



COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
Thirty-sixth session
1 – 19 May 2006

ADVANCE UNEDITED VERSION

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLES 16 AND 17 OF THE COVENANT**

**Concluding Observations of the Committee on
Economic, Social and Cultural Rights**

CANADA

1. The Committee on Economic, Social and Cultural Rights considered the fourth and fifth periodic reports of Canada on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/4/Add.15 and E/C.12/CAN/5) at its 9th to 12th meetings, held on 5 and 8 May 2006 (E/C.12/2006/SR.9-12), and adopted, at its 29th meeting held on 19 May 2006, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fourth and fifth periodic reports of the State party, as well as the written responses provided in advance to the Committee's lists of issues (E/C.12/Q/CAN/2 and E/C.12/CAN/Q/5). The Committee also welcomes the dialogue with the State party's delegation, composed of experts in the various fields covered by the Covenant, as well as of representatives from some Provinces and Territories of the State party. The Committee notes however, that the submission of the fifth periodic report at a time when the fourth periodic report had not yet been considered did not facilitate the consideration of the situation in the State party.

B. Positive Aspects

3. The Committee notes that Canada still ranks at the top of the Human Development Index of the United Nations Development Programme. On the average, Canadians enjoy a high standard of living and Canada has the capacity to achieve a high level of realization of all Covenant rights.
4. The Committee welcomes the relatively low level of unemployment in the State party, and the decrease in the proportion of persons living below the Low Income Cut Off from 13.7 percent in 1998 to 11.2 percent in 2004.
5. The Committee notes with appreciation the reduction in disparities between Aboriginal people and the rest of the population in the State party with regard to infant mortality and secondary education.
6. The Committee welcomes the measures taken by the State party in the area of equal pay for equal work, in particular the payment of retroactive adjustments to women who had suffered discrimination.
7. The Committee welcomes the extension of maternity and parental benefits from 6 months to one year.
8. The Committee notes with satisfaction the numerous health programmes conducted by the State party, such as the 10-Year Plan to Strengthen Health Care and the launch of the Public Health Agency.
9. The Committee notes that Canada's level of Official Development Assistance was raised from about 0.27 percent of GNP in 2004 to a current estimated level of 0.33 percent of GNP.

C. Factors and Difficulties Impeding the Implementation of the Covenant

10. The Committee notes the absence of any factors or difficulties preventing the effective implementation of the Covenant in the State party.

D. Principal Subjects of Concern

11. The Committee regrets that most of its 1993 and 1998 recommendations have not been implemented, and that the State party has not addressed in an effective manner the following principal subjects of concern, which were stated in relation to the second and third periodic reports, and which are still relevant:
 - a) The State party's restrictive interpretation of its obligations under the Covenant, in particular its position that the Covenant sets forth principles and programmatic objectives rather than legal obligations, and the consequent lack of awareness, in the Provinces and Territories, of the State party's legal obligations under the Covenant.

- b) 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 to urge upon their courts an interpretation of the Canadian Charter on Rights and Freedoms denying protection of Covenant rights, and the inadequate availability of civil legal aid, particularly for economic, social and cultural rights.
- c) 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.
- d) The disparities that still persist between Aboriginal peoples and the rest of the Canadian population in the enjoyment of Covenant rights, as well as the discrimination still experienced by Aboriginal women in matters of matrimonial property.
- e) The absence of an official poverty line.
- f) The insufficiency of minimum wage and social assistance to ensure the realization of the right to an adequate standard of living for all.
- g) The authorization given to Provinces and Territories to deduct the amount of the child benefit under the National Child Benefit Scheme from the amount of social assistance received by parents on welfare.

12. The Committee is concerned that despite the consultations and sharing of information between federal, provincial and territorial governments through the FPT Continuing Committee of Officials on Human Rights, effective procedures to follow-up on the Committee's concluding observations have not been developed.

13. The Committee, while noting the State party's Court Challenges Program, regrets that this Program has not been extended to permit funding with respect to challenges to provincial and territorial legislation and policies, as previously recommended by the Committee.

14. The Committee notes with concern the cuts in financial support to civil legal aid services with regard to economic, social and cultural rights in a number of jurisdictions of the State party. This leads to a situation where poor people, in particular poor single women that are denied benefits and services to which they are entitled to under domestic law, cannot access domestic remedies. The drastic cuts in British Columbia raise particular concern in this regard.

15. The Committee is concerned that, despite Canada's economic prosperity and the reduction of the number of people living below the Low Income Cut Off, 11.2 percent of its population still lived in poverty in 2004, and that significant differences in levels of poverty persist between Provinces and Territories. The Committee also notes with particular concern that poverty rates remain very high among disadvantaged and marginalized individuals and groups such as Aboriginal peoples, African-Canadians, immigrants, persons with disabilities, youth, low-income women and single mothers. In a number of jurisdictions, including British

Columbia, poverty rates have increased among single mothers and children in the period between 1998 and 2003. The Committee is also concerned by the significant disparities still remaining between Aboriginal people and the rest of the population in areas of employment, access to water, health, housing and education, and by the failure of the State party to fully acknowledge the barriers faced by African-Canadians in the enjoyment of their rights under the Covenant.

