

# UPR MONITOR

International Service for Human Rights



Human Rights Monitor Series

## UNIVERSAL PERIODIC REVIEW, 4<sup>TH</sup> SESSION CANADA REVIEWED ON 3 FEBRUARY 2009, MORNING

### Overview

Canada's large delegation to the UPR Working Group was headed by Mr John Sims, Deputy Minister in the Department of Justice and was composed of representatives of several relevant federal and provincial ministries.

The review attracted a lot of interest from States with more than 65 inscribed to speak. Although the speaking time was reduced to two minutes from three only around 40 countries were able to take the floor.<sup>1</sup> Only six countries had submitted written questions in advance, all of them European.

During the review, many States generally commended Canada for its human rights record and its role at the international level in efforts to promote and protect human rights. However, a number of States were very critical of Canada's international performance, in particular on the Human Rights Council (the Council) as well as its withdrawal from the Durban Review Conference. They argued that Canada's votes against Council resolutions on the human rights situation in the occupied Palestinian territories did not comply with the principles of 'objectivity, non-selectivity and non-politicisation' that it had undertaken to respect when becoming a Council member. Notably, many States urged Canada to reconsider its negative position on the *Declaration on the Rights of Indigenous Peoples*.

Most of the review focused on the disadvantages and discrimination suffered by Aboriginal peoples in Canada and discrimination against Arab, Muslim and Afro-Canadian communities. Attention was also paid to the lack of specific criminal legislation on domestic violence, treatment of refugees and migrants, the prevalence of poverty, and trafficking.

While frequent references were made to the findings and recommendations of treaty bodies and special procedures, most of the recommendations put forward remained quite general. The delegation seemed well-prepared and answered a selected number of the questions posed. Some of the more politically charged comments and recommendations, including its position on the human rights situation in the occupied Palestinian territories, went unaddressed. The State's presentation and replies acknowledged some challenges, including in relation to Aboriginal peoples and violence against women.

---

<sup>1</sup> All the statements prepared for the review are posted on the OHCHR extranet, available at <http://portal.ohchr.org/portal/page/portal/UPR>. Fill in the form at [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive username and password. Audiovisual archives of the meetings of the Working Group 'webcast' are available at [www.un.org/webcast/unhrc/index.asp](http://www.un.org/webcast/unhrc/index.asp).

## General information on Canada

- Canada is a member of the Human Rights Council (2006-2009).
- The members of the troika for the examination of Canada were United Kingdom, Bangladesh and Azerbaijan.<sup>2</sup>
- According to the State report, Canada held a workshop with civil society in June 2008 and six regional ‘engagement sessions’ in January 2009. In its opening presentation, Canada acknowledged that civil society was dissatisfied with the timing and nature of the ‘engagement process’.

## Information submitted to the Working Group<sup>3</sup>

The **national report** of Canada is very detailed and comprehensive in terms of the domestic legislative and policy framework. However, it provides only very limited information about the level of implementation of human rights obligations and challenges faced. Challenges are only recognised in relation to the situation of Aboriginal peoples.

The OHCHR **compilation of UN information** focuses on: pending implementation of recommendations by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights; discrimination against Aboriginal peoples, and in particular multiple discrimination against Aboriginal women in areas of employment, housing, education, and health care; settling of land rights of Aboriginal peoples and the impact of extractive and industrial activities on their rights; prevalence of domestic violence; treatment and detention of asylum-seekers; exploitation of migrant workers; poverty; inadequate protection against *refoulement* to places where a person may face torture; anti-terrorism laws and racial profiling; and trafficking.

50 other stakeholders, including 42 non-governmental organisations (NGOs) (of which 6 were coalitions of NGOs), submitted information for the OHCHR **summary of stakeholders’ information**. Some NGOs focused on the rights of Aboriginal persons and highlighted discrimination in relation to income, employment, education, health, and overrepresentation in prisons, suicide and poverty and highlighted the particular disadvantages suffered by Aboriginal women.<sup>4</sup> Many NGOs focused on Aboriginal peoples’ land rights, including obstacles to access to justice to claim title, limited implementation of modern land agreements, impact of extraction and other industries, and the failure to obtain the consent of Aboriginal peoples in regard to such activities.<sup>5</sup> Several NGOs also focused on Canada’s position on the *Declaration on the Rights of Indigenous Peoples* and called on the Government to change its stance.<sup>6</sup>

