



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fifth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

CANADA

1. The Human Rights Committee considered the fifth periodic report of Canada (CCPR/C/CAN/2004/5) at its 2312th and 2313th meetings (CCPR/C/SR.2312-2313), on 17 and 18 October 2005, and adopted the following concluding observations at its 2328th and 2330th meetings (CCPR/C/SR.2328 and 2330), on 27 and 28 October 2005.

A. Introduction

2. The Committee welcomes the timely submission of Canada's fifth periodic report, which was elaborated in conformity with the reporting guidelines, and contains information on national jurisprudence and relating to the Committee's previous concluding observations.

3. The Committee further appreciates the attendance of a delegation composed of experts in various fields relevant to the Covenant, some of them coming from Canadian provinces, and welcomes their efforts to answer to the Committee's written and oral questions.

B. Positive aspects

4. The Committee notes with appreciation that Canada acceded to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2002, and ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2005.

5. The Committee appreciates the fact that Canada has a vigorous civil society, which plays an important role in the promotion of human rights, both at the national and international levels.

C. Principal subjects of concern and recommendations

6. The Committee notes with concern that many of the recommendations it addressed to the State party in 1999 remain unimplemented. It also regrets that the Committee's previous concluding observations have not been distributed to members of Parliament and that no parliamentary committee has held hearings on issues arising from the Committee's observations, as anticipated by the delegation in 1999 (art. 2).

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.

7. The Committee notes with concern the State party's reluctance to consider that it is under an obligation to implement the Committee's requests for interim measures of protection. The Committee recalls that, in acceding to the Optional Protocol, the State party recognized the Committee's competence to receive and examine complaints from individuals under the State party's jurisdiction. Disregard of the Committee's requests for interim measures is inconsistent with the State party's obligations under the Covenant and the Optional Protocol.

The State party should adhere to its obligations under the Covenant and the Optional Protocol, in accordance with the principle of *pacta sunt servanda*, and take the necessary measures to avoid similar violations in future.

8. The Committee, while noting with interest Canada's undertakings towards the establishment of alternative policies to extinguishment of inherent aboriginal rights in modern treaties, remains concerned that these alternatives may in practice amount to extinguishment of aboriginal rights (arts. 1 and 27).

The State party should re-examine its policy and practices to ensure they do not result in extinguishment of inherent aboriginal rights. The Committee would also like to receive more detailed information on the comprehensive land claims agreement that Canada is currently negotiating with the Innu people of Quebec and Labrador, in particular regarding its compliance with the Covenant.

9. The Committee is concerned that land claim negotiations between the Government of Canada and the Lubicon Lake Band are currently at an impasse. It is also concerned about information that the land of the Band continues to be compromised by logging and large-scale oil and gas extraction, and regrets that the State party has not provided information on this specific issue (arts. 1 and 27).

The State party should make every effort to resume negotiations with the Lubicon Lake Band, with a view to finding a solution which respects the rights of the Band under the Covenant, as already found by the Committee. It should consult with the Band before granting licences for economic exploitation of the disputed land, and ensure that in no case such exploitation jeopardizes the rights recognized under the Covenant.

10. The Committee, while noting the responses provided by the State party in relation to the preservation, revitalization and promotion of Aboriginal languages and cultures, remains concerned about the reported decline of Aboriginal languages in Canada (art. 27).

The State party should increase its efforts for the protection and promotion of Aboriginal languages and cultures. It should provide the Committee with statistical data or an assessment of the current situation, as well as with information on action taken in the future to implement the recommendations of the Task Force on Aboriginal Languages and on concrete results achieved.

11. 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. It is concerned that human rights commissions still have the power to refuse referral of a human rights complaint for adjudication and that legal aid for access to courts may not be available.

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.

12. The Committee, while noting the existence of a social protest protection clause, expresses concern about the wide definition of terrorism under the Anti-Terrorism Act.

The State party should adopt a more precise definition of terrorist offences, so as to ensure that individuals will not be targeted on political, religious or ideological grounds, in connection with measures of prevention, investigation or detention.