16. The Committee, while noting that the State party has withdrawn, since 1998, the requirement for an express reference to extinguishment of Aboriginal rights and titles either in a comprehensive claim agreement or in the settlement legislation ratifying the agreement, remains concerned that the new approaches, namely the “modified rights model” and the “non-assertion model”, do not differ much from the extinguishment and surrender approach. It further regrets not having received detailed information on other approaches based on recognition and coexistence of rights, which are currently under study.

17. The Committee notes with concern that the long-standing issues of discrimination against First Nations women and their children, in matters relating to Indian status, Band membership, and matrimonial real property on reserve lands have still not been resolved. The Committee notes that such discrimination has had a negative impact on the enjoyment of economic, social and cultural rights of some First Nations women and their children under the Covenant.

18. 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.

19. The Committee is concerned that some categories of workers such as public servants and employees of Crown corporations, public school teachers and college and university professors are excluded from the right to strike in Canada. The Committee considers that the explanation provided by the State party that these workers provide essential services, is not satisfactory under articles 4 and 8 of the Covenant.

20. The Committee reiterates its concern that federal transfers for social assistance and social services to Provinces and Territories, still do not include standards in relation to some of the rights set forth in the Covenant, including the right to social security. The Committee is also concerned that while the federal government has increased its contribution to the costs of health care through the Canada Health Transfer, its support for post-secondary education, social assistance and social services through the Canada Social Transfer has not even been restored to 1994-1995 levels, in spite of the sustained economic growth in the State party during these last years.

21. 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.

22. The Committee expresses concern about the significantly low proportion of unemployed workers eligible for receiving insurance benefits, and notes that the State party has not provided detailed responses to the Committee's previous concerns on this issue. The Committee notes with concern that in 2001, only 39 per cent of unemployed Canadians were eligible for benefits; that in some Provinces such as Ontario, eligibility rates are even lower; that the number of youth receiving employment insurance benefits has decreased; that migrant workers and many part-time workers, predominantly women, contribute to the plan but have great difficulties in accessing benefits; and that the replacement rate of income which has been reduced to 55 per cent in 1997, is the lowest ever.

23. The Committee, while noting the information provided by the State party of its willingness to ensure that low-income working families do not receive fewer benefits than those receiving social assistance, is deeply concerned by the discriminatory impact of the National Child Benefit "clawback system", on the poorest families in Canada, in particular single-mother-led families.

24. The Committee notes with concern that low-income families, single-mother-led families and Aboriginal and African-Canadian families, are over-represented in families whose children are relinquished to foster care. The Committee is also concerned that women continue to be forced to relinquish their children into foster care because of inadequate housing.

25. The Committee regrets that domestic violence as a specific offence has not been included in the criminal code.

26. The Committee notes with concern that women are prevented from leaving abusive relationships due to the lack of affordable housing and inadequate assistance.

27. The Committee notes with concern that about 7.4 % of the population, amounting to about 2.3 million people, suffer from food insecurity in the State party, that about 40 percent of food bank users are children and young people, and that about 51 percent 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.

28. The Committee, while welcoming the National Homelessness Initiative and the adoption of numerous measures on housing, regrets that the information provided was not sufficient enough to assess the results of such measures. In particular the Committee is concerned that the estimated number of homeless persons in Canada still ranges from 100,000 to 250,000. The Committee, while welcoming the decrease in the proportion of households with core housing need, notes with concern that in 2001 such households still represented about 13,7 to 16 percent of all households. The Committee is further concerned that shelter allowances and social assistance rates continue to fall far below average rental costs, and that waiting lists for subsidized housing remain very long, as for example in Hamilton and Montreal.

29. The Committee notes with particular concern that many evictions occur on account of minimal arrears of rent, without due consideration of the State party's obligations under the Covenant.

30. The Committee regrets that the State party does not recognize the right to water as a legal entitlement, which is implicitly provided for under articles 11 and 12 of the Covenant, as outlined in the Committee's General Comment n° 15 (2002) on the right to water.

31. The Committee, while noting that scholarships, bursaries, loans and other types of supports are provided to disadvantaged and marginalized individuals and groups, expresses concern about the discriminatory impact of tuition fee increases on low-income persons in many Provinces and Territories since 1998.

32. The Committee is concerned about information that African Canadian students face difficulties in accessing education and that they experience a disproportionately high drop out rates from secondary school.

