

BRIEFING NOTES

UN Human Rights Bodies' Concerns and Recommendations Related to the Right to Food And the Lack of Follow-Up

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Overview

As is so clear from the extensive civil society engagement with this mission, civil society and stakeholders in Canada place immense importance in Canada's social rights commitments. NGOs from Canada were the first domestic NGOs to make oral submissions to any UN human rights treaty body in the context of a periodic review after they petitioned the CESCR, through its chairperson Philip Alston, in 1993, to initiate such a procedure on a trial basis in the context of Canada's review.

Since that time, reviews of Canada before treaty bodies have always been the subject of extensive engagement and mobilization. In UPR consultations with civil society, the overwhelming experience was of the incredible resonance social rights such as the right to food have in Canadian society.

Outlined below are some of the concerns and recommendations from UN treaty bodies relating to the emergence of widespread hunger in Canada. When Canada ratified the ICESCR in 1976, no one would have even imagined the concept of a food bank. When the provisions of the Charter were debated, access to adequate food and housing were protected under the Canada Assistance Plan Act (CAP) as fundamental social rights. Provincial social assistance rates were required to be sufficient to cover these basic requirements from 1966 until CAP was revoked in 1996. These were considered to be fundamental rights at that time and it was expected that the rights in the Canadian Charter to equality and security of the person would encompass these substantive social rights. It would have been unimaginable to parliamentarians that thirty years after the Charter was adopted, hunger and malnutrition would constitute a serious human rights crisis in Canada.

It will be critical for the Special Rapporteur to address the fact that so many important and reasonable recommendations from UN human rights bodies have simply been ignored. The mechanisms for following up on concerns and recommendations, both within the Federal Government and in co-ordination with the provinces and territories are entirely ineffective. The SR may find it helpful to ask specifically what was done to follow up on some of the recommendations below. The true answer is in most cases nothing has been done.

Civil society was so concerned about the loss of integrity in Canada's interactions with human rights bodies that we joined together at the time of Canada's UPR and submitted a joint statement urging that the "implementation gap" be addressed as the priority issue. That means

- 1) the development and implementation of an effective Federal/Provincial/Territorial mechanism for following up on concerns and recommendations, which engages central decision-makers as well as parliamentary and legislative committees; and*
- 2) ensuring access to effective remedies within domestic law.*

Recommendations of UN Human Rights Bodies re. the right to adequate food

This brief outlines the relevant comments/concerns made by United Nations human rights bodies regarding the implementation of the right to adequate food in Canada as well as Canada’s responses to those recommendations as they relate to the procedural and substantive aspects of the right to adequate food.

Concluding Observations of the Committee on Economic Social and Cultural Rights¹:

Year of Committee’s review	Committee’s concerns	Committee’s recommendations
1993	<p>“A further subject of concern for the Committee is the evidence of hunger in Canada and the reliance on food banks operated by charitable organizations.” (para. 16)</p> <p>In view of the obligation arising out of article 2 of the Covenant to apply the maximum of available resources to the progressive realization of the rights recognized in the treaty, and considering Canada’s enviable situation with regard to such resources, the Committee expresses concern about the persistence of poverty in Canada. There seems to have been no measurable progress in alleviating poverty over the last decade, nor in alleviating the severity of poverty among a number of particularly vulnerable groups.” (para 12)</p>	<p>“The Committee recommends a concerted Government action to eliminate the need for food banks.” (para 26)</p>
1998	<p>“The Committee received information to the effect that cuts of about 10 per cent in social assistance rates for single people have been introduced in Manitoba; 35 per cent in those for single people in Nova Scotia; and 21.6 per cent in those for both families and single people in Ontario. These cuts appear to have had a significantly adverse impact on vulnerable groups, causing increases in already high levels of homelessness and hunger” (para 21)</p> <p>“The Committee is concerned that the significant reductions in provincial social assistance programmes, the unavailability of affordable and appropriate housing and</p>	<p>“The Committee recommends that the State Party consider re-establishing a national programme with specific cash transfers for social assistance and social services that includes universal entitlements and national standards and lays down a legally enforceable right to adequate assistance for all persons in need, a right to freely chosen work, a right to appeal and a right to move freely from one job to another” (para 40)</p> <p>“The Committee urges the State Party to establish officially a poverty line and to establish social assistance at levels which ensure the realization of an</p>

¹ Links to Canada’s submissions and the Committee’s concluding observations can be found at <http://www.socialrightsonario.ca/international-human-rights/universal-periodic-review/> .

