

**Compilation of Summaries of Canadian NGO Submissions  
to the  
UN Committee on Economic, Social and Cultural Rights  
in Connection with the Consideration of the  
Fourth and Fifth Periodic Reports of Canada**

**March 31, 2006**

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## INTRODUCTION

This is a compilation of four page summaries of longer submissions prepared by the Canadian NGOs listed below. The summaries were compiled in order to provide the Committee with an overview of the issues addressed and to identify the most pressing issues relating to the consideration of Canada's Fourth and Fifth Periodic Reports. Given the complexity of the issues, the NGOs urge the Committee to also consider their longer submissions, which contain additional information and identify other important issues.

- Advocacy Centre for Tenants in Ontario/Centre for Equality Rights in Accommodation
- Alternatives North
- Amnesty International
- The Canadian Association of Food Banks/Food Secure Canada
- Canadian Council for Refugees
- Canadian Feminist Alliance for International Action
- National Association of Women and the Law
- Canadian Health Coalition
- Charter Committee on Poverty Issues
- Child Care Advocacy Association of Canada
- Council of Canadians with Disabilities
- Feminist Organization for Women's Advancement, Rights and Dignity
- KAIROS: Canadian Ecumenical Justice Initiatives
- Ligue des droits et libertés
- Low Income Families Together
- National Anti-Poverty Organization
- National Working Group – Women and Housing in Canada
- Native Women's Association of Canada
- Poverty and Human Rights Centre

## JOINT SUBMISSIONS

### ***Available Resources and Retrogressive Measures***

Canada is one of the wealthiest countries in the world. The Government of Canada recently recorded its eighth consecutive annual surplus. Canada is the only G7 country expected to post a surplus in 2006.<sup>1</sup> Canada also has the lowest debt burden of all G-7 countries.<sup>2</sup>

Canada has the resources, institutions and infrastructure necessary to eradicate poverty among women, men and children and to maintain adequate social programs and services to support the realization of all Covenant rights.

However, as is outlined in the summaries of NGO submissions included in this compilation, Canadian governments have cut away programs and services, reduced the level of benefits, narrowed eligibility rules, and made harsher the lives of the poorest, particularly women, Aboriginal people, people of colour, African-Canadians, immigrants and refugees, and people with disabilities.<sup>3</sup>

### ***Restructuring Fiscal Arrangements***

Between 1995 and 2005 Canada undertook the restructuring of its social programs, and the fiscal arrangements between the federal government and the provinces and territories.

Nearly 12 billion dollars a year was lost in federal funds for critical programs between 1995 and 1998.<sup>4</sup> Canada justifies the 1995 8.2 billion dollar cut to the federal transfer payments to the provinces and territories for social programs on the grounds that cuts were necessary to reduce the federal deficit. The fact that the deficit was retired in three short years, two years earlier than expected, has raised questions about whether the drastic cuts to social spending were ever necessary.<sup>5</sup> Another explanation was also

<sup>1</sup> Government of Canada, Department of Finance, *News Release*, September 21, 2005 <http://www.fin.gc.ca/news05/05-060e.html>.

<sup>2</sup> Canadian Centre for Policy Alternatives, Press Release, *Getting the Most Bang for Our Bucks*, February 9, 2005, <http://www.policyalternatives.ca/index.cfm?act=news&do=Article&call=1012&pA=BB736455>.

<sup>3</sup> Social Watch. Report on Canada 2005. [http://www.socialwatch.org/en/informelmpreso/pdfs/canada2005\\_eng.pdf/](http://www.socialwatch.org/en/informelmpreso/pdfs/canada2005_eng.pdf/)

<sup>4</sup> Yalnizyan, A. 2005. *Canada's Commitments to Equality: A Gender Analysis of Ten Federal Budgets (1995 – 2004)* at 6. Canadian Feminist Alliance for International Action. <http://www.fafia-afai.org/images/pdf/CanadaCommitmentsEquality.pdf>

<sup>5</sup> Ibid.

offered by the Honourable Paul Martin, then Finance Minister. In his 1995 Budget Speech he said that it was his intention to make a permanent change not only to “*how* government works but what government *does*.”<sup>6</sup>

Program spending fell from 16 per cent of GDP to 12 per cent of GDP in the deficit era, the three years between 1995 – 1998. Indeed, the federal government has maintained a low level of program spending despite posting a budgetary surplus every year since 1997.<sup>7</sup> This low level of federal involvement in the economy and society is historically unprecedented and completely incongruent with modern society, according to leading economists.<sup>8</sup>

In the era of back to back surpluses from 1997 to 2004, when the federal government had the opportunity to remedy the many areas of noncompliance with the Covenant identified by the Committee in its last review, the national government spent only 42 billion on new departmental spending compared to 152 billion dollars on tax reductions and tax-related benefits.<sup>9</sup> Social programs and services remain enfeebled.<sup>10</sup>

We submit that in light of the assessment of available resources, Canada has taken **retrogressive measures**, contrary to its obligations under Article 2. The explanations offered by Canada to the Committee at its last review for the dramatic steps backward in the realization of Covenant rights are certainly no longer valid. Yet the pattern of retrogression has continued.

The NGOs contributing to the compilation jointly submit that in light of Canada’s present economic prosperity, many of the failures of Canadian governments to comply with obligations under the Covenant should be understood as deliberately retrogressive. Further, because of the disproportionately harsh impact of cuts to social programs on those already marginalized and poor, we submit that it has also violated its obligations of non-discrimination and equality in Articles 2(2) and 3.

<sup>6</sup> Budget 1995 Speech, <http://www.fin.gc.ca/budget95/speech/SPEECH3E.html>, (date accessed: October 9, 2005)

<sup>7</sup> More money has been put into transfers to the provinces and territories in recent years, but until the most recent Health Accord, it was one-time money, not stable increases to the base amount of the transfers, and most of it was designated for health care.

<sup>8</sup> Yalnizyan, A. at 100.

<sup>9</sup> Yalnizyan, A. at 95 – 97.

<sup>10</sup> Ibid. at 94.

## ***No Process for Follow-up on Review or Ongoing Domestic Review of ICESCR Compliance***

The 4<sup>th</sup> and 5<sup>th</sup> Periodic Reports make no systematic effort to provide information on how the federal and provincial governments have on their own or jointly followed up on and addressed the specific concerns and recommendations emanating from the 1998 review.

A common theme in all of the NGO submissions is the shocking disregard by Canadian governments of the serious concerns and recommendations of the CESCR. There has been no effective follow-up to the Committee's 1998 review. In fact, there is no mechanism in place through which effective follow-up to concerns and implementation of recommendations is possible.

In the 1998 review process, issues of federal-provincial mechanisms for addressing compliance with the ICESCR arose repeatedly. The Canadian delegation referred to the Continuing Committee on Human Rights Officials (CCOHRO) as the body through which the federal and provincial/territorial governments work jointly to ensure compliance with the Covenant.

When the federal and provincial governments of Canada agreed to ratification of the ICESCR in 1975, they also agreed to hold federal/provincial/territorial minister's conferences (F/P/T conferences) twice a year in order to coordinate the implementation of the ICESCR.<sup>11</sup> The last F/P/T conference was held in the late 1980's.

In its 2003 review of Canada, the Committee on the Elimination of Discrimination Against Women recommended that "the state party search for innovative ways to strengthen the currently existing consultative federal-provincial-territorial Continuing Committees of Officials for human rights as well as other mechanisms of partnership ...". However, no action has been taken on this recommendation. The Continuing Committee on Human Rights Officials (CCOHRO) was also established to oversee coordination between the different levels of government. As noted by the Standing Senate Committee on Human Rights, however,

the CCOHRO offers no opportunity for any public debate or follow-up to the observations, findings, and recommendations of the treaty bodies – nor was

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<sup>11</sup> Canadian Heritage, Human Rights Program, "How Canada Works with the United Nations" [http://www.pch.gc.ca/progs/pdp-hrp/inter/un\\_e.cfm](http://www.pch.gc.ca/progs/pdp-hrp/inter/un_e.cfm)



such a role ever intended for it. ... This is not its job. The real problem for Canada is that no other official body or institution of government is performing this function either.<sup>12</sup>

The Senate Committee made a variety of recommendations to improve the domestic implementation of and compliance with international human rights obligations, including that the Canadian Human Rights Act should make express reference to the ICESCR and that the practise of regular F/P/T conferences dealing with compliance with international human rights be reinstated. Most importantly, the Committee emphasized the need for parliamentary accountability, through a parliamentary human rights committee. Not one of these recommendations has been followed up on by the government.

All NGOs are united in their concern about the absence of any effective mechanisms of follow-up to the Committee's concerns and recommendations, or ongoing assessment of progress in implementing obligations under the Covenant, at both the federal and provincial/territorial levels, and through FPT conferences and other inter-governmental bodies. We urge the Committee in its dialogue with the Canadian Delegation to insist that this issue be given the highest priority.