NGOs also highlighted the prevalence of violence against women, in particular Aboriginal women and the absence of a national strategy to combat this scourge.<sup>7</sup> Many NGOs expressed concerns about the high level of poverty. Some recommended that Canada adopt a national poverty reduction strategy.<sup>8</sup>

---

<sup>2</sup> Canada did not request that a member of its regional group be among its troika. There were no objections by State under review or by the members of the troika to the selection. For a full summary of the selection of troikas, see ISHR’s *Daily Update* of 8 September 2008, available at [www.ishr.ch](http://www.ishr.ch).

<sup>3</sup> All three basic documents (A/HRC/WG.6/4/CAN/1, A/HRC/WG.6/4/CAN/2, A/HRC/WG.6/4/CAN/3) are available at <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CCASession4.aspx>.

<sup>4</sup> Assembly of First Nations.

<sup>5</sup> First Nations Summit, KAIROS, Land Claims Agreement Coalition, Lubicon Lake Indian Nation, Amnesty International, Athabasca Chipewyan First Nation, joint submission by the International Indian Treaty Council, Assemblée des Premières Nations du Québec et du Labrador, Indigenous Network on Economies and Trade.

<sup>6</sup> Canadian Human Rights Commission, Franciscans International, joint submission by the International Indian Treaty Council, Amnesty International and Ligue des Droits et Libertés.

<sup>7</sup> Feminist Alliance for International Action, Native Women’s Association of Canada, Amnesty International.

<sup>8</sup> KAIROS, Citizens for Public Justice, Canadian Coalition for the Rights of Children, joint submission by Women’s Housing Equality Network.

Other issues raised included: the use of taser guns by the police,<sup>9</sup> exploitation of migrant workers,<sup>10</sup> racial profiling, lack of independence of the refugee determination system<sup>11</sup> and barriers to family reunification,<sup>12</sup> insufficient protection against *refoulement* to torture,<sup>13</sup> and concerns about solitary confinement of suspected terrorists and the judicial process used in cases related to national security.<sup>14</sup>

## Interactive dialogue<sup>15</sup>

### Presentation by the State

The opening presentation took about 20 minutes and outlined the State's approach to human rights promotion and protection and to key challenges facing it. It focused in quite general terms on: challenges in relation to the situation of Aboriginal peoples, including violence against Aboriginal women, land rights and economic rights; right to housing homelessness; and counter-terrorism measures. The Government noted that it was unable to support the *Declaration on the Rights of Indigenous Peoples* as the text 'failed to address Canada's key concerns' in areas such as lands and resources, self-government and the concept of free prior consent, and 'lacks clear guidance'. Canada did not explicitly answer the questions submitted in advance on implementation of recommendations the Committee on the Elimination of Racial Discrimination and the Human Rights Committee; consultation with Aboriginal peoples in relation to land and resource exploitation; criminalisation of domestic violence; ratification of the Optional protocol to the *Convention against Torture*, and the *Convention on the Rights of Persons with Disabilities*; protection of children of prisoners; policy on clemency for the death penalty overseas; economic, social and cultural rights of Aboriginal peoples; and *refoulement* to torture.

### Themes and issues

The issue that received most attention was the situation of **Aboriginal peoples**. Austria and Argentina asked for more information on how the Government could accelerate the process for settling land claims by Aboriginal peoples. Switzerland recommended that Canada increase its efforts to settle territorial claims. States made several general and specific recommendations in this area, including that Canada should: adopt all necessary measures to guarantee all human rights for Aboriginal peoples; give the highest priority to addressing existing inequalities,<sup>16</sup> and strengthen and enlarge current programmes on housing, education and employment;<sup>17</sup> improve the welfare of Aboriginal children;<sup>18</sup> increase the representation of Aboriginal

---

<sup>9</sup> ACAT Canada, International Federation of Action by Christians for the Abolition of Torture, Amnesty International, Ligue des Droits et Libertés.

<sup>10</sup> KAIROS, Amnesty International, Ligue des Droits et Libertés.

<sup>11</sup> Canada Research Chair in International Migration Law, Amnesty International, Franciscans International.

<sup>12</sup> KAIROS.