	<p>widespread discrimination with respect to housing create obstacles to women escaping domestic violence. Many women are forced, as a result of those obstacles, to choose between returning to or staying in a violent situation, on the one hand, or homelessness and inadequate food and clothing for themselves and their children, on the other.” (para 28)</p> <p>“The Committee is concerned that the minimum wage is not sufficient to provide an adequate standard of living for a worker and his or her family” (para 32)</p> <p>“The Committee is perturbed to hear that the number of food banks almost doubled between 1989 and 1997 in Canada and that they are able to meet only a fraction of the increased needs of the poor.” (para 33)</p>	<p>adequate standard of living for all.” (para 41)</p>
2006	<p>“The Committee notes with concern that the minimum wages in all provinces and territories of the State party are below the Low-Income Cut-Off and are insufficient to enable workers and their families to enjoy a decent standard of living.” (para 18)</p> <p>“The Committee is concerned that the State party has not provided detailed information as to whether current provincial and territorial social assistance rates allow recipients to enjoy an adequate standard of living. It notes with concern that in most provinces and territories, social assistance benefits are lower than a decade ago, that they do not provide adequate income to meet basic needs for food, clothing and shelter, and that welfare levels are often set at less than half the Low-Income Cut-Off.” (para 21)</p> <p>“The Committee notes with concern that about 7.4 per cent of the population, amounting to about 2.3 million people, suffer from food insecurity in the State party, that about 40 per cent of food bank users are children and young people, and that about 51 per cent of food bank users while receiving social assistance benefits in 2005, still had to resort to food banks because of the insufficient level of these benefits.” (para 27)</p>	<p>“The Committee recommends that the State party significantly intensify its efforts to address the issue of food insecurity and hunger in Canada. In this regard, the Committee reminds the State party of its core obligation to fulfil (provide) the right to food when disadvantaged and marginalized individuals or groups are, for reasons beyond their control, unable to realize these rights for themselves through all means possible at their disposal.” (para 61)</p> <p>“The Committee urges the State party to adopt all necessary measures to ensure that minimum wages are increased throughout Canada to a level enabling workers and their families to enjoy a decent standard of living.”</p> <p>“The Committee reiterates its recommendation that the State party establish an official poverty line. The Committee also recommends that the State party integrate economic, social and cultural rights in its poverty reduction strategies.” (para 60)</p>

Various concerns and recommendations regarding domestic legal protections and access to effective remedies have also been central to UN treaty body reviews :

Year of Committee's review	Committee's concerns	Committee's recommendations
1993	<p>“The Committee is concerned to learn that in a few cases, courts have ruled that the right to security of the person in the Charter does not protect Canadians from social and economic deprivation, or from infringements of their rights to adequate food, clothing and housing.” (para 23)</p> <p>“The Committee is concerned that provincial human rights legislation has not always been applied in a manner which</p>	<p>“The Committee recommends the incorporation in human rights legislation of more explicit reference to social, economic and cultural rights.” (para 25)</p> <p>“In recognition of the increasingly important role played by the courts in ordering remedial action against violations of social and economic rights, the Committee recommends that the Canadian judiciary be provided with training courses on Canada's</p>