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<sup>12</sup> Standing Senate Committee on Human Rights <http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-E/huma-e/rep-e/rep02dec01-e.htm>

**ACTO – ADVOCACY CENTRE FOR TENANTS IN ONTARIO<sup>13</sup>**  
**CERA – CENTRE FOR EQUALITY RIGHTS IN**  
**ACCOMMODATION<sup>14</sup>**

***The Right to Adequate Housing in Canada: Article 11(1)***

**1. *No National Housing Strategy***

The Government of Canada has still not adopted or implemented a national housing strategy or policy aimed at reducing homelessness and poverty, despite the fact that in 1998 the Committee on Economic, Social and Cultural Rights (hereinafter ‘the Committee’) recommended that it do so.<sup>15</sup> As a result, within Canada there is no coherent policy of national standards to ensure that the right to adequate housing is enjoyed by all and particularly by poor and disadvantaged groups, such as low-income women.<sup>16</sup>

The Government of Canada should adopt a national housing strategy that includes principles of equality and non-discrimination to reduce homelessness and poverty.

**2. *Failure to Implement Affordable Housing Program***

In 2001 the Government of Canada responded to the housing crisis in Canada by establishing the Affordable Housing Program (AHP) through which the Affordable Housing Framework Agreement was reached. Under this Agreement, each province and territory then signed a bilateral housing deal with the Government of Canada. By

<sup>13</sup> ACTO is a legal aid clinic in Ontario that undertakes legal and law reform advocacy with the goal of broadening the legal rights of low-income persons in respect of their need for adequate, affordable housing.

<sup>14</sup> CERA is a non-profit organization in Ontario that focuses on challenging housing-based discrimination and barriers that keep disadvantaged individuals and families from accessing and retaining the housing they need.

<sup>15</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at par. 46.

<sup>16</sup> The lowest income women in Canada are: Aboriginal, single-mothers, in receipt of social assistance, disabled, older, young, immigrants and refugees, and visible minority.

January 2005, the Government of Canada revealed that of the \$1 billion (Cdn) promised through the AHP only \$200 million (1/5<sup>th</sup>) had been committed to new housing, after more than 3 years into the 5 year program. Only 10,500 homes have been funded through this program, constituting just 10% of what the Government of Canada promised and far short of what is needed nationally. In some provinces, such as Ontario, virtually no new affordable housing units have been created.<sup>17</sup> The shortage of new subsidized housing has put pressure on the waiting lists for subsidized housing. In Ontario alone, there were 124,785 low-income households on the active municipal waiting lists for subsidized housing at year-end 2004.<sup>18</sup> In 2005 Parliament agreed to put a further \$1.6 billion (Cdn) toward an affordable housing fund. The new government, elected in January 2006, has yet to indicate whether it will honour this agreement.

The Government of Canada is strongly urged to spend the original monies promised to the provinces and territories under the Affordable Housing Framework Agreement on subsidized housing for those most in need. The Government of Canada is also urged to implement the 1.6 billion affordable housing fund.

### **3. Homelessness**

In its 1998 Concluding Observations on Canada, the Committee expressed concern about “homelessness and inadequate housing as a national emergency”. Although it is not possible to accurately count the homeless,<sup>19</sup> estimates range from 100,000 to 250,000 persons.<sup>20</sup> In December 1999 the Government of Canada introduced its National Homelessness Initiative. Initially, about \$753 million was targeted to ten municipalities. When NGOs noted that homelessness is not simply a city phenomenon,

<sup>17</sup> Though an accountability and communications mechanism is attached to the Agreements, only Ontario has released information on units built: 24 new affordable units created in 2002, 23 new units in 2003 and 18 new units in 2004.

<sup>18</sup> Ontario Non-Profit Housing Association, *2005 Assessment of Waiting List Statistics For All Service Manager Areas in Ontario*, July 2005, p 2.

<sup>19</sup> For example, the group of homeless is comprised of the individuals sleeping outside, as well as individuals who sleep in shelters and church basements, in cars and on other people’s floors and couches, and people at risk of homelessness. These are referred to as the absolute homeless, the concealed homeless and the at risk population: David Hulchanski, *A New Canadian Pastime? Counting Homeless People*, (Toronto: CUCS U. of T. , Dec. 2000)

<sup>20</sup> See for example: David Hay, *Housing, Horizontality and Social Policy*, (Ottawa, Canadian Policy Research Networks Inc., March 2005).

the Government of Canada extended the program to the entire country, without adding any additional funding. The National Homelessness Initiative was initially funded for three years, then renewed for an additional three years. It is due to expire in 2006. In the transition period between program renewals, there have been significant administrative issues. For instance, in the transition from the first to the second phase in 2003, a delay in negotiating federal-provincial and federal-territorial protocols meant that services had to be suspended and staff laid-off until the issues could be resolved. This disruption in service has a serious and negative impact on homeless people.

The Government of Canada should establish a long-term, adequately resourced strategy to address the causes and consequences of the homelessness crisis in Canada.

#### **4. *Forced Eviction and Lack of Security of Tenure Provisions***

Please see submission by the Charter Committee on Poverty Issues

#### **5. *Inadequate Shelter Allowance Rates***

Across the country, the shelter allowance component of welfare entitlements continue to be far lower than average market rents. For example, in 2005, a mother with two children in Ontario received a maximum shelter allowance of \$554, but the average cost of a two-bedroom apartment was \$1,052 in the Toronto-region and \$903 on a province-wide basis.<sup>21</sup>

The Government of Canada should address homelessness by “increasing shelter allowances and social assistance rates to realistic levels.”<sup>22</sup>

<sup>21</sup> *Rental Market Report – Ontario Highlights and Rental Market Report – Toronto CMA*, Canada Mortgage and Housing Corporation, December 2005. Social assistance rates were increased by 3% in 2005.

<sup>22</sup> CESCR, *Concluding Observations* (1998), at par. 46.

## **6. Failure of Human Rights Legislation to Give Claimants Access to a Hearing**

Human rights commissions in most Canadian jurisdictions<sup>23</sup> have a statutory ‘veto’ power to decide, on a discretionary basis, whether a complaint will be permitted to go forward to the adjudicative tribunal. As a result, the majority of complaints alleging discrimination<sup>24</sup> will be blocked from proceeding to a hearing. Complainants have no independent right of access to adjudication and to an ordered remedy for discrimination. In 1998, this Committee recommended that governments in Canada implement legislative amendments, at the federal and provincial/territorial level, to allow access to an adjudicative tribunal for human rights claimants.<sup>25</sup> The Human Rights Committee expressed similar concerns in 1999. To date, British Columbia is the only province that has made legislative changes of this nature. Unfortunately, the province has enacted new legislation which grants a right of access to a hearing tribunal, but which also abolishes the human rights commission, violating the *Paris Principles*. In early 2006, the Ontario Ministry of the Attorney General announced that it will reform Ontario’s Human Rights legislation to allow complaints to be filed directly with the Ontario Human Rights Tribunal.

Federal, provincial and territorial governments should take positive measures to reform the human rights enforcement process and remove the human rights commission veto over hearing access so that claimants have the ability to take their claims directly to a hearing on the merits. Claimants also must be afforded appropriate legal supports to take claims forward to a hearing.

<sup>23</sup> With the exception of Quebec and British Columbia.

<sup>24</sup> In Canada, human rights codes protect against discrimination in accommodation, employment, and services.

<sup>25</sup> CESCR, Concluding Observations (1998), at par. 51. The absence of a right to adjudication and to effective remedy is also a violation of at least one of the *Effectiveness Factors* developed to support the *Paris Principles*. The *Effectiveness Factors* recognize “accessibility” as a necessary feature of an effective human rights system. When claimants have no independent right of access to an adjudicated remedy, a human rights system cannot claim to be accessible.

## ALTERNATIVES NORTH

Formed in 1993, Alternatives North is a coalition of groups and individuals united in an active commitment to build, strengthen and defend social and economic justice locally, nationally and around the world. The coalition is based in Yellowknife, Northwest Territories, Canada.

Alternatives North is a member of the National Anti Poverty Organization.

### ***The National Child Benefit Supplement (Article 9)***

The Committee on Economic, Social & Cultural Rights stated in the December 1998 report & recommendations (#18 & # 44) that the clawback of the National Child Benefit Supplement (NCBS) should be prohibited. To date, Canada has not complied.

The following is a summary of the document presented to the Government of the Northwest Territories (GNWT) in February 2004. The document was prepared by a coalition of concerned groups coming together under the banner of Alternatives North to call on the GNWT to discontinue its practice of clawing back the National Child Benefit Supplement from families on Income Support.

It is our position that people relying on Income Support do not have sufficient income to support themselves or their families and that clawing back the NCBS has negatively impacted these families. The NWT should take a leadership role and abide by the International Covenant on Economic, Social & Cultural Rights.