<sup>13</sup> *Non-refoulement* is a principle of international law that forbids the extradition or expulsion of an individual into an area where he or she might be subjected to torture.

<sup>14</sup> Canadian Centre for Victims of Torture, Amnesty International, Commonwealth Human Rights Initiative, Ligue des Droits et Libertés, International Civil Liberties Monitoring Group Coalition, Mouvement d'éducation populaire et d'action communautaire de Québec.

<sup>15</sup> Most statements made at the UPR Working Group can be found at <http://portal.ohchr.org/portal/page/portal/UPR>. Fill in the form at [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive username and password. Audiovisual archives of the meetings of the Working Group 'webcast' are available at [www.un.org/webcast/unhrc/index.asp](http://www.un.org/webcast/unhrc/index.asp).

<sup>16</sup> UK.

<sup>17</sup> Netherlands.

<sup>18</sup> Indonesia.

peoples in society;<sup>19</sup> and implement treaty body recommendations regarding Aboriginal women.<sup>20</sup> Questions were asked about measures already taken to address the disadvantages faced by Aboriginal peoples,<sup>21</sup> and Aboriginal women in particular;<sup>22</sup> the discriminatory effects of the *Indian Act*;<sup>23</sup> and the impact of mining on Aboriginal lands.<sup>24</sup> Canada replied that there was a history of human rights violations against Aboriginal peoples. It underlined that land claims present demanding and difficult tasks for the Government. The negotiations of treaties with Aboriginal peoples were seen as the best means of ‘striking a balance’ between the interests of Aboriginal peoples and the interests of Canadians at large.

A large number of States expressed concerns about the lack of specific criminal legislation on **domestic violence**.<sup>25</sup> They recommended that Canada adopt such criminal legislation and take measures to provide protection and redress for victims. Norway recommended that it undertake comprehensive reporting and produce statistics on violence against women to allow the authorities to design the most effective prevention strategies and other responses. The Philippines enquired about the existence of a national action plan on violence against Aboriginal women. Questions were also raised about trafficking,<sup>26</sup> and sexual harassment in the workplace.<sup>27</sup> Canada replied that it is taking a range of measures to address violence against women. While there is no specific criminal law on this issue, the penal code allows for prosecution. In addition, specific domestic violence courts have been established and awareness raising programmes conducted.

Regarding **racism and racist violence**, several States expressed concerns in particular about the treatment of Arab and Muslim persons<sup>28</sup> and about racial profiling.<sup>29</sup> Algeria and Malaysia recommended that Canada criminalise racist violence, while Iran recommended that Canada ensure access to justice for victims of such crimes. Indonesia recommended a review of discriminatory laws on national security that could lead to racial profiling. Jordan asked for more information on the national plan to fight racism. Canada replied that it has criminalised racism and has a national action plan to fight racism, and that it educates the public and promotes diversity. It underlined that racial profiling is a discriminatory practice that is not condoned in Canada and that the police receives training and is subject to independent review of their practices.

Many comments were made about Canada’s **cooperation with the international human rights system**. The issue that received the most attention in this context was Canada’s negative position regarding the *Declaration on the Rights of Indigenous Peoples*.<sup>30</sup> States recommended that Canada review its position. It was also recommended that Canada ratify the Optional Protocol to the *Convention against Torture*,<sup>31</sup> the optional protocol to the *International Covenant on Economic, Social and Cultural Rights*,<sup>32</sup> the *Convention on Migrant Workers*,<sup>33</sup> *Convention on the Rights of Persons with Disabilities*,<sup>34</sup> the *Convention on Enforced*

---

<sup>19</sup> Azerbaijan.

<sup>20</sup> Jordan.

<sup>21</sup> Cuba, Iran, Vietnam.

<sup>22</sup> India.

<sup>23</sup> India, Bosnia and Herzegovina.

<sup>24</sup> Philippines.

<sup>25</sup> Austria, Italy, Chile, Mexico, Bolivia, Brazil, Bosnia and Herzegovina, Turkey, Malaysia, Syria.

<sup>26</sup> Philippines, Slovakia.

<sup>27</sup> Japan.

<sup>28</sup> Saudi Arabia, Egypt, Syria, Algeria,

<sup>29</sup> Pakistan, Syria, Indonesia.

<sup>30</sup> Finland, Denmark, Austria, Norway, Cuba, Mexico, Pakistan.