	<p>would provide improved remedies against violations of social and economic rights, particularly concerning the rights of families with children, and the right to an adequate standard of living, including food and housing.” (para 24)</p> <p>“The Committee is concerned that in some court decisions and in recent constitutional discussions, social and economic rights have been described as mere "policy objectives" of governments rather than as fundamental human rights. The Committee was also concerned to receive evidence that some provincial governments in Canada appear to take the position in courts that the rights in article 11 of the Covenant are not protected, or only minimally protected, by the Charter of Rights and Freedoms. The Committee would like to have heard of some measures being undertaken by provincial governments in Canada to provide for more effective legal remedies against violations of each of the rights contained in the Covenant.” (para 21)</p>	<p>obligations under the Covenant and on their effect on the interpretation and application of Canadian law.” (para 29)</p>
1998	<p>“The Committee has received information about a number of cases in which claims were brought by people living in poverty (usually women with children) against government policies which denied the claimants and their children adequate food, clothing and housing. Provincial governments have urged upon their courts in these cases an interpretation of the Charter which would deny any protection of Covenant rights and consequently leave the complainants without the basic necessities of life and without any legal remedy.” (para 14)</p> <p>“The Committee is deeply concerned at the information that provincial courts in Canada have routinely opted for an interpretation of the Charter which excludes protection of the right to an adequate standard of living and other Covenant rights. The Committee notes with concern that the courts have taken this position despite the fact that the Supreme Court of Canada has stated, as has the Government of Canada before this Committee, that the Charter can be interpreted so as to protect these rights” (para 15)</p>	<p>“[E]nforcement mechanisms provided in human rights legislation need to be reinforced to ensure that all human rights claims not settled through mediation are promptly determined before a competent human rights tribunal, with the provision of legal aid to vulnerable groups.” (para 51)</p> <p>“The Committee urges the federal, provincial and territorial governments to adopt positions in litigation which are consistent with their obligation to uphold the rights recognized in the Covenant” (para 50)</p> <p>“The Committee recommends that the Federal Government extend the Court Challenges Programme to include challenges to provincial legislation and policies which may violate the provisions of the Covenant” (para 59)</p>
2006	<p>Concerns remain regarding:</p> <p>“The lack of legal redress available to individuals when governments fail to implement the Covenant, resulting from the insufficient coverage in domestic legislation of economic, social and cultural rights, as spelled out in the Covenant; the lack of effective enforcement mechanisms for these rights; the practice of governments of urging upon their courts an interpretation of the Canadian Charter of Rights and Freedoms denying protection of Covenant rights, and the inadequate availability of civil legal aid, particularly for economic, social and cultural rights; The absence of a legally enforceable right to adequate social assistance benefits for all persons in need on a non-discriminatory basis and the negative impact of certain workfare programmes on social assistance recipients; The insufficiency of minimum wage and social assistance to ensure the realization of the right to an adequate standard of living for all...” (para 11)</p>	<p>“The State party should take immediate steps, including legislative measures, to create and ensure effective domestic remedies for all Covenant rights in all relevant jurisdictions.” (para 40)</p> <p>“The Committee recommends that the State party ensure that civil legal aid with regard to economic, social and cultural rights is provided to poor people in the provinces and territories, and that it be adequate with respect to coverage, eligibility and services provided.” (para 43)</p>

Comments by other UN Human Rights Bodies:

Other UN human rights treaty bodies have similarly expressed concerns about the effects of social program cuts and failures to take appropriate measures to address poverty, hunger and homelessness. For example:

UN Review body, report, year	Committee's concerns	Committee's recommendations
<p>Committee on the Elimination of all forms of Discrimination Against Women, Concluding Observations of the Committee in response to Canada's 6th and 7th periodic reports, 2008</p>	<p>"The Committee is also concerned at reports of cuts in social assistance schemes in many provinces and at the resulting negative impact on the rights of vulnerable groups of women, such as single mothers, aboriginal women, Afro-Canadian women, immigrant women, elderly women and disabled women, who rely on social assistance for an adequate standard of living" (para 13)</p> <p>"While the Committee notes that the minimum wage rate has increased in a number of provinces and territories, it remains gravely concerned at the fact that poverty is widespread among women, in particular aboriginal women, minority women and single mothers." (para 39)</p>	<p>"The Committee calls upon the State party to establish minimum standards for the provision of funding to social assistance programmes, applicable at the federal, provincial and territorial levels, and a monitoring mechanism to ensure the accountability of provincial and territorial governments for the use of such funds so as to ensure that funding decisions meet the needs of the most vulnerable groups of women and do not result in discrimination against women" (para 14)</p> <p>"The Committee urges the State party to ensure that all women, particularly women belonging to vulnerable groups, have access to remedies for discrimination on the basis of sex by making available to them adequate mechanisms and access to legal aid so as to enable them to have legal representation and to seek and obtain redress from courts and tribunals for violations of their rights." (para 22)</p> <p>"The Committee also recommends that the State party carry out a cost-benefit analysis to assess the impact of current living standards, housing and childcare situations on the economic empowerment of women and present the findings in its next report to the Committee. Such an analysis should have a special focus on low-income women, taking into account the amount of social assistance they receive from the State compared with the actual cost of living, including housing and childcare." (para 40)</p>
<p>Human Rights Committee, Concluding Observations of the Committee in response to Canada's 5th periodic report, 2006</p>	<p>"The Committee is concerned by information that severe cuts in welfare programmes have had a detrimental effect on women and children, for example in British Columbia, as well as on Aboriginal people and Afro-Canadians" (para 24)</p>	<p>"The State party should adopt remedial measures to ensure that cuts in social programmes do not have a detrimental impact on vulnerable groups." (para 24)</p>
<p>Committee on the Rights of the Child, Concluding Observations of the Committee in response to Canada's 2nd periodic report 2003</p>	<p>"The Committee expresses its concern about the value of the Convention in domestic law. Certain basic provisions and principles of the Convention, particularly those relating to non-discrimination, the best interests of the child and the respect for the views of the child, have not always been</p>	<p>"The Committee encourages the State party to ensure that a coherent and comprehensive rights-based national plan of action is adopted, targeting all children, especially the most vulnerable groups including Aboriginal, migrant and refugee children; with a division of</p>