- “Given differences in social assistance and child benefit programs and a post CAP (Canadian Assistance Plan) world of few restrictions on welfare rules:
  - There were five different models that provinces and territories chose for their social assistance offset. The following chart (Appendix II) oversimplifies these models but provides a useful sketch of the differences.

- The models are not transparent or clear and have led many to think both rightly and wrongly, that the NCBS is clawed back in a small minority of jurisdictions.
- Rightly: as this is technically true.
- Wrongly: as all jurisdictions except New Brunswick and now Manitoba have an offset of some description.”<sup>26</sup>
- Advocacy groups & non-government organizations (NGO’s) from the community to the national level have not seen any positive gains from the clawback and all are fighting to stop it. Many of these groups work at the grassroots level and see the negative impacts and ineffectiveness of the clawback.

Almost every province and territory claws back the NCBS from families accessing Income Support. This Child Benefit is taken from the poorest of the poor and reinvested into programs designed to help low income families, but which the majority of the families living in poverty or on Income Support cannot access.

The NCBS is also included in the calculation for income in the Child Care Subsidy Benefit eligibility assessment. This means that very few families are eligible to receive subsidy. In fact in 2005, only 20 families in the City of Yellowknife (population 20,000) were able to access the Child Care Subsidy Benefit and none were able to receive full cost coverage. The budget for the Child Care Subsidy is 1 million dollars and under-utilized because families attending post secondary education, accessing healing programs, or working are unable to access it. This simply sets up more barriers for those trying to escape poverty.

The value of reinvestment of the NCBS to the Government of the Northwest Territories was \$800,000 in 2004. This amount will increase as the supplement increases. The lucrative nature of this reinvestment provides no incentive for the provincial/territorial governments to stop the clawback or reform their income security programs.

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<sup>26</sup> A Primer on the National Child Benefit Supplement “Clawback”. St Christopher House July 2003 page 18, 19.

### Negative Impact of Clawback:

- One of the stated goals of the NCBS is to decrease the number of children living in poverty. However, since the money is not going directly to those on Income Support, the current system actually creates barriers, and in some cases, long term dependency, as the longer a parent stays on Income Support, the greater the erosion and depletion of their assets.
- Those that benefit the least from the NCBS are women who are both in receipt of Income Support and members of those groups most marginalized from and underpaid within the labour force.<sup>27</sup>
- The surest way to reduce the long-term impacts of child poverty is to leave enough income in the hands of parents so they can provide a basic standard of living for their children. However, because of the NCBS clawback, families on Income Support cannot meet their basic needs.
- NWT families on Income Support have empty fridges for part of the month and children going to school without lunches. Parents fear allegations of child neglect when they can't provide a school lunch for their child, when the real problem is lack of money. Families relying on Income Support usually can only afford fresh fruit for half of the month.
- Lack of money to cover basic needs keeps families in a constant state of crisis and impedes their ability to transition to employment through productive choices. Many also go further and further into debt.
- Because the National Child Benefit supplement is included in the "income" calculation, many women are no longer eligible for Income Support. This distorts the statistics for GNWT as to the number of recipients and their dependents, and, it appears that Income Support was successful in moving another family off assistance.
- To quote from the National Council of Welfare regarding the clawback: "(We) cannot see how making poor people poorer is good public policy, and it is absolutely impossible for us to understand in the case of poor families with children."<sup>28</sup>

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<sup>27</sup> The Framing of Poverty as "Child Poverty" and its Implications for Women." Status of Women Canada 2002.

<sup>28</sup> National Council of Welfare. Another Look at Welfare Reform. Ottawa, Ont. Autumn 1997, p. 114.



Conclusion:

- It is important to return to the point that the GNWT is using money aimed at the lowest income earners to subsidize programs that it claims are universally accessible. However, we have argued that indeed there are significant barriers to participation in these programs by social assistance recipients.
- The reality is that children living in poverty are in this state because their parents are also living in poverty. This idea of taking children off welfare creates this fictitious separation between the child and parent- it clearly undermines children's respect for their parents.
- While we recognize the funding shortages that the GNWT faces, we must note that in the last legislative assembly, the GNWT cut the personal income tax levels resulting in a decrease in its funding levels. In addition, it continues to maintain one of the lowest corporate taxation regimes in the country. Any system of progressive taxation would support the principal that those who are better off are asked to pay more. Instead, we impose what amounts to a significant tax grab on those least able to pay. We do not want to see funding for early intervention programs cut but rather call on the GNWT to reallocate spending or determine new sources of revenue.
- The GNWT should join with the other territories and demand additional funds from the Canada Social Transfer (CST) to enable it to stop the clawback and to continue funding the beneficial early childhood and early intervention programs.
- Another option is to fund these programs through Canada's National Plan of Action for Children (CAPC) initiatives when the funding for this Plan is outlined.

## **AMNESTY INTERNATIONAL**

Amnesty International's brief makes recommendations in six areas: indigenous peoples; migrants; trade and investment; development assistance; implementation; and enforcement. Amnesty calls on the Canadian government to:

### ***1. THE RIGHTS OF INDIGENOUS PEOPLES – ICESCR ARTICLES 1, 2, 9, 10, 15***

- Collaborate with indigenous peoples to establish effective approaches to the timely resolution of disputes over lands and territories consistent with the human rights of indigenous peoples, including recognizing, respecting and protecting a land and resource base adequate to ensure the full realization of their rights.
- In consultation with indigenous peoples, establish clear, written policies, to ensure that no resource extraction activities that could impact on their rights will be licensed on land to which they have title or use rights, or where title and use rights have not been legally resolved, unless they give their free, prior informed consent.
- Ensure the collection and dissemination of accurate data on violent crime against indigenous women.
- In collaboration with indigenous peoples, establish a coordinated plan of action to address violence against indigenous women, including social and economic factors that place indigenous women in situations of heightened risk and the role of racism in perpetuating violence.
- End the disparity in funding for indigenous child and family services and ensure that the best interests of indigenous children are protected by effective preventative and early intervention programs.
- Ensure that all levels of government adopt such measures as are necessary to ensure that indigenous peoples are consulted in the formulation and implementation of any policy that could affect their rights and well-being.

## **2. THE RIGHTS OF MIGRANTS – ICESCR ARTICLES 2, 6, 7, 9, 10, 12**

- Identify and rectify instances in which economic, social and cultural rights are denied or not equally guaranteed to individuals because they are not Canadian citizens.
- Amend the Seasonal Agricultural Workers program to include an impartial process of appeal, available to all workers before any decision to repatriate is made.
- Ensure that all migrant workers are fully covered by minimum labour standards, including the right to form trade unions and bargain collectively, and have equal access to employment insurance.
- Reform the Live-in Caregiver program, including by reconsidering the live-in requirement and by adopting measures to ensure the safety of women (including, for example, by instituting a system of monitoring visits, help-lines, or access to a specialized centre for such women), to reduce the vulnerability of women to abuse and exploitation.
- Remove obstacles to speedy family reunification for all refugees immediately upon recognition, including especially refugee minors, or otherwise reduce delays in obtaining permanent residency for such refugees, as well as for individuals coming from “moratorium countries”.
- Ensure that individuals in Canada, regardless of their immigration status, have equal access to adequate health care services.
- Ensure that all individuals in immigration detention have access to adequate physical and mental health care.

## **3. UPHOLDING ECONOMIC, SOCIAL AND CULTURAL RIGHTS ABROAD – ICESCR ARTICLE 2**

- Take steps towards the fulfilment of its obligations of international cooperation and assistance, including through ensuring that development cooperation respect, protect and fulfil obligations under the ICESCR, bearing in mind the internationally agreed consensus that industrialised countries should devote 0.7% of GDP to Official Development Assistance.

- Conduct meaningful consultations with those likely to be affected by new trade rules, including women, people living in extreme poverty and other vulnerable populations.
- Undertake human rights impact assessments of trade rules both during the process of negotiations and after negotiations are concluded.
- Work to ensure that relevant UN agencies and organizations build on existing expertise and best practices worldwide in order to identify an effective model of human rights impact assessment, which includes an appropriate methodology and human rights indicators and benchmarks.

#### **4. PRIVATE COMPANIES - ICESCR ARTICLE 2**

- Provide strong support for the development of UN-human rights standards applicable to companies, and an effective monitoring and implementation mechanism regarding the responsibilities businesses carry with respect to human rights.
- Become a participant and urge Canadian companies to become participants in the Voluntary Principles on Security and Human Rights; and urge Canadian companies to implement the Voluntary Principles in their policies and practices abroad.
- Require Canadian companies to conduct periodic evaluations concerning the impact of their own activities on human rights, and ensure that before they take any action that may impact on the enjoyment of fundamental human rights there is opportunity for genuine consultation with those affected; timely and full disclosure of information on the proposed measures; reasonable notice of proposed actions; legal recourse and remedies for those affected; and legal assistance for obtaining remedies.