33. The Committee, while noting the numerous programmes adopted to preserve Aboriginal languages in the State party, as well as the studies conducted in the area of the protection of traditional knowledge, regrets that no time frame has been set up for the consideration and implementation of the recommendations of the Task Force on Aboriginal Languages and Cultures, and that no concrete measures have been adopted in the area of intellectual property for the protection and promotion of ancestral rights and traditional knowledge of Aboriginal peoples.

E. Suggestions and recommendations

34. The Committee calls upon the State party to address the specific subjects of concern that date back to the second and third periodic reports and strongly reiterates that the State party consider implementing the Committee's suggestions and recommendations in this regard.

35. The Committee reiterates its recommendation that the federal government take concrete steps to ensure that Provinces and Territories are made aware of the State party's legal obligations under the Covenant, that the Covenant rights should be enforceable within Provinces and Territories through legislation or policy measures, and that independent and appropriate monitoring and adjudication mechanisms be established in this regard. In particular, the State party should establish transparent and effective mechanisms, involving all levels of governments as well as civil society, including indigenous peoples, with the specific mandate to follow-up on the Committee's concluding observations.

36. The Committee recalls that, within the limits of the appropriate exercise of their functions of judicial review, courts should take account of Covenant rights where this is necessary to ensure that the State party's conduct is consistent with its obligations under the Covenant, in line with the Committee's General Comment n° 9 (1998) (see for example *Chaoulli v. Quebec – Attorney General*).

37. The Committee urges the State party to re-examine its policies and practices towards the inherent rights and titles of Aboriginal peoples, to ensure that policies and practices do not result in extinguishment of those rights and titles.

38. The Committee strongly recommends that the State party resume negotiations with the Lubicon Lake Band, with a view to finding a solution to the claims of the Band that ensures the enjoyment of their rights under the Covenant. The Committee also strongly recommends the State party to conduct effective consultation with the Band prior to the grant of licences for economic purposes in the disputed land, and to ensure that such activities do not jeopardize the rights recognized under the Covenant.

39. The Committee recommends that federal, provincial and territorial legislation be brought in line with the State party's obligations under the Covenant, and that such legislation should protect poor people in all jurisdictions from discrimination because of social or economic status.

40. 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.

41. The Committee, drawing the State party's attention to its General Comment n° 9 (1998), reiterates its recommendation that the federal, provincial and territorial governments promote interpretations of the Canadian Charter and other domestic law in a way consistent with the Covenant.

42. The Committee reiterates its recommendation that the State party extend the Court Challenges Programme to permit funding of challenges with respect to provincial and territorial legislation and policies.

43. 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 Provinces and Territories, and that it be adequate with respect to coverage, eligibility and services provided.

44. The Committee recommends that the State party fully abide by its obligations under article 2 (1) of the Covenant to take all possible measures to the maximum of its available resources to ensure the enjoyment of economic, social and cultural rights for all and reminds the State party, in line with its General Comment n° 3 (1990), that steps to that end "should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant." The Committee also recommends that the State party eliminate gaps in the area of poverty as a matter of priority, bearing in mind the immediate nature of the obligations contained in articles 2 and 3 of the Covenant. The Committee further recommends that the State party assess the extent to which poverty is a discrimination issue in Canada, and ensure that measures and programmes do not have a negative impact on the enjoyment of economic, social and cultural rights, especially for disadvantaged and marginalized individuals and groups.

45. The Committee recommends that the State party, in consultation with First Nations and including Aboriginal women's groups, adopt measures to combat discrimination against First

Nations women and their children in matters relating to Indian status, Band membership and matrimonial property. In particular, the Committee urges the State party to repeal section 67 of the Canadian Human Rights Act, which prevents First Nations people from filing complaints of discrimination before a human rights commission or tribunal. The Committee also urges the State party to amend the Indian Act to remove any residual discrimination against First Nations women and their children.

46. The Committee recommends that the State party take into consideration the right to work of women and the need of parents to balance work and family life, by supporting their care choices through adequate child care services.

47. 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.

48. The Committee recommends that the State party take steps to ensure access to employment insurance benefits, enjoyment of trade union rights and effective protection by labour standards for workers in precarious, part-time and temporary low wage jobs in the State party, particularly women.

49. The Committee urges the State party to adopt effective measures, legislative or otherwise, to eliminate exploitation and abuse of migrant domestic workers who are under the federal Live-in Caregiver Program.

50. The Committee recommends that legislation be adopted at the provincial and territorial levels, where necessary, to ensure equal remuneration for work of equal value in both the public and private sectors. In this regard, the Committee reminds the State party that the principle of non discrimination provided for in article 2(2) is an immediate obligation.

51. The Committee strongly recommends that the compatibility of restrictions on the right to strike imposed at the federal, provincial and territorial levels with articles 4 and 8 of the Covenant be re-examined. Such restrictions should be eliminated where they are not strictly necessary for the promotion of the general welfare in a democratic society, for the protection of the interests of national security or public safety, public order, public health or the protection of the rights and freedoms of others, and where no other alternative may be found.