<sup>31</sup> Chile, Liechtenstein, Netherlands, Azerbaijan, Czech Republic, France, Denmark.

<sup>32</sup> Mexico, Brazil.

<sup>33</sup> Chile, Algeria, Syria, Mexico, Azerbaijan, Philippines.

<sup>34</sup> Chile, China.

*Disappearances*,<sup>35</sup> the *Rome Statute of the International Criminal Court*,<sup>36</sup> withdraw its reservations to the *Convention on the Rights of the Child*, and invite the Special Rapporteur on the rights of migrants.<sup>37</sup>

In this regard, Canada replied that it joined consensus of the optional protocol to ICESCR and on the *Convention on Enforced Disappearances*. It underlined that its priority is to ratify the *Convention on the Rights of Persons with Disabilities*. Regarding the OP-CAT, it stated that it is examining its national monitoring mechanisms to identify possible gaps.

In an unusually direct manner, some States openly criticised Canada for its performance on the Human Rights Council, and in particular its stance on the human rights situation in the occupied Palestinian territories.<sup>38</sup> Algeria, Pakistan, and Iran criticised Canada for ‘selectivity and double-standards’ and urged it to change its position. While Brazil was less direct in its comments on this topic, it was surprising to see Brazil raise such concerns at all. Pakistan went further and highlighted that Canada is often the sole voice of dissent on a number of resolutions at the Council and that this required review. Brazil, Egypt and the Russian Federation also urged Canada to reconsider its withdrawal from the Durban Review Conference. Canada did not directly reply to any of these comments. However, the Deputy Minister noted that he would have liked to respond to some of the ‘strong statements’ made, but that time did not allow for that.

A large number of States recommended that Canada establish an effective and inclusive follow-up process to the UPR with the involvement of civil society.<sup>39</sup> Regrettably, Canada only stated that it is currently examining the best model for follow-up.

Questions and recommendations were also raised regarding: right to housing including implementation of the recommendations of the Special Rapporteur on housing; health policies that discriminate against lesbian, gay, bisexual and transsexual persons; reduction in the budget to fight HIV; access to higher education; use of taser guns by police and the need for legislation to regulate their possession and use; juvenile justice and the rights of children of detainees and prisoners; respect for international law in armed conflicts overseas; the need for a national strategy to combat poverty; clemency for Canadians abroad sentenced to the death penalty; representation of minorities; and protection of the rights of migrants.

### Adoption of the report

The outcome report on Canada was adopted after the troika made a series of amendments. Canada undertook to respond to all of the recommendations before the final adoption by the Council. In its final remarks, Canada stated that no country has a perfect human rights record and that all countries must be open to scrutiny. It regretted the lack of time for all States to take the floor during the review and for it to respond to the questions raised.

---

<sup>35</sup> Chile, Argentina, France.

<sup>36</sup> Brazil.

<sup>37</sup> Pakistan.

<sup>38</sup> Algeria, Pakistan, Iran.

<sup>39</sup> UK, Mexico, Netherlands, Philippines, Portugal, Republic of Korea, Denmark, Norway.

## **COUNCIL MONITOR STAFF**

**Eléonore Dziurzynski**, Communications Officer  
**Chantal Mutamuriza**, Human Rights Officer  
**Michael Ineichen**, Human Rights Officer  
**Gareth Sweeney**, Deputy Manager  
**Katrine Thomasen**, Manager

## **ABOUT THE PUBLICATION**

The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at [www.ishr.ch](http://www.ishr.ch)

## **SUBSCRIPTION**

If you wish to receive the Council Monitor Daily Updates by e-mail during the Council session, please e-mail [information@ishr.ch](mailto:information@ishr.ch) with 'subscribe' in the subject line. Your e-mail address and personal information will not be shared or sold to any third parties. We may from time to time send you a notification about other publications in the Human Rights Monitor Series that you may be interested in downloading or subscribing to.

## **COPYRIGHT, DISTRIBUTION AND USE**

Copyright © 2008 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

ISHR accepts no responsibility for any inaccuracies arising from or connected to unapproved or unofficial translations of its publications or parts thereof.

## **DISCLAIMER**

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on, or any use of this publication. We are however happy to correct any errors you may come across so please notify [information@ishr.ch](mailto:information@ishr.ch).