#### **5. THE RATIFICATION AND IMPLEMENTATION GAP – ICESCR ARTICLE 2**

- Ensure that the intended meeting of federal, provincial and territorial Ministers responsible for human rights goes ahead in the near future and that the meeting adopts a new coordinated, inter-governmental and publicly accountable approach to

overseeing implementation of and compliance with Canada's international human rights obligations.

**6. STRENGTHENING ENFORCEMENT– ICESCR ARTICLE 2**

- Ensure that ICESCR rights are fully incorporated into federal and provincial law.
- Provide effective remedies for the enforcement of those rights, including by administrative tribunals and courts.
- Support the development and eventual adoption of an Optional Protocol to the ICESCR.

## THE CANADIAN ASSOCIATION OF FOOD BANKS AND FOOD SECURE CANADA

### ***The Right to Adequate Food***

In both its 1993 and 1998 reviews of Canada the Committee expressed concern about evidence of hunger and growing reliance on charitable food banks, and recommended a concerted effort to eliminate the need for food banks. In its 1998 Review the Committee was “perturbed to hear the number of food banks almost doubled between 1989 and 1997.”

Laudably, in 1998, as a response to the World Food Summit, the Federal Government introduced Canada’s Action Plan for Food Security. Yet, the evidence of continuing and widespread food insecurity indicates the Federal and provincial governments’ continued lack of compliance with the right to adequate food in article 11 of the Covenant. Canadian governments have failed to make a concerted effort to eliminate hunger and the need for emergency food assistance since Canada’s last review, during a period of massive Federal Government budget surpluses. As the gathering body of research makes clear, the problem of hunger and food poverty constitutes a hidden national crisis in Canada.

### ***Food Insecurity Amidst Affluence***

In 2001 the Canadian Community Health Survey (CCHS) found that 3.7 million people or 14% of the population lived in households reporting food insecurity. In 2004, using a more restrictive measure than used previously, CCHS reported 2.1 million people or 6.8% of the population struggling with different levels of food insecurity (Power and Tarasuk, 2006).

- 28% of people in low and middle income households had not had enough to eat at some point in the year 2000 (*ibid*).
- On reserve First Nations household food insecurity in Canada’s north varies between 40% - 83% (INAC, 2001 and 2002)

### ***Increased Reliance on Food Banks***

823,856 people turned to a food bank in one month of 2005, an increase of 24% since 1997 and 118% since 1989. The first food bank in Canada opened in 1981. Today they number 650. 40.7% of food bank users are children and young people (CAFB, 2005). Food bank usage presents a considerable underestimate of food insecurity in Canada. 38.8% of food banks report difficulty in meeting demand. (*Ibid.*)

### ***Causes of Food Poverty***

Food poverty in Canada is the result of complex forces and springs from a number of interrelated causes including:

- corporate globalization and economic restructuring, including production of commodities for export rather than food for the local population;
- failures to regulate market forces to ensure food security;
- social spending cutbacks and harsh reductions in benefit levels;
- eligibility for welfare based, not on financial or social need but on attachment to the labour market and stringent work requirements;
- social assistance benefits thousands of dollars below the official Low Income Cut-offs (poverty lines) and insufficient to put food on the table;
- government failure to ensure that the real costs of eating (diet/nutrition) and housing are included in social assistance and 'employment insurance' rates and lack of affordable housing;
- fragmented food policy (federal or provincial); and
- the failure by governments in Canada to ensure meaningful accountability to their international obligations to respect, protect and fulfill the right to food.

In light of the significant incidence of food insecurity in Canada, the now institutional reliance on food banks, and the increased resources available to the state, the right to food is being violated in Canada. Vulnerable populations and, in particular, single

unemployable persons, lone parent female headed households and Aboriginal peoples are at most risk.

### ***Recommendations***

For the right to food to be fully implemented, a commitment to new courses of action is required:

- All levels of government in Canada should accept their obligations to recognize and act in compliance with the right to adequate food and adopt concrete mechanisms of accountability to ensure that these obligations are met.
- Social and economic rights, including the right to food, should be constitutionally recognized as justiciable rights under the protection of the Charter of Rights and Freedoms as well as under federal and provincial/territorial human rights legislation. As former Supreme Court Justice and the current UN Commissioner for Human Rights, Louise Arbour, has stated: 'Ultimately, the potential to give economic, social and cultural rights the status of constitutional entitlement represents an immense opportunity to affirm our fundamental Canadian values, giving them the force of law' (Arbour, 2005).
- Canada, in conjunction with the provincial and municipal governments and the Assembly of First Nations, should adopt a National Action Plan for Food Security requiring the full participation of all relevant ministries, including federal and provincial justice departments and with the full representation of civil society. The plan should set verifiable goals, indicators, benchmarks, timeframes and accountability and comprise remedy and monitoring mechanisms.
- The erosion of Canada's welfare state should be reversed, informed by implementation of the proposed Canada Social Transfer, earmarking federal funds for provincial safety net programmes with national conditions and federal monitoring, including adequate minimum wage incomes and social security benefits.
- Food policy councils should be established and food policy charters adopted at the municipal level, recognizing the human right to food and the importance of developing just and sustainable local food systems.
- Civil society organizations working to advance food security within a framework of sustainability and social justice should be provided adequate funding.



The human right to food and nutrition, as set out in the ICESCR, General Comment No. 12 and the UNFAO Council Voluntary Guidelines provide an essential philosophy and springboard necessary to inform and shape the achievement of national, provincial and household food security in Canada. As the eminent French historian, Fernand Braudel, once wrote: 'Today's society, unlike yesterday's, is capable of feeding its poor. To do otherwise is an error of government.' (Braudel, 1985).

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## CANADIAN COUNCIL FOR REFUGEES

***Issue Number 1: Denial of family reunification as a punishment for immigrants who failed to disclose dependants on a previous immigration application, thereby preventing their examination by the visa officer (Articles 9 and 10).***

*Immigration and Refugee Protection Regulation 117(9) (d)* was implemented in June of 2003. Under the *Immigration and Refugee Protection Act (IRPA)* s. 65, appeal rights to the Immigration Appeal Division have been removed for these cases. If a person failed at any time to declare a family member on an application for immigration, and the family member was not examined by the visa office, they cannot be reunited through the family sponsorship process. The section applies regardless of the circumstances which lead to the failure to disclose and without regard to the best interests of any children affected. There is no hearing to assess the underlying reasons and a separate application process has to be undertaken to have a review which takes into account humanitarian and compassionate considerations. Families are separated forever, because the sponsorship prohibition is forever, and there is no appeal.

This makes Canada not in compliance with *CESCR* Article 10(1) and articles 9(1) and 10(1) of the *Convention on the Rights of the Child*.

**Identification in List of Issues:** Regulation 117(9) (d) was identified in the list of issues for the fifth Report.

**Number of people affected?** Canada has provided no statistics on the number of families affected by the regulation.

**Recommended Action:** The Committee should recommend the repeal of *IRP Regulation 117(9) (d)*

***Issue Number 2: Canada discriminates against people who are poor, on the basis of social condition by denying family reunification under four circumstances (Articles 2 and 10).***

1. Directly where the sponsor is on social assistance. *IRP Regulation 133(1) (k)*

2. Where there is a risk the sponsored person will need social assistance. *IRPA* s.39
3. Where a sponsor previously sponsored someone who received social assistance and the amount has not been repaid. *IRP Regulation* 133(1) (g) and (h)
4. Indirectly through the imposition of processing fees which are beyond the means of poor people. *IRP Regulation* 175, 176, 295(1) (2).

This direct and indirect discrimination against people who are poor makes Canada not in compliance with CESC articles 2 and 10

**Number of people affected?** Canada has not provided any statistics on the number of people separated from their families due to these 4 sections.

**Recommended action:** Repeal *IRPA* s. 39 and *IRP Regulations* 133(1) (g) and (k).  
Introduce immigration processing fee waivers for low-income sponsors seeking family reunification.

***Issue Number 3: Significant delays in family reunification, particularly for refugee families, which are primarily caused by five factors (Articles 9 and 10):***

1. Child refugees accepted in Canada cannot be reunited with their parents because of *IRP Regulations* 1(3) and 176(1).
2. Delays in processing family reunification applications for Convention refugees can amount to years. The worst delays are at the visa posts which process the majority of refugee families. In 2005 in Abidjan, (which covers West and Central Africa) it took 26 months to process 50% of the cases, and 40 months to process 80% of the cases. There are a number of reasons for the delays which include:
  - a) Requirement of overseas processing of refugee family members.
  - b) Inadequate resources at visa posts overseas
  - c) Requests for identity documents that are not available and DNA testing.
  - d) Processing fees imposed on refugees for permanent residence, which take refugees a long time to rise.