52. The Committee recommends that the State party undertake a detailed assessment of the impact of the reduction of federal transfers for social assistance and social services to Provinces and Territories, on the standard of living of people depending on social welfare, in particular women, children, older persons, persons with disabilities, Aboriginal people, African-Canadians and members of other minorities. The Committee strongly recommends that the State party reconsider all retrogressive measures adopted in 1995.

53. The Committee urges the State party to establish social assistance at levels which ensure the realization of an adequate standard of living for all.

54. The Committee recommends that the State party reassess the Employment Insurance scheme with a view to providing greater access and improved benefit levels to all unemployed workers.

55. The Committee reiterates its recommendation that the National Child Benefit Scheme be amended so as to prohibit Provinces and Territories from deducting child benefit from social assistance entitlements.

56. The Committee recommends that the State party gather disaggregated statistical data in relation to the relinquishment to foster care of children belonging to low-income families, single-mother-led families, and Aboriginal and African-Canadian families in order to accurately assess the extent of the problem. The Committee further recommends that, in accordance with the provisions of article 10 of the Covenant on the protection of families, the federal, provincial and territorial governments undertake all necessary measures including through financial support, where necessary, to avoid such relinquishment.

57. The Committee recommends that the State party give special attention to the difficulties faced by homeless girls who are more vulnerable to health risks and social and economic deprivation, and take all necessary measures to provide them with adequate housing and social and health services.

58. The Committee recommends that domestic violence be included as a specific offence in the criminal code.

59. The Committee recommends the State party to ensure that low-income women and women trying to leave abusive relationships can access housing options and appropriate support services in keeping with the right to an adequate standard of living.

60. 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. In this regard, the State party is referred to the Committee's Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights, adopted in May 2001.

61. 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.

62. The Committee reiterates its recommendation that the federal, provincial and territorial governments address homelessness and inadequate housing as a national emergency by reinstating or increasing, where necessary, social housing programmes for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels, and providing

adequate support services for persons with disabilities. The Committee urges the State party to implement a national strategy for the reduction of homelessness that includes measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms, in keeping with Covenant standards.

63. The Committee strongly recommends that, before forced evictions are carried out, the State party take appropriate measures, legislative or otherwise, to ensure that those affected by forced evictions are provided with alternative accommodation and thus do not face homelessness, in line with the Committee's General Comments n° 7 (1997).

64. The Committee strongly recommends that the State party review its position on the right to water, in line with the Committee's General Comment n° 15 (2002) on the right to water, so as to ensure equal and adequate access to water for people living in the State party, irrespective of the Province or Territory in which they live or the community to which they belong.

65. The Committee recommends that the State party ensure by every appropriate means that higher education be made equally accessible to all, on the basis of capacity.

66. The Committee recommends that an overall assessment of the situation of African-Canadians be conducted, particularly in the area of education, in order to adopt and effectively implement a targeted programme of action to realize their rights under the Covenant.

67. The Committee recommends that the State party undertake the adoption and implementation of concrete plans, with relevant benchmarks and time frames, for the consideration and implementation of the recommendations of the Task Force on Aboriginal Languages and Cultures, as well as in the area of intellectual property for the protection and promotion of ancestral rights and traditional knowledge of Aboriginal peoples.

68. The Committee reminds the State party that although trade liberalization has a wealth-generating potential, such liberalization does not necessarily create and lead to a favorable environment for the realization of economic, social and cultural rights. In this regard, the Committee recommends the State party to consider ways in which the primacy of Covenant rights may be ensured in trade and investment agreements, and in particular in the adjudication of investor-state disputes under Chapter XI of NAFTA.

69. The Committee requests the State party to include in its sixth periodic report, detailed information on any measures taken and progress made, particularly with regard to the suggestions and recommendations made by the Committee in the present concluding observations.

70. The Committee requests that the succeeding State party's reports focus primarily on the State party's follow-up to the Committee's previous concluding observations, and structured by articles of the Covenant. The Committee also requests the State party to provide, in addition to information on measures adopted, details on the substantive impact of such measures on the realization of economic, social and cultural rights. In this regard, the Committee also wishes to

receive comparative statistical data on an annual basis, as well as information on percentages of budget allocations to programmes relevant under the Covenant.

71. The Committee encourages the State party to actively engage non-governmental organisations and other members of civil society in a meaningful process of discussions, at the federal, provincial and territorial levels, prior to the submission its next periodic report to the Committee.

72. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among government officials and judicial authorities, and to inform the Committee on all steps taken to implement them in its next periodic report.

73. The Committee requests the State party to submit its sixth periodic report by 6 June 2010.
