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# ADVANCE UNEDITED VERSION

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## Human Rights Committee

### Concluding observations on the sixth periodic report of Canada\*

1. The Committee considered the sixth periodic report submitted by Canada (CCPR/C/CAN/6) at its 3176th and 3177th meetings (CCPR/C/SR.3176 and CCPR/C/SR.3177), held on 7 and 8 July 2015. At its 3192<sup>nd</sup> meetings (CCPR/C/SR 3192), held on 20 July 2015, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Canada. It expresses appreciation for the opportunity to pursue its constructive dialogue with the State party's high level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for its written replies (CCPR/C/CAN /Q/6 /Add.1) to the list of issues which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

#### B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) Adoption of the Human Rights Act of the Province of Newfoundland and Labrador, in 2010;

(b) Adoption of the Domestic Relations Act in the Prince Edward Island that legalizes same-sex marriage, in 2008;

(c) Changes in Ontario's human rights system that allows direct complaints to the Human Rights Tribunal of Ontario.

4. The Committee welcomes the ratification by the State party of the Convention on the Rights of Persons with Disabilities, on 11 March 2010.

#### C. Principal matters of concern and recommendations

##### Views under the Optional Protocol

5. The Committee is concerned about the State party's reluctance to comply with all Committee's Views and Interim Measures under the Optional Protocol and the Covenant in particular when they relate to recommendations to re-open Humanitarian and Compassionate applications. The Committee regrets the lack of an appropriate mechanism

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\* Adopted by the Committee at its 114th session (29 June–24 July 2015).

in the State party to implement Views of the Committee, with a view, *inter alia*, to providing victims with effective remedies (art.2).

**The State party should reconsider its position in relation to Views and Interim measures adopted by the Committee under the First Optional Protocol. It should take all necessary measures to establish mechanisms and appropriate procedures to give full effect to the Committee's Views so as to guarantee an effective remedy when there has been a violation of the Covenant. The Committee draws the attention of the State party to its General Comment No. 33 (2009).**

#### **Business and Human Rights**

6. While appreciating information provided, the Committee is concerned about allegations of human rights abuses by Canadian companies operating abroad, in particular mining corporations and about the inaccessibility to remedies by victims of such violations. The Committee regrets the absence of an effective independent mechanism with powers to investigate complaints alleging abuses by such corporations that adversely affect the enjoyment of the human rights of victims, and of a legal framework that would facilitate such complaints (art. 2).

**The State party should: a) enhance the effectiveness of existing mechanisms to ensure that all Canadian corporations, in particular mining corporations, under its jurisdiction respect human rights standards when operating abroad; b) consider establishing an independent mechanism with powers to investigate human rights abuses by such corporations abroad; c) and develop a legal framework that affords legal remedies to people who have been victims of activities of such corporations operating abroad.**

#### **Gender equality**

7. The Committee is concerned about the persisting inequalities between women and men. In particular, the Committee is concerned about: a) the high level of the pay gap, which is more pronounced in some provinces such as Alberta and Nova Scotia and disproportionately affects low-income women, in particular minority and indigenous women; b) the fact that the legislation relating to equal pay differs at federal, provincial and territorial levels and for the public and private sectors, and does not exist in some provinces; d) the underrepresentation of women in leadership positions in the public and private sectors and; e) the failure to enforce or ensure employment equality in the private sector across the country. It further regrets that the State party has not yet adopted regulations to implement the Public Sector Equitable Compensation Act (art. 3).

**The State party should strengthen its efforts to guarantee that men and women receive equal pay for work of equal value across its territory with a special focus on minority and indigenous women. It should ensure that all provinces and territories adopt a legislative framework on equal pay, covering the public and private sectors; and take measures to implement the recommendations of the Pay Equity Task Force at all levels. The State party should promote better representation of women in leadership positions both in private and public sectors and ensure effective remedies to women who are victims of gender-based discrimination.**

#### **Violence against women**

8. The Committee is concerned about the continued high prevalence of domestic violence in the State party, in particular violence against women and girls, that mostly affects indigenous and minority women. The Committee is also concerned about reports of: a) the low number of cases reported to the police by victims; b) the insufficiency of shelters, support services and other protective measures for victims that reportedly prevent them from leaving their violent partner and; c) a failure to effectively investigate, prosecute, convict, and punish perpetrators with appropriate penalties. The Committee is further

concerned about the lack of statistical data on domestic violence including on investigations, prosecutions, convictions, sanctions and reparation (arts. 3, 6, 7).