Significant processing delays make Canada not in compliance with *CESC* Article 10(1) and articles 9(1) and 10(1) of the *Convention on the Rights of the Child*.

**Who is affected?** Refugee families are affected, particularly those seeking reunification with family members in Africa. Refugee processing times are found at <http://www.cic.gc.ca/english/department/times-int/12-ref-dependants.html> and have increased over the past few years.

The Committee on the Rights of the Child CRC/C/15/Add.37, 20 June 1995 recommended:

That every feasible measure be taken to facilitate and speed up the reunification of the family in cases where one or more members of the family have been considered eligible for refugee status in Canada. Solutions should also be sought to avoid expulsions causing the separation of families, in the spirit of article 9 of the Convention. (#21)

**Recommended Action:** Allow all family members of protected persons to come to Canada immediately on the granting of Convention refugee status, by granting entry permits to family members and completing any processing in Canada.

***Issue Number 4: Canada discriminates in the provision of social safety-net benefits on the basis of immigration status, even where the benefits in question form part of contributory insurance schemes funded by payroll deductions (Article 11).***

The Canada Child Tax Benefit (CCTB) and the Energy Cost Benefit are designed to assist low-income families and individuals, and by their very nature they would make a substantial difference to the standard of living of the families who are denied. *Energy Cost Assistance Act, Part 1* and *The Income Tax Act*, s. 122.6 (e).

Employment Insurance benefits for seasonal agricultural workers are funded by their own payroll deductions, but are unavailable to the workers because of the terms of their contracts which require them to leave Canada if unemployed. *Employment Insurance Act*, s.18 (a), 37(b). Canada collects approximately 11 million dollars from these workers, who will never be eligible to receive employment insurance benefits.

Many of the families denied the benefits are legally present in Canada, hold work permits, pay taxes, file income tax returns, and have children, including children who are Canadian citizens by birth. The fact that these low-income families pay into the schemes, but are denied access to any of the benefits, is discriminatory.

Discrimination in access to benefits on the basis of immigration status makes Canada not in compliance with *CESCR* Article 11.1

**Who is affected?** Low income children whose parents are refugee claimants, nationals of countries on which the Canadian government has imposed a suspension of removals due to generalized risk, refused refugee claimants awaiting removal, applicants for humanitarian and compassionate consideration and non-status workers are all denied the CCTB and the Energy Supplement. For a single parent earning \$15,600.00 per year, the CCTB would increase her income by \$8,656.00 and the Energy Supplement would add an additional \$250.00.

Seasonal agricultural workers in Canada are denied the right to collect Employment Insurance.

**Recommended action:** Amend *Income Tax Act* section 122.6 to remove the requirement for permanent residence to be eligible for the CCTB and the Energy Cost Benefit. Exempt seasonal agricultural workers from the payment of Employment Insurance Premiums in recognition of their ineligibility to receive the benefit.

## CANADIAN FEMINIST ALLIANCE FOR INTERNATIONAL ACTION

### ***Articles 2 and 3: Restructuring Fiscal Arrangements***

The restructuring of Canada's social programs, and of the fiscal arrangements between the federal government and the provinces and territories, was undertaken over the last decade without any consideration of the impact on women of these massive changes.

Cutbacks to social programs negatively affect all women and men in Canada. But, social programs play a special role in women's lives – by shifting some caregiving work to the state and giving women more opportunity to be involved in paid work, higher education and public life. Because of this, the cutbacks to social programs and services have had a disproportionately harsh effect on women, pushing them backwards. This gendered impact has been recognized by CESCR, HRC and CEDAW in reviews of Canada between 1993 and 2005.<sup>29</sup> Women have been particularly harmed by the erosion of social assistance, Employment Insurance, civil legal aid, supports for women leaving violent relationships, supports for housing, and labour standards protections and enforcement. To enjoy their right to equality, as well as their Article 3 right to equal enjoyment of their economic, social and cultural rights, women need re-invigorated support for these programs and protections, as well as for child care and post-secondary education.

**The Government of Canada should re-invest in its social programs, in particular by increasing the Canada Social Transfer that supports post-secondary education, social assistance, civil legal aid, and other social services, and by maintaining and strengthening the new child care agreements and housing agreements with the provinces.**

### ***Articles 3, 7, 10, 11, 12, 13 and 15: Aboriginal Women***

Aboriginal women are still at a disadvantage at law in Canada. They do not enjoy the same rights as Aboriginal men with respect to passing on their Indian status to their children and grandchildren. Nor do Aboriginal women living on reserve enjoy the same rights to the division of matrimonial property as counterparts who live off reserve.<sup>30</sup> Also, s. 67 of the *Canadian Human Rights Act* denies them the right to make complaints of sex

<sup>29</sup> CEDAW, 1997, paras. 330, 331, 334, 336, 342; CESCR 1998, paras. 19, 23, 54; HRC, 1999, para. 20; CEDAW 2003 paras. 351, 352, 357, 358, 359, 360; HRC 2005, para. 24.

<sup>30</sup> *Indian Act*, R.S.C. 1970, c. I-6, Section 20; *Derrickson v. Derrickson*, [1986] 1 S.C.R. 285; *Report of the Royal Commission on Aboriginal Peoples*, volume 4, *Perspectives and Realities* (Ottawa: Government of Canada) at 51-53.

discrimination against Band Councils.<sup>31</sup> This discriminatory treatment of Aboriginal women at law affects their enjoyment - and the enjoyment of their children and grandchildren - of their right to culture, ancestral lands, the benefits of land claims, and other social and economic benefits provided to Indians.

The Government of Canada is currently opposing constitutional challenges by Aboriginal women to the continuing discriminatory effects of Bill C-31 amendments to the *Indian Act*<sup>32</sup> and it has failed to correct the overt discrimination against Aboriginal women despite recommendations of the Royal Commission on Aboriginal Peoples, the Canadian Human Rights Act Review Panel, this Committee and other UN treaty bodies.<sup>33</sup>

In addition, Aboriginal women are among the poorest women in Canada. They are marginalized in the labour force. They have higher unemployment rates and lower incomes.<sup>34</sup> They do not have the same level of educational attainment as non-Aboriginal women.<sup>35</sup> They have lower life expectancy and higher rates of chronic illness, such as diabetes.<sup>36</sup> They experience more violence.<sup>37</sup>

More than 500 Aboriginal women have gone missing or been murdered over the last 15 years. There has been no recognition of this as a massive human rights violation. In 1996 Indian and Northern Affairs Canada reported that, "Aboriginal women ... between the ages of 25 and 44 are five times more likely to experience a violent death than other Canadian women in the same age category."<sup>38</sup> The lack of protection of Aboriginal women's human rights and their economic and social marginalization permits the cycle of violence to continue.

**The Government of Canada should take immediate steps to eliminate discrimination against Aboriginal women with respect to Indian status and Band membership, the operation of the *Canadian Human Rights Act*, and the division of matrimonial property on Indian lands.**

**All levels of government need to design and implement comprehensive measures to address the inequality of Aboriginal women with respect to income, health, the attainment of education, employment and just conditions of work. Resources should be allocated**

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<sup>31</sup> The *Canadian Human Rights Act* Review Panel recommended removing section 67 from the *Canadian Human Rights Act* in June 2000. See *Promoting Equality: A New Vision*, at 130. [http://canada.justice.gc.ca/chr/en/chrareview\\_report\\_2000.pdf](http://canada.justice.gc.ca/chr/en/chrareview_report_2000.pdf)

<sup>32</sup> See, for example, *McIvor v. Attorney General of Canada*, (B.C.S.C. No. A941122).

<sup>33</sup> CESCR, 1998 at para. 29; HRC, 1999 at para. 9; CEDAW 2003 at paras. 361-362; HRC 2005 at para.22.

<sup>34</sup> Statistics Canada. 2006. *Women in Canada 2005*. Catalogue no. 89-503-XIE at 198-199.

<sup>35</sup> *Ibid.* at 199.

<sup>36</sup> *Ibid.* at 190 and 193.

<sup>37</sup> *Ibid.* at 195.

<sup>38</sup> *Aboriginal Women: A Demographic, Social and Economic Profile*, Indian and Northern Affairs Canada, Summer 1996.

specifically to support the advancement of Aboriginal women, including equal resources for women to participate in the negotiation of self-government and other agreements.

**Article 11: Women and Social Assistance**

Women have a higher incidence of poverty. Particular groups of women have very high rates of poverty: In 2000 36% of Aboriginal women,<sup>39</sup> 23% of immigrant women,<sup>40</sup> 29% of women of colour,<sup>41</sup> and 26% of women with disabilities<sup>42</sup> lived in poverty. Women are also the majority of those reliant on social assistance.<sup>43</sup> The erosion of social assistance, including reduced welfare rates and narrowed eligibility rules, disproportionately affects women.