	<p>adequately reflected in national legislation and policy-making. The Committee is concerned by the emerging problem of child poverty, especially among vulnerable groups. While appreciating the programmes already set up, the Committee emphasizes the need for special programmes and services to provide the necessary care, especially in terms of education, housing and nutrition, for such children.” (para 11, 12)</p>	<p>responsibilities, clear priorities, a timetable and a preliminary allocation of necessary resources in conformity with the Convention at the federal, provincial, territorial and local levels in cooperation with civil society.” (para 13)</p> <p>“The Committee recommends that the State party pay particular attention to the full implementation of article 4 of the Convention by prioritizing budgetary allocations so as to ensure implementation of the economic, social and cultural rights of children, in particular those belonging to marginalized and economically disadvantaged groups, “to the maximum extent of ... available resources”. The Committee further encourages the State party to state clearly every year its priorities with respect to child rights issues and to identify the amount and proportion of the budget spent on children, especially on marginalized groups, at the federal, provincial and territorial levels in order to be able to evaluate the impact of the expenditures on children and their effective utilization.” (para 18)</p> <p>“In view of the fact that the Convention can only be referred to before the courts as a means of interpretation of national legislation, the Committee recommends that further steps be taken to ensure the effective implementation of the Convention at the national level. In this regard, the Committee also wishes to emphasise the importance of taking action to ensure that the general principles of the Convention, particularly those relating to non-discrimination...” (para 23)</p>
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Report of the Working Group on Universal Periodic Review²:

In 2009 Canada submitted its first report under the Universal Periodic Review procedure. The right to food was not specifically mentioned in Canada's submissions or in the Working Group's review. The following recommendations were made by the Working Group regarding procedural protections, poverty, and the right to an adequate standard of living. Canada rejected the substantive components each of these recommendations.

Recommendation	Canada's response
Recognize the justiciability of social, economic and cultural rights, in accordance with the Optional Protocol to ICESCR; ensure legal enforcement of economic, social and cultural rights in domestic courts (recommendation 10)	Canada does not accept recommendations 10, 13 and 41. Canada agrees that all human rights are universal, indivisible, interdependent and interrelated and strives to give the same importance to all rights. However, Canada does not accept that all aspects of economic, social and cultural rights are amenable to judicial review or that its international human rights treaty obligations require it to protect rights only through legislation. Some ESC rights are addressed by legislation in Canada. Various administrative and judicial bodies provide domestic remedies for violations of certain ESC rights and strong equality rights protection ensure their non-discriminatory application.
Develop a national strategy to eliminate poverty (recommendation 17)	Canada does not accept recommendation 17 or the related recommendation from Ghana to develop a national strategy to eliminate poverty. Provinces and territories have jurisdiction in this area of social policy and have developed their own programs to address poverty.
Integrate economic social and cultural rights in its poverty reduction strategies in a way that can benefit the most vulnerable groups in society, specially the Aborigines, afro-Canadians, migrants, persons with disabilities, youth, women with low incomes, and single mothers and adopt all necessary measures, including the full implementation of the United Nations Declaration on the Rights of Indigenous Peoples, to guarantee Aboriginals the full enjoyment of their rights including economic, social and cultural so that their standard of living was similar to that of the rest of the citizens in Canada (recommendation 45)	Canada accepts in part recommendation 45 and commits to giving appropriate attention to vulnerable groups in policy development. Canada does not accept recommendation 52, the related part of recommendation 45. Canada continues to have concerns with respect to the wording of the UN Declaration on the Rights of Indigenous Peoples, including the provisions on lands, territories and resources, and free, prior and informed consent. Canada remains strongly committed to the rights of indigenous peoples. The rights of Aboriginal people in Canada are protected by the Canadian Constitution and other domestic laws, and Canada is committed to making progress on issues of particular concern to Aboriginal people in Canada.