**The State party should enhance its efforts to firmly combat domestic violence including violence against women in all forms, paying particular attention to minority and indigenous women. Specifically, the State party should: a) take measures to effectively enforce its criminal legislation at federal, provincial and territorial levels; b) provide complaint mechanisms to victims of domestic violence, protect them from any retaliation and provide them with support at the police level; c) investigate all reported cases, prosecute, and punish those responsible with appropriate penalties; d) increase the number of shelters, support services and other protective measures and; e) effectively implement policies and programs adopted at all levels and ensure an effective application of the Victims Bill of Rights Act.**

#### **Murdered and Missing Indigenous women and girls**

9. The Committee is concerned that indigenous women and girls are disproportionately affected by life-threatening forms of violence, homicides and disappearances. Notably, the Committee is concerned about the State party's reported failure to provide adequate and effective responses to this issue across the territory of the State party. While noting that the Government of British Columbia has published a report on the Missing Women Commission of Inquiry and adopted legislation related to missing persons, and the Government of the State party is implementing the Action Plan to Address Family Violence and Violent Crimes Against Aboriginal Women and Girls, the Committee is concerned about the lack of information on measures taken to investigate, prosecute, and punish those responsible (arts. 3, 6).

**The State party should, as a matter of priority: a) address the issue of murdered and missing indigenous women and girls by conducting a national inquiry, as called for by the Committee on the Elimination of Discrimination Against Women, in consultation with indigenous women's organizations and families of the victims; b) review its legislation at the federal, provincial and territorial levels and coordinate police responses across the country with a view to preventing the occurrence of such murders and disappearances; c) investigate, prosecute and punish the perpetrators and provide reparation to victims and; d) address the root causes of violence against indigenous women and girls.**

#### **Counter-terrorism**

10. The Committee takes note of the State party's need to adopt measures to combat acts of terrorism, including the formulation of appropriate legislation to prevent such acts. However, the Committee is concerned about information according to which: a) Bill C-51 amendments to the *Canadian Security Intelligence Act* confers a broad mandate and powers on the Canadian Security Intelligence Service (CSIS) to act domestically and abroad, thus potentially resulting in mass surveillance and targeting activities that are protected under the Covenant without sufficient and clear legal safeguards; b) Bill C-51 creates under the *Security of Canada Information Sharing Act*, an increased sharing of information among federal government agencies on the basis of a very broad definition of activities that undermine the security of Canada which does not fully ensure that inaccurate or irrelevant information is shared; c) Bill C-51 codifies a no-fly list programme without a clear procedure to inform the person concerned on its status, allowing a judicial review that may be conducted in secret, and to which the system of special advocates does apply. The Committee is also concerned about the lack of adequate and effective oversight mechanisms to review activities of security and intelligence agencies and the lack of resources and power of existing mechanisms to monitor such activities (arts. 2, 14, 17, 19, 20, 21, 22).

**The State party should refrain from adopting legislation that imposes undue restrictions on the exercise of rights under the Covenant. In particular, it should: a)**

ensure its anti-terrorism legislation provides for adequate legal safeguards and does not undermine the exercise of the rights protected under the Covenant; b) consider revising Bill C-51 to ensure that it complies with the Covenant ; c) provide adequate safeguards to ensure that information-sharing under the *Security of Canada Information Sharing Act* does not result in human rights abuses; d) establish oversight mechanisms over security and intelligence agencies that are effective and adequate and provide them with appropriate powers as well as sufficient resources to carry out their mandate; e) provide for judicial involvement in the authorization of surveillance measures and; f) establish a clear procedure that allows persons placed on the no-fly list to be promptly informed and able to challenge such a decision through judicial review, with the legal assistance of counsel.