Also, women are the overwhelmingly majority of single parents. They now lead 20% of Canadian families. Single mothers have the highest poverty rate of any group in the country: 38% of single mothers have after-tax incomes that are below the poverty line, compared to 13% of single fathers. One third of single mother-led families are reliant on social assistance. The majority of the families from whom the NCBS is clawed back are single-mother led families.<sup>44</sup> This is sex discrimination. Single mothers are also harmed most by welfare rules which bar them from receiving assistance while being enrolled in post-secondary education, and by inadequate and unaffordable child care. The Dietitians of Canada say that single mothers on welfare are most likely to go without food.<sup>45</sup>

In addition, women in particular need adequate social assistance, because, if it is not available, they cannot leave violent partners and abusive family or work environments.<sup>46</sup> Low welfare rates and rules that deem women ineligible are coercing Canadian women into prostitution.<sup>47</sup>

This Committee and other treaty bodies have repeatedly expressed concern about the high poverty rates among women, and among single mothers in particular, and about the harmful effects on women when adequate social assistance is not available (CESCR

<sup>39</sup> *Women in Canada 2005* at 200.

<sup>40</sup> *Ibid.* at 228.

<sup>41</sup> *Ibid.* at 254.

<sup>42</sup> *Ibid.* at 297.

<sup>43</sup> Katherine Scott. 1998. *Women and the CHST: A Profile of Women Receiving Social Assistance in 1994*. Status of Women Canada. [http://www.swc-cfc.gc.ca/pubs/pubspr/0662266250/index\\_e.html](http://www.swc-cfc.gc.ca/pubs/pubspr/0662266250/index_e.html).

<sup>44</sup> National Council of Welfare. 2005. *Welfare Incomes 2004* at 15.

<sup>45</sup> Dietitians of Canada. 2004. *The Cost of Eating in B.C.* <http://www.dietitians.ca/resources/resourcsearch.asp?fn=view&contentid=3026> at 1.

<sup>46</sup> Ontario Association of Interval and Transition Houses (OAITH). 1996. Report to the Special Rapporteur on Violence Against Women (Toronto: OAITH, 1996) at 22. Janet Mosher. 2004. *Walking on Eggshells: Abused Women's Experience of Ontario's Welfare System*. <http://gaynorfolk-net.norfolk.on.ca/life-on-brians-beat/pdfs/walkingoneggshellsfinalreport.pdf>; Canadian Association of Sexual Assault Centres. 2003. *Canada's Promises to Keep: The Charter and Violence Against Women* at 95 – 97.

<sup>47</sup> Canadian Centre for Policy Alternatives. 2006. *Denied Assistance: Closing the Front Door on Welfare in BC* at 51-52. [http://www.policyalternatives.ca/documents/BC\\_Office\\_Pubs/bc\\_2006/denied\\_assistance.pdf](http://www.policyalternatives.ca/documents/BC_Office_Pubs/bc_2006/denied_assistance.pdf).



1993, para. 13, CEDAW 1997, para. 342; CESCR 1998, paras. 28, 33, 54; HRC 1999, para. 20; CEDAW, 2003, 358).

**The Government of Canada should attach national standards<sup>48</sup> of adequacy and eligibility to the Canada Social Transfer to ensure that women in need are not deprived of social assistance, that rates are adequate to meet current costs of food, clothing and housing, and that women are not coerced into remaining in violent relationships or into prostitution.**

### **Articles 7 and 10: Child Care**

Women with children have shown a particularly sharp increase in employment rates, with 70% of mothers with children ages 3 to 5 in the labour force.<sup>49</sup> The vast majority of these working mothers hold full-time jobs.<sup>50</sup> There is also ample evidence now that child care is not only crucial to women's equality but to the best early development of children. No region of Canada, except Quebec, provides a system of well-designed and funded child care services.<sup>51</sup> Only 12.1% of children under 12 had access to regulated child care spaces in 2001.<sup>52</sup> Safe, affordable child care is not available for the women, children and families who need it.<sup>53</sup> Thirty-five years ago the Royal Commission on the Status of Women recommended that the federal government act to create a national system of child care. Successive governments, both Liberal and Conservative, have promised to do so, but have not. In 2004 the Government of Canada signed child care agreements with the provinces, providing money to support the development of regulated child care spaces. This was the first real step forward in 35 years. But, the newly elected minority government has promised to cancel these agreements, offering instead a child care allowance of \$1,200 per year for each child under 6. A child care allowance, while useful, does not build a national child care system.<sup>54</sup> Preserving the child care agreements, and building on them, is essential for women, children and families. The CEDAW Committee recommended in 2003 that Canada "expand affordable childcare facilities under all governments" (CEDAW, 2003, paras. 379-380).

**The federal government and the provinces should preserve and build on the child care agreements.**

<sup>48</sup> Quebec will establish its own standards that reflect human rights norms, with parallel systems of enforcement.

<sup>49</sup> *Women in Canada 2005* at 105.

<sup>50</sup> *Ibid.*

<sup>51</sup> Child Care Resource and Research Unit. *The State of Early Childhood Education and Care in Canada 2005: An Overview.*

[http://www.childcarecanada.org/ECEC2004/pub\\_pdf/ECEC\\_2004\\_Overview.pdf](http://www.childcarecanada.org/ECEC2004/pub_pdf/ECEC_2004_Overview.pdf)

<sup>52</sup> *Ibid.* [http://www.childcarecanada.org/ECEC2001/tables\\_big/TABLES.pdf](http://www.childcarecanada.org/ECEC2001/tables_big/TABLES.pdf)

<sup>53</sup> Need statistic on number of child care spaces available.

<sup>54</sup> Child Care Advocacy Association of Canada. Code Blue for Child Care. <http://www.childcareadvocacy.ca/>

## NATIONAL ASSOCIATION OF WOMEN AND THE LAW

### **Articles 2 and 3: Legal Aid and Court Challenges**

The federal government has provided general funds under the Canadian Health and Social Transfer (and now the Canada Social Transfer), which at the provinces' discretion may be used for civil legal aid, including family law, poverty law, and immigration and refugee matters. By comparison, criminal law legal aid is specifically funded by the federal government. Studies show that criminal law legal aid is mainly used by men, whereas civil law legal aid, especially family law legal aid is mainly used by women.<sup>55</sup> Access to civil legal aid has diminished over the last decade, since the repeal of CAP. In some jurisdictions, poverty law legal aid has been eliminated.<sup>56</sup> In many jurisdictions family law legal aid is virtually unavailable. The Canadian Bar Association says that civil legal aid is in crisis, and that the poorest Canadians currently do not enjoy equal protection of the law, or the benefit of the rule of law.<sup>57</sup> Women are particularly affected.<sup>58</sup>

**The federal government should provide targeted funds to support civil legal aid and ensure that there are effective national standards for coverage, eligibility and adequacy.**

Despite repeated recommendations from this Committee and other treaty bodies (CESCR 1993, para. 28; CESCR 1998, para. 58; CEDAW 2003, paras. 355-356), the federal government has not expanded the mandate of the Court Challenges Program so that equality test cases can be funded when the challenge is being brought to provincial governments. The expansion of this mandate is crucial to women and other disadvantaged groups in Canada having access to domestic remedies for violations of the economic, social and cultural rights.

<sup>55</sup> Addario, L. 1998. *Getting a Foot in the Door: Women, Civil Legal Aid and Access to Justice*. Status of Women Canada. [http://www.swc-cfc.gc.ca/pubs/pubspr/footinthedoor/footinthedoor\\_e.html](http://www.swc-cfc.gc.ca/pubs/pubspr/footinthedoor/footinthedoor_e.html) at 25, 46.

<sup>56</sup> Poverty law legal aid has been eliminated in British Columbia. See Legal Services Society. 2002. Poverty Law Changes. [http://www.lss.bc.ca/What\\_s\\_new/news\\_releases/Archived/factsheet\\_povertylawchanges.htm](http://www.lss.bc.ca/What_s_new/news_releases/Archived/factsheet_povertylawchanges.htm).

<sup>57</sup> Canadian Bar Association. 2005. CBA Launches Test Case to Challenge Constitutional Right to Civil Legal Aid. [http://www.cba.org/CBA/News/2005\\_Releases/2005-06-20\\_backgrounder.aspx](http://www.cba.org/CBA/News/2005_Releases/2005-06-20_backgrounder.aspx); [http://www.cba.org/CBA/News/pdf/statement\\_legalaid\\_jun05.pdf](http://www.cba.org/CBA/News/pdf/statement_legalaid_jun05.pdf).

<sup>58</sup> Brewin, A. and Stephens, L. 2004. *Legal Aid Denied: Women and Cuts to Legal Services in BC*. [http://www.policyalternatives.ca/documents/BC\\_Office\\_Pubs/legal\\_services.pdf](http://www.policyalternatives.ca/documents/BC_Office_Pubs/legal_services.pdf)

**The federal government should expand the mandate of the Court Challenges Program so that constitutional challenges to provincial laws and policies can be funded.**

***Article 9: Women and Employment Insurance and Maternity and Parental Leave***

Women have been hit particularly hard by tightened eligibility rules, reduced benefit levels and shortened benefit periods for Employment Insurance introduced during this decade.