Canada's failure to follow up on or implement recommendations of UN Human Rights Bodies:

Canada has failed to implement/recognize the recommendations of made by UN human rights committees that have an impact on Canadian's realization to the right to adequate food and the right to an adequate standard of living. UN bodies have expressed increasing concern about Canada's failure to meaningfully engage with or follow-up on concerns and recommendations.

² Links to Canada's submissions and the Committee's concluding observations can be found at <http://www.socialrightsonario.ca/international-human-rights/universal-periodic-review/>. United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Canada*, UN Human Rights Council OR, 11th Sess, UN Doc A/HRC/11/17, (2009).

UN review body, report, year	Comment/concern re. Canada's lack of implementation of recommendations
Human Rights Committee, Concluding Observations of the Committee in response to Canada's 5 th periodic report, 2006	<p>“The Committee notes with concern that many of the recommendations it addressed to the State party in 1999 remain unimplemented... The State party should establish procedures, by which oversight of the 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 the full participation of all levels of government and of civil society, including indigenous peoples.” (para 6)</p> <p>“The Committee regrets that its previously expressed concern relating to the inadequacy of remedies for violations of articles 2, 3 and 26 of the Covenant remains unaddressed... The State party should ensure that the relevant human rights legislation is amended at federal, provincial and territorial levels and its legal system enhanced, so that all victims of discrimination have full and effective access to a competent tribunal and to an effective remedy.” (para 11)</p>
Committee on the Rights of the Child, Concluding Observations of the Committee in response to Canada's 2 nd periodic report, 2003	“The Committee, while noting the implementation of some of the recommendations it made upon consideration of the State party's initial report (CRC/C/11/Add.3), regrets that the rest have not been, or have been insufficiently” (para 4)
Committee on Economic, Social and Cultural Rights, Concluding Observations of the Committee in response to Canada's 3 rd periodic report, 1998	“The Committee, as in its review of the previous report of Canada, reiterates that economic and social rights should not be downgraded to “principles and objectives” in the ongoing discussions between the Federal Government and the provinces and territories regarding social programmes.” (para 52)
Committee on Economic, Social and Cultural Rights, Concluding Observations of the Committee in response to Canada's 4 th and 5 th periodic reports, 2006	<p>“The Committee, while noting the State party's Court Challenges Program, regrets that this programme has not been extended to permit funding with respect to challenges to provincial and territorial legislation and policies, as previously recommended by the Committee.” (para 14)</p> <p>“The Committee calls upon the State party to address the specific subjects of concern that date back to its second and third periodic reports and strongly reiterates that the State party should consider implementing the Committee's suggestions and recommendations in this regard.” (para 34)</p> <p>“The Committee, drawing the State party's attention to its general comment No. 9 (1998), reiterates its recommendation that the federal, provincial and territorial governments promote interpretations of the Canadian Charter of Rights and other domestic law in a way consistent with the Covenant.” (para 41)</p>

Recommendations Ignored:

There has been no co-ordinated policy response to key recommendations from the UN human rights bodies regarding social assistance reform, minimum wage, employment insurance, anti-poverty strategies etc. Where policies or programs have been changed, there has been no reference made by governments to their obligations under international human rights law or the concerns or recommendations of UN bodies.

Governments and courts have also ignored the recommendations made with regard to ensuring access to effective remedies to violations of social and economic rights including the right to food. The following critical recommendations in particular have been ignored :

- human rights legislation be amended to include the right to housing and other social and economic rights³

³ *Concluding Observations* 1998 at para 51, *Concluding Observations* 1993 at para 25.

- [provinces take] immediate steps, including legislative measures, to create and ensure effective domestic remedies for all Covenant rights in all relevant jurisdictions
- federal, provincial and territorial governments promote interpretations of the Canadian Charter of Rights and other domestic law in a way consistent with the Covenant⁴
- the federal government implement a strategy for the reduction of homelessness and poverty that integrates economic, social and cultural rights⁵

⁴ *Concluding Observations* 2006 at paras 39-41.

⁵ *Concluding Observations* 1998, at para 46, *Concluding Observations* 2006, at para 60.