#### **Excessive use of force during protests and police accountability**

11. The Committee is concerned about reports of the excessive use of force by law enforcement officers during mass arrests in the context of protests at federal and provincial levels, with particular reference to indigenous land-related protests, G20 protests in 2010 as well as student protests in Quebec in 2012. The Committee is also concerned about reports that complaints are not always promptly investigated and the lenient nature of sanctions imposed. While noting efforts by the State party to establish oversight and accountability mechanisms to investigate serious incidents involving the police at the federal, provincial and territorial levels, the Committee is concerned about reports of the lack of effectiveness of such mechanisms. The Committee regrets the lack of statistical data on all complaints, investigations, prosecutions, convictions and sanctions imposed on police officers at all levels (art. 7).

**The State party should strengthen its efforts to ensure that all allegations of ill-treatment and excessive use of force by the police are promptly and impartially investigated by strong independent oversight bodies with adequate resources at all levels, and that those responsible for such violations are prosecuted and punished with appropriate penalties.**

#### **Immigration detention, asylum-seekers and non-refoulement**

12. The Committee is concerned that individuals who enter onto the territory of the State party irregularly may be detained for an unlimited period of time and that under Section 20.1 (1) of the Immigration and Refugee Protection Act (“IRPA”), any migrant and asylum-seeker designated as an “irregular arrival” would be subject to mandatory detention , or until the asylum-seeker’s status is established, and would not enjoy the same rights as those who arrive “regularly”. The Committee is also concerned that individuals who are nationals of Designated Country of Origin are denied an appeal hearing against a rejected refugee claim before the Refugee Appeal Division and are only allowed judicial review before the Federal Court, thus increasing a risk that those individuals may be subjected to *refoulement*. The Committee is further concerned about the 2012 cuts to the Interim Federal Health Program which has resulted in many irregular migrants losing access to essential health care services (arts. 2, 7, 9, 13).

**The State party should refrain from detaining irregular migrants for an indefinite period of time and should ensure that detention is used as a measure of last resort, that a reasonable time limit for detention is set, and that non-custodial measures and alternatives to detention are made available to persons in immigration detention. The State party should review the Immigration and Refugee Protection Act in order to provide refugee claimants from “safe countries” with access to an appeal hearing before the Refugee Appeal Division. The State party should ensure that all refugee claimants and irregular migrants have access to essential health care services irrespective of their status.**

13. The Committee is concerned that subsection 115 (2) of the Immigration and Refugee Protection Act provides for two exceptions to the principle of *non-refoulement* which may

result in deporting migrants that are at risk in their country of origin. The Committee is also concerned at reports that individuals under the security certificate mechanism may be subject to deportations when due process guarantees are limited. In such cases, judicial review may take place in secret and the special advocates appointed to assist individuals cannot independently and properly seek evidence on behalf of their clients, because the Court can be requested to withhold information and evidence by the Minister of Public Safety and Immigration under Bill C. 51. The Committee is further concerned that Bill C-60 may prevent certain individuals from applying for protection on the basis of crimes committed, thus posing a risk of *refoulement* (arts. 2, 9, 13).

**The State party should consider amending subsection 115 (2) of the IRPA to fully comply with the principle of non-refoulement. The State party should also ensure that the application of the security certificate is not detrimental to the rights protected under the Covenant and does not result in unlawful deportations, and should allow special advocates to seek all evidence that may be necessary to represent their clients. The State party should reconsider Bill C-60 to ensure that all individuals in need of protection may apply to have their requests appropriately examined.**

#### **Prison conditions**

14. The Committee is concerned about: a) the high level of overcrowding in some detention facilities in the State party; b) the many cases of administrative or disciplinary segregation, sometimes for long periods of time, including of detainees with mental illness; c) reports of insufficient medical support to detainees with serious mental illness; d) reported suicides in detention in particular among indigenous inmates and; e) lack of information on the impact of the Mental Health Strategy within Correctional Service of Canada (art.10).

**The State party should take appropriate measures to effectively reduce overcrowding in detention facilities, including by increasing the use of alternative means of detention. It should also limit effectively the use of administrative or disciplinary segregation as a measure of last resort for as short a time as possible and avoid such confinement for inmates with serious mental illness. The State party should effectively improve access to, and the capacity of, treatment centres for prisoners with mental health issues at all levels.**

#### **Freedoms of expression, peaceful assembly and association**

15. While noting explanations provided by the State party, the Committee is concerned about reports of increased repression of mass protests in the State party, such as those which occurred in the G.20 Summit in 2010, in Quebec in 2011, and the disproportionate number of arrests of participants. The Committee is also concerned by the level of apprehension within a broad sector of civil society about the State party's current policies in the areas of political, social and human rights advocacy. The Committee is further concerned at the ambit of section 149.1 of the Income Tax Act relating to donations to non-governmental organisations registered as charities whose activities are considered as political activities when they relate to the promotion of human rights (arts.19, 21, 22.)