- **Decreased Access:** Only 39% of unemployed workers were eligible for EI in 2001 compared to 74% in 1990. Changes to eligibility rules have disproportionately disqualified women workers. Only 33 % of unemployed women got unemployment insurance benefits in 2001 compared to 44% of men. Part-time female workers continue to pay premiums but they disproportionately are unable to claim unemployment benefits.<sup>59</sup>
- **Replacement Income Levels Lowest Ever:** Replacement rate of income is now 55%, the lowest percentage in the history of employment insurance in Canada. The replacement rate was 67% in 1971, 60% in 1980, 57% in 1993 and 55% after 1997.<sup>60</sup>
- **Maternity and Parental Leave Improved, But Many Do Not Qualify:** Maternity/parental benefits have been enhanced, providing women with a longer period of benefits – up to 50 weeks. But these benefits are available only to those who qualify. Many women have no access to paid maternity benefits.<sup>61</sup>

**The federal government should revise the EI eligibility rules and benefit levels to ensure that unemployed workers are adequately assisted, and that rules do not discriminate against women workers.**

***Article 7: Pay Equity***

Women who work in full-year, full time employment make 71% of the income of men, regardless of age or education.<sup>62</sup> Canada still does not have laws in every jurisdiction that require both public and private sector employers to pay women equal pay for work of equal value (pay equity). In Saskatchewan, B.C., Alberta and Newfoundland there are no

<sup>59</sup> Canadian Labour Congress. 2003. *Falling Unemployment Insurance Protection for Canada's Unemployed*. [http://canadianlabour.ca/index.php/Unemployment\\_Insuran/a42927ce4c6992](http://canadianlabour.ca/index.php/Unemployment_Insuran/a42927ce4c6992)

<sup>60</sup> Yalnizyan, A. *Canada's Commitment to Equality: A Gender Analysis of the Last Ten Federal Budgets (1995 – 2004)* at 34 – 38. <http://www.fafia-afai.org/images/pdf/CanadaCommitmentsEquality.pdf>

<sup>61</sup> Yalnizyan, *ibid.* at 69 – 73.

<sup>62</sup> *Women in Canada 2005* at 133 and 138. All employed women make only 64% of what all employed men earn.

pay equity laws. In Manitoba, New Brunswick, Nova Scotia and Prince Edward Island there are pay equity laws that apply to some public sector employers. Only in Ontario, Quebec, and the federal sector are there pay equity laws applying to both public and private sector employers.

The federal pay equity law is not working. It is only activated if there is a complaint. The process of complaint investigation and hearing is too long and too costly, especially for non-unionized women.

The federal government appointed a Pay Equity Task Force in 2001.<sup>63</sup> The Task Force recommended: 1) a new pro-active pay equity law that requires employers to review pay practices, identify gender-based and race-based wage discrimination gaps, and develop plans to eliminate pay inequities; and 2) a Pay Equity Commission and a Pay Equity Tribunal to administer new pay equity laws.

**All governments should implement laws requiring public and private sector employers to pay women equal pay for work of equal value. The federal government should immediately implement the recommendations of the Pay Equity Task Force.**

***Article 7: More Women in the Low Paid Work Sector***

Women, and racialized women in particular, are disproportionately participants in Canada's low-paid work sector. Employed Aboriginal women are over-represented in 'traditionally female' low-paying occupations. In 2000 60% of employed Aboriginal women worked in sales, service or administration jobs, and they were twice as likely to work in these low-paying positions than Aboriginal men.<sup>64</sup> In 2001 only 7% of Aboriginal women held managerial positions.<sup>65</sup>

While immigrant women are highly educated compared to other Canadian women, their educational attainment does not provide them with higher incomes and better employment.<sup>66</sup> Immigrant women are more likely than their native-born counterparts to have completed university, and are more likely to have an advanced university degree.<sup>67</sup> Despite this immigrant women are less likely to be employed than native-born women,<sup>68</sup>

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<sup>63</sup> Government of Canada. 2004. Pay Equity Review. <http://www.justice.gc.ca/en/payeqsal/6025.html>

<sup>64</sup> Ibid. at 198-199.

<sup>65</sup> Ibid. at 199.

<sup>66</sup> Ibid. at 104 and 139.

<sup>67</sup> Ibid. at 223.

<sup>68</sup> Ibid. at 224.

and are more likely to be working in 'traditional' female jobs. In 2001 46% of immigrant women were employed in sales or service positions, clerks or administrators.<sup>69</sup> Immigrant women are also over-represented in the low-paid manufacturing sector, and underrepresented in management, and the professions compared to their male counterparts, and native-born women.<sup>70</sup> The credentials of immigrant women, obtained in other countries, are often not recognized in Canada, contributing to unemployment and underemployment.

Women of colour in Canada are also a well-educated population. In 2001 21% of women of colour had a university degree, compared to 14% of other women.<sup>71</sup> Despite this women of colour are ghettoized in low-paying administrative, clerical, sales, and service jobs,<sup>72</sup> and have lower employment earnings than other women,<sup>73</sup> and their male counterparts.<sup>74</sup> A large proportion (21%) of women of colour also report that they are discriminated against in finding employment, and in their places of employment.<sup>75</sup>

Women with disabilities also have higher unemployment rates and low incomes.<sup>76</sup>

34% of women are in low paid work.<sup>77</sup> Particularly immigrant and racialized women, are disproportionately employed in the 'precarious' 'non-standard' work sector, working in part-time, temporary, and casual jobs. For these workers, access to decent wages, unionization, benefits, job security, and pensions is poor.<sup>78</sup>

**All governments should improve labour standards and human rights protections and enhance enforcement. Steps should be taken immediately to raise minimum wages, and improve the access of women in the low paid work sector to unionization, benefits and job security.**

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<sup>69</sup> Ibid. at 225.

<sup>70</sup> Ibid. at 225.

<sup>71</sup> Ibid. at 246.

<sup>72</sup> Ibid. at 251.

<sup>73</sup> Ibid. at 252.

<sup>74</sup> Ibid. at 253.

<sup>75</sup> Ibid. at 254.

<sup>76</sup> Ibid. at 295-296.

<sup>77</sup> *The OECD Employment Outlook 1996*, Table 3.2.

<sup>78</sup> Chaykowski, R. 2005. *Non-standard Work and Economic Vulnerability*. Canadian Policy Research Network. [http://www.cprn.org/documents/35591\\_en.pdf](http://www.cprn.org/documents/35591_en.pdf); Vosko, L. 2002. *Rethinking Feminization: Gendered Precariousness in the Canadian Labour Market*. <http://www.genderwork.ca/modules/precarious/papers/vosko.2002.rethinking.pdf>.

## CANADIAN HEALTH COALITION

### ***The Rise of Privatization and the Lack of Enforcement (Article 12)***

Many provinces, most notably BC, Alberta, and Quebec, have expanded the role of private, for-profit companies in the public health system and have allowed private companies to provide medical services for a fee. This has created a two-tier medical system in which the wealthy can jump the queue and buy faster access to health care. This trend was exacerbated by the decision of the Supreme Court of Canada in *Chaoulli*, described in the submission of the Charter Committee on Poverty Issues, in which the majority of the Court failed to interpret the right to health, as protected by the right to “life and security of the person”, in a manner consistent with the ICESCR or with General Comment 14. In spite of these privatization measures, no province has ever been penalized for contravening one of the five principles of the *Canada Health Act*.<sup>79</sup>

- In BC, there are reports of private surgical clinics charging clients user fees.<sup>80</sup>
- Private MRI clinics, which are growing in number across Canada, have also been linked to user fees and queue jumping.<sup>81</sup>
- Provinces have consistently omitted to report data on the number of private, for-profit facilities and the amount of money transferred to those facilities.<sup>82</sup>
- The Dispute Avoidance and Resolution process suffers from a lack of transparency by taking non-compliance issues “out of the legislative and public realm and into the backrooms.”

The Government of Canada has been ineffective in ensuring access to adequate healthcare without distinction based on ability to pay. Paradoxically, the Supreme Court of Canada has failed to ensure that disadvantaged groups are afforded the equal

<sup>79</sup> Paul Moist “Full of holes: Parliament’s annual reports on the Canada Health Act” *CUPE* (7 February 2005), online: CUPE <[http://www.cupe.ca/www/57/Full\\_of\\_holes\\_Parliaments](http://www.cupe.ca/www/57/Full_of_holes_Parliaments)>.

