearly state that the countries that ratify the Convention are determined to give priority to their right to protect public health.¹⁸ And the Convention clearly states that its provisions are a floor, not a ceiling, for national tobacco control policy.¹⁹

WE THEREFORE REQUEST THAT THE COMMITTEE ASK THE CANADIAN GOVERNMENT TO:

- TAKE LEADERSHIP INTERNATIONALLY TO PROMOTE THE PRECEDENCE OF HUMAN RIGHTS OVER CORPORATE INTERESTS
- INCLUDE, IN NATIONAL AND INTERNATIONAL DOCUMENTS, AGREEMENTS AND LAWS, PROVISIONS THAT SPECIFY THAT HUMAN RIGHTS TAKE PRECEDENCE OVER CORPORATE INTERESTS

G) CHILLING EFFECT ON HUMAN RIGHTS ADVOCACY OF CHARITABLE TAX LAW

Canada's charity laws derive from the *Statute of Elizabeth* in England of 1601. They are out-of-date and excessively restrictive, prohibiting civil society organizations from participating freely in important public debate and advocacy, if they wish to keep their charitable tax status (which allows donors to receive tax receipts for deductions on their income tax).

The Canada Tax Act permits charities to use only 10% of their human and financial resources on advocacy on public policy issues.

Businesses, on the other hand, are unlimited in the amount of advocacy activity they can participate in and they can deduct the costs of those activities as business expenses.

In other words, businesses are subsidized under the Canada Tax Act to advocate for laws and policies that benefit them while charities are punished for advocating for laws and policies that promote economic, social and cultural rights.

¹⁸ "The Parties to this Convention, Determined to give priority to their right to protect public health" (underlining added), Preamble to WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL.

¹⁹ "Nothing in these instruments shall prevent a Party from imposing stricter requirements that are consistent with their provisions." (Article 2.1)

Charities are the only group in Canada that can be penalized if they speak out publicly about keeping or changing a law in Canada or internationally. For example, a group working against torture in Quebec lost its charitable status for writing letters to leaders of other countries asking them to stop torturing their political prisoners.²⁰

A charitable organization in Canada that uses more than 10% of its resources to carry out advocacy campaigns asking the Canadian government (or any other government) to change its laws and policies so as to comply with its human rights obligations under the Covenant, for example, will have its charitable tax status removed by the government.

95% of Canadians say that charities should speak out on issues like the environment, poverty and health care. 78% say the laws should be changed to permit charities to advocate more freely for their causes.²¹

In the September 30, 2002 Throne Speech, the Canadian government said it wished *"to enable the (voluntary) sector to contribute to national priorities and represent the views of those too often excluded."*

In 2003 the Canada Revenue Agency released new administrative guidelines that are a small improvement. However, the present Canadian Income Tax Act continues to function as a gag law on civil society organizations and stifles advocacy efforts to advance economic, social and cultural rights.

Vibrant civil society participation is the lifeblood of human rights.

WE THEREFORE REQUEST THAT THE COMMITTEE ASK THE CANADIAN GOVERNMENT TO:

- CHANGE THE INCOME TAX ACT SO AS TO LIFT THE 10% RESTRICTION AND ALLOW CHARITIES MORE FREEDOM TO ADVOCATE ON PUBLIC ISSUES

H) CONCLUDING COMMENTS

Far from making progress in implementing economic, social and cultural rights, the Canadian government is downgrading these rights to almost make them disappear. The government shows little commitment to ending poverty, hunger, homelessness and growing inequality in Canada. It virtually does not talk about these human rights issues, far less take serious action to address them.

Canada is a far wealthier country than it was thirty years ago. Yet thirty years ago we did not have vast numbers of people living in the streets and depending on the charity of food banks to allay their hunger. We may be wealthier as a country. But we have greater inequality and injustice; greater denial of basic human rights. And we are all diminished by this injustice.

²⁰ *Thaw the Chill on Advocacy by Charities*, Charities and Democracy Project, The Institute for Media, Policy and Civil Society, www.charitiesanddemocracy.net

²¹ *Talking About Charities, 2004*; www.muttart.org. Survey carried out in 2000 by the Canadian Centre for Philanthropy and The Muttart Foundation.

Submissions to the Committee from other Canadian civil society organizations document in irrefutable detail the ways in which economic, social and cultural rights are being eroded in Canada.

The Standing Senate Committee on Human Rights put forward a list of recommendations, calling on the government to show leadership in living up to its international human rights commitments:

"The third phase of human rights on which we are now embarked demands that we actually live by our human rights commitments. It is about implementation of rights, but more than just that, it is implementation over the long haul. Unfortunately, much of the passion and excitement generated by the struggles to establish human rights during the first two phases seems to have dissipated," wrote the Committee, noting that: "The battle can still be lost. The passion and commitment that accompanied the first two phases are now needed as much as ever."²²

WE REQUEST THAT THE COMMITTEE ASK THE CANADIAN GOVERNMENT TO:

- TAKE SERIOUS ACTION TO IMPLEMENT CANADA'S HUMAN RIGHTS COMMITMENTS UNDER THE COVENANT ON ECONOMIC, SOCIAL & CULTURAL RIGHTS, WORKING IN A TRANSPARENT MANNER WITH CIVIL SOCIETY ORGANIZATIONS, HUMAN RIGHTS EXPERTS AND THE MEMBERS OF THE HOUSE OF COMMONS

-IMPLEMENT THE RECOMMENDATIONS OF THE STANDING SENATE COMMITTEE ON HUMAN RIGHTS

²² *Promises To Keep*, Report of the Standing Senate Committee on Human Rights, December 2001