**The State party should renew its traditional commitment to the promotion and protection of the exercise of freedom of assembly, association and expression. It should take all appropriate measures to avoid unnecessary obstacles and restrictions, legally or in practice, against the activities of civil society organizations. The State party should effectively protect the exercise of the freedom of peaceful assembly and avoid restrictions that are not proportionate. The State party should take measures to ensure that the application of section 149.1 of the Income Tax Act does not result in unnecessary restrictions on the activities of non-governmental organisations defending human rights. The State party should consider developing a well-structured dialogue with civil society and indigenous peoples, to restore confidence in the State party's commitment in this area.**

### **Indigenous lands and titles**

16. While noting explanations provided by the State party, the Committee is concerned about reports of the potential extinguishment of indigenous land rights and titles. It is concerned that land disputes between indigenous peoples and the State party which have gone on for years impose a heavy financial burden in litigation on the former. The Committee is also concerned at information that indigenous peoples are not always consulted, to ensure that they may exercise their right to free, prior and informed consent to projects and initiatives concerning them, including legislation, despite favourable rulings of the Supreme Court (arts. 2, 27).

**The State party should consult indigenous people: a) to seek their free, prior and informed consent whenever legislation and actions impact on their lands and rights and b) to resolve land and resources disputes with indigenous peoples and find ways and means to establish their titles over their lands with respect to their treaty rights.**

### **Indian Act**

17. While noting the position of the State party, the Committee is concerned about the slow application of the 2011 Gender Equity in Indian Registration Act that amends the Indian Act, to remove reported lasting discriminatory effects against indigenous women, in particular regarding the transmission of Indian status, preventing them and their descendants from enjoying all of the benefits related to such status (arts. 2, 3, 27).

**The State party should speed up the application of the 2011 Gender Equity in Indian Registration Act and remove all remaining discriminatory effects of the Indian Act that affect indigenous women and their descendants, so that they enjoy all rights on equal footing with men.**

### **Overrepresentation in criminal justice and access to justice for indigenous peoples**

18. The Committee is concerned at the disproportionately high rate of incarceration of indigenous people, including women, in federal and provincial prisons across Canada. The Committee is also concerned that Aboriginal people continue to face obstacles in recourse to justice (arts. 2, 10, 14).

**The State party should ensure the effectiveness of measures taken to prevent the excessive use of incarceration of indigenous peoples and resort, wherever possible, to alternatives to detention. It should enhance its programs enabling indigenous convicted offenders to serve their sentences in their communities. The State party should further strengthen its efforts to promote and facilitate access to justice at all levels by indigenous peoples.**

### **Situation of indigenous peoples**

19. While noting measures taken by the State party, the Committee remains concerned about: a) the risk of disappearance of indigenous languages; b) some indigenous people lacking access to basic needs; c) child welfare services which are not sufficiently funded; e) the fact that appropriate redress not yet being provided to all students who attended the Indian Residential Schools (arts. 2, 27).

**The State party should in consultation with indigenous people: a) implement and reinforce its existing programmes and policies to supply basic needs to indigenous peoples; b) reinforce its policies aimed at promoting the preservation of the languages of indigenous peoples; c) provide family and child care services on reserves with sufficient funding and; d) fully implement the recommendations of the Truth and Reconciliation Commission with regard to the Indian Residential Schools.**

20. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of its sixth periodic report and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-

governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into official languages and the minority languages of the State party.

21. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the recommendations made by the Committee in paragraphs 9 (murdered and missing indigenous women and girls), 12 (immigration detention, asylum-seekers and non-refoulement) and 16 (indigenous lands and titles ) above.

22. The Committee requests the State party to submit its next periodic report by 24 July 2020 and to include specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee requests the State party, in the preparation of the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.

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