13. The Committee notes with concern that the amendments to the Canada Evidence Act introduced by the Anti-Terrorism Act (sect. 38), relating to the non-disclosure of information in connection with or during the course of proceedings, including criminal proceedings, which could cause injury to international relations, national defence or national security, do not fully abide by the requirements of article 14 of the Covenant.

The State party should review the Canada Evidence Act so as to guarantee the right of all persons to a fair trial, and in particular, to ensure that individuals cannot be condemned on the basis of evidence to which they, or those representing them, do not have full access. The State party, bearing in mind the Committee's general comment No. 29 (2001) on states of emergency, should in no case invoke exceptional circumstances as justification for deviating from fundamental principles of fair trial.

14. The Committee is concerned by the rules and practices governing the issuance of "security certificates" under the Immigration and Refugee Protection Act, enabling the arrest, detention and expulsion of immigrants and refugees on grounds of national security. The Committee is concerned that, under such rules and practices, some people have been detained for several years without criminal charges, without being adequately informed about the reasons for their detention, and with limited judicial review. It is also concerned about the mandatory detention of foreign nationals who are not permanent residents (arts. 7, 9 and 14).

The State party should ensure that administrative detention under security certificates is subject to a judicial review that is in accordance with the requirements of article 9 of the Covenant, and legally determine a maximum length of such detention. The State party should also review its practice with a view to ensuring that persons suspected of terrorism or any other criminal offences are detained pursuant to criminal proceedings in compliance with the Covenant. It should also ensure that detention is never mandatory but decided on a case-by-case basis.

15. The Committee is concerned by the State party's policy that, in exceptional circumstances, persons can be deported to a country where they would face the risk of torture or cruel, inhuman or degrading treatment, which amounts to a grave breach of article 7 of the Covenant.

The State party should recognize the absolute nature of the prohibition of torture, cruel, inhuman or degrading treatment, which in no circumstances can be derogated from. Such treatments can never be justified on the basis of a balance to be found between society's interest and the individual's rights under article 7 of the Covenant. No person, without any exception, even those suspected of presenting a danger to national security or the safety of any person, and even during a state of emergency, may be deported to a country where he/she runs the risk of being subjected to torture or cruel, inhuman or degrading treatment. The State party should clearly enact this principle into its law.

16. While appreciating the firm denial by the delegation, the Committee is concerned by allegations that Canada may have cooperated with agencies known to resort to torture with the aim of extracting information from individuals detained in foreign countries. It notes that a public inquiry is under way regarding the role of Canadian officials in the Maher Arar case, a Canadian citizen arrested in the United States of America and deported to the Syrian Arab Republic where he was reportedly tortured. The Committee regrets however that insufficient information was provided as to whether cases of other Canadians of foreign origin detained, interrogated and allegedly tortured are the subject of that or any other inquiry (art. 7).

The State party should ensure that a public and independent inquiry review all cases of Canadian citizens who are suspected terrorists or suspected to be in possession of information in relation to terrorism, and who have been detained in countries where it is feared that they have undergone or may undergo torture and ill-treatment. Such inquiry should determine whether Canadian officials have directly or indirectly facilitated or tolerated their arrest and imprisonment.

17. The Committee is concerned about information that, in some provinces and territories, people with mental disabilities or illness remain in detention because of the insufficient provision of community-based supportive housing (arts. 2, 9, 26).

The State party, including all governments at the provincial and territorial level, should increase its efforts to ensure that sufficient and adequate community based housing is provided to people with mental disabilities, and ensure that the latter are not under continued detention when there is no longer a legally based medical reason for such detention.

18. The Committee expresses concern about the situation of women prisoners, in particular Aboriginal women, women belonging to ethnic minorities and women with disabilities. While welcoming the information provided by the State party on measures adopted or planned in response to the findings of the Canadian Human Rights Commission, the Committee remains concerned by the decision of the authorities to maintain the practice of employing male front-line staff in women's institutions (arts. 2, 3, 10 and 26).

The State party should put an end to the practice of employing male staff working in direct contact with women in women's institutions. It should provide substantial information on the implementation of the recommendations of the Canadian Human Rights Commission as well as on concrete results achieved, in particular regarding the establishment of an independent external redress body for federally sentenced offenders and independent adjudication for decisions related to involuntary segregation, or alternative models.

19. The Committee notes with concern that the Youth Criminal Justice Act enables imprisonment of persons under 18 with adults if serving an adult sentence (arts. 10 and 24).

The State party should ensure that no person under 18 years of age is tried as an adult, and that no such person can be held together with adults in correctional facilities, whether federal, provincial or territorial.

20. The Committee is concerned about information that the police, in particular in Montreal, have resorted to large-scale arrests of demonstrators. It notes the State party's responses that none of the arrests in Montreal have been arbitrary since they were conducted on a legal basis. The Committee, however, recalls that arbitrary detention can also occur when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by the Covenant, in particular under articles 19 and 21 (arts. 9, 19, 21 and 26).

The State party should ensure that the right of persons to peacefully participate in social protests is respected, and ensure that only those committing criminal offences during demonstrations are arrested. The Committee also invites the State party to conduct an inquiry into the practices of the Montreal police forces during demonstrations, and wishes to receive more details about the practical implementation of article 63 of the Criminal Code relating to unlawful assembly.

21. The Committee expresses concern about the State party's responses relating to the Committee's Views in the case *Waldman v. Canada* (Communication No. 694/1996, Views adopted on 3 November 1999), requesting that an effective remedy be granted to the author eliminating discrimination on the basis of religion in the distribution of subsidies to schools (arts. 2, 18 and 26).

The State party should adopt steps in order to eliminate discrimination on the basis of religion in the funding of schools in Ontario.

22. The Committee notes with concern that the Canadian Human Rights Act cannot affect any provision of the Indian Act or any provision made under or pursuant to that Act, thus allowing discrimination to be practised as long as it can be justified under the Indian Act. It is concerned that the discriminatory effects of the Indian Act against Aboriginal women and their children in matters of reserve membership have still not been remedied, and that the issue of matrimonial real property on reserve lands has still not been properly addressed. While stressing the obligation of the State party to seek the informed consent of indigenous peoples before adopting decisions affecting them and welcoming the initiatives taken to that end, the Committee observes that balancing collective and individual interests on reserves to the sole detriment of women is not compatible with the Covenant (arts. 2, 3, 26 and 27).

The State party should repeal section 67 of the Canadian Human Rights Act without further delay. The State party should, in consultation with Aboriginal peoples, adopt measures ending discrimination actually suffered by Aboriginal women in matters of reserve membership and matrimonial property, and consider this issue as a high priority. The State party should also ensure equal funding of Aboriginal men and women associations.

23. The Committee is concerned that Aboriginal women are far more likely to experience a violent death than other Canadian women. While noting the State party's numerous programmes aimed at addressing the issue, the Committee regrets the lack of precise and updated statistical data on violence against Aboriginal women, and notes with concern the reported failure of police forces to recognize and respond adequately to the specific threats faced by them (arts. 2, 3, 6, 7 and 26).

The State party should gather accurate statistical data throughout the country on violence against Aboriginal women, fully address the root causes of this phenomenon, including the economic and social marginalization of Aboriginal women, and ensure their effective access to the justice system. The State party should also ensure that prompt and adequate response is provided by the police in such cases, through training and regulations.

24. 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 (arts. 3, 24 and 26).

The State party should adopt remedial measures to ensure that cuts in social programmes do not have a detrimental impact on vulnerable groups.

25. The Committee sets 31 October 2010 as the date for the submission of Canada's sixth periodic report. It requests that the State party's fifth periodic report and the present concluding observations be published and widely disseminated in Canada, to the general public

as well as to the judicial, legislative and administrative authorities, and that the sixth periodic report be circulated for the attention of the non-governmental organizations operating in the country.

26. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit within one year information on the follow-up given to the Committee's recommendations in paragraphs 12, 13, 14 and 18 above. The Committee requests the State party to include in its next periodic report information on its remaining recommendations and on the implementation of the Covenant as a whole. The State party is encouraged to increase its efforts to provide the Committee with more detailed information on concrete results achieved.