<sup>80</sup> British Columbia Nurses’ Union, News Release, “Illegal billing: Nurses take BC government to court over private clinics” (21 April 2005), online: British Columbia Nurses’ Union <[http://www.bcnu.org/Newsreleases\\_2005/NR\\_015\\_2005.htm](http://www.bcnu.org/Newsreleases_2005/NR_015_2005.htm)>.

<sup>81</sup> CUPE, “‘Innovation’ exposed: An ongoing inventory of major privatization initiatives in Canada’s health care system, 2003-2005” *CUPE* (12 April 2005) at 4, online: CUPE <[http://www.cupe.ca/updir/Revised\\_Apr\\_12,\\_2005.pdf](http://www.cupe.ca/updir/Revised_Apr_12,_2005.pdf)>.

<sup>82</sup> Paul Moist “Full of holes: Parliament’s annual reports on the Canada Health Act” *CUPE* (7 February 2005), online: CUPE <[http://www.cupe.ca/www/57/Full\\_of\\_holes\\_Parliaments](http://www.cupe.ca/www/57/Full_of_holes_Parliaments)>.

enjoyment of the right to health. Governments in Canada should ensure that any inadequacies in the public healthcare system are addressed without creating a two tiered system or institutionalizing inequalities in the enjoyment of the right to health.

### ***The Erosion of Public Health Protection (Article 12)***

On May 24, 2005, the Government of Canada launched “Smart Regulation”, a sweeping initiative that proposes to revamp the rules governing the labelling of foods, the approval of drugs, the growth of crops, and the assessment of industrial projects.<sup>83</sup> In seeking to harmonize Canadian regulations with those of the U.S., Canada’s largest trading partner, the government appears to be prioritizing corporate profits ahead of its statutory obligation to protect the public health of its citizens.<sup>84</sup>

Recent developments suggest that rather than dismantling regulatory safeguards, more stringent safety standards are needed, particularly in the area of drug approval. In September 2004, the widely prescribed arthritis drug Vioxx was withdrawn after a study confirmed that long-term use doubled the risk of a heart attack. Health Canada was aware of the higher risk of adverse cardiovascular events long before Vioxx was withdrawn. “The built-in bias toward approving drugs without adequate assurance of their safety and with only a fragmentary and underfunded mechanism for postapproval surveillance...is a fundamental and (often literally) fatal flaw.”<sup>85</sup>

It is recommended that the Government of Canada strengthen, not loosen, regulations and standards in the food and drug industries to protect the health of Canadians.

### ***The Lack of Pharmaceutical Coverage (Article 12)***

In the 1998 *Reply to List of Issues*, the Government of Canada admitted that “for the working poor without a drug plan, access to these drugs is limited.” This continuing problem stems from the fact that provincial governments are not required to cover medically necessary drugs prescribed outside a hospital. As a result, there are significant

<sup>83</sup> Dennis Bueckert “‘Smart Regulation’ seen as weakening food, drug and environmental standards” *Canadian Press* (27 March 2005), online: Canadian Health Coalition <<http://www.healthcoalition.ca/smart-cp.pdf>>.

<sup>84</sup> Canadian Health Coalition, Media Release, “‘Smart Regulation’ puts profits before health” (29 March 2005), online: Canadian Health Coalition <<http://www.healthcoalition.ca/march29.pdf>>.

<sup>85</sup> Editorial, “Vioxx: lessons for Health Canada and the FDA” (2005) 172(1) *CMAJ*, online: Canadian Medical Association Journal <<http://www.cmaj.ca/cgi/content/full/172/1/5>>.

disparities across Canada as to who is covered, what drugs are covered, and what deductibles are required.<sup>86</sup> For example, in 2002, the public sector financed only 33.5% of prescribed drugs in New Brunswick, whereas in British Columbia, the public sector covered 50.6% of prescribed drugs.<sup>87</sup> As the *Romanow Report* observed: “To a very large extent, people’s income, the kind of job they have, and where they live determine what type of access they have to prescription drugs.”<sup>88</sup>

The Government of Canada and the provincial/territorial governments are strongly urged to establish a universal, accessible, comprehensive, and portable drug plan (such as the Catastrophic Drug Transfer proposed by the *Romanow Report*) as soon as possible.

### ***The Inadequacy of Long-Term Care (Article 12)***

Long-term care institutions, which include nursing homes and residential care facilities, are designed for individuals who require the availability of 24-hour nursing care and supervision within a secure setting. In Ontario alone, there are approximately 63,000 senior citizens who live in long-term care institutions.<sup>89</sup> Their significant health care needs are not being met, as evidenced by the following examples from Ontario:

- In 2002, the daily food allowance per day per resident in Ontario’s long-term care facilities was \$4.49, having increased only \$0.23 in the past decade.<sup>90</sup>
- In a 2001 consumers’ report by PricewaterhouseCoopers comparing nursing care and therapy levels in 11 comparable Canadian provinces, U.S. states, and European countries, Ontario was ranked at the very bottom. Residents in Ontario received only two hours of medical and nursing attention per day by less qualified aides, half the time received by residents in other comparable jurisdictions.

<sup>86</sup> Canada, Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada – Final Report* (Ottawa: Health Canada, 2002) at 194 (Commissioner: Roy J. Romanow), online: Health Canada <[http://www.hc-sc.gc.ca/english/pdf/romanow/pdfs/HCC\\_Final\\_Report.pdf](http://www.hc-sc.gc.ca/english/pdf/romanow/pdfs/HCC_Final_Report.pdf)> [*Romanow Report*].

<sup>87</sup> Canadian Institute for Health Information, *Drug Expenditure in Canada, 1985-2004* (Ottawa: Canadian Institute for Health Information, 2005) at ii, online: Canadian Institute for Health Information <[http://secure.cihi.ca/cihiweb/dispPage.jsp?cw\\_page=AR\\_80\\_E&cw\\_topic=80](http://secure.cihi.ca/cihiweb/dispPage.jsp?cw_page=AR_80_E&cw_topic=80)>.

<sup>88</sup> Canada, Commission on the Future of Health Care in Canada, *Building on Values: The Future of Health Care in Canada – Final Report* (Ottawa: Health Canada, 2002) at 194 (Commissioner: Roy J. Romanow), online: Health Canada <[http://www.hc-sc.gc.ca/english/pdf/romanow/pdfs/HCC\\_Final\\_Report.pdf](http://www.hc-sc.gc.ca/english/pdf/romanow/pdfs/HCC_Final_Report.pdf)> [*Romanow Report*].

<sup>89</sup> Paul McKay “Ontario’s Nursing Home Crisis – Part 1” *The Ottawa Citizen* (26 April 2003), online: Canadian Health Coalition <<http://www.healthcoalition.ca/mckay.pdf>>.

<sup>90</sup> Paul McKay “Ontario’s Nursing Home Crisis – Part 1” *The Ottawa Citizen* (26 April 2003), online: Canadian Health Coalition <<http://www.healthcoalition.ca/mckay.pdf>>.



- One year after the report, annual inspections had dropped, contagious disease outbreaks were not being properly tracked, and there was no way of verifying that provincial funds earmarked for seniors' care were allocated properly.<sup>91</sup>

All provincial and territorial governments are strongly urged to improve standards of care in long-term care facilities.

### ***The Unaddressed Health Problems of the Homeless (Article 12)***

Homeless individuals have considerably higher risks of many illnesses, including tuberculosis and HIV/AIDS. Their health problems are exacerbated by lack of access to appropriate health care.

- A 2004 study examined mortality rates in a cohort of homeless women in Toronto from 1995 to 1997, and found that homeless women aged 18 to 44 years were ten times more likely to die than women in the general population.<sup>92</sup>
- In another 2004 study, mortality rates in a cohort of street youth in Montreal were tracked from January 1995 to September 2000. The mortality rate was reported to be 921 per 100 000 persons, and the leading causes of death were suicide and overdose.<sup>93</sup>

In spite of these studies, none of the National Homelessness Initiative programs from 1999 to 2003 were specifically targeted at improving homeless individuals' access to the health care system.<sup>94</sup>

It is strongly recommended that the Government of Canada implement a national strategy aimed at improving homeless individuals' access to the health care system.

<sup>91</sup> Paul McKay "Ontario's Nursing Home Crisis – Part 6" *The Ottawa Citizen* (1 May 2003), online: Canadian Health Coalition <<http://www.healthcoalition.ca/mckay.pdf>>.

<sup>92</sup> Angela M. Cheung and Stephen W. Hwang, "Risk of death among homeless women: a cohort study and review of the literature" (2004) 170(8) CMAJ, online: Canadian Medical Association Journal <[http://www.cmaj.ca/cgi/content/full/170/8/1243?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&fulltext=cheung+hwang&andorexactfulltext=and&searchid=1115042949187\\_939&stored\\_search=&FIRSTINDEX=0&sortspe c=relevance&resourcetype=1&journalcode=cmaj](http://www.cmaj.ca/cgi/content/full/170/8/1243?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&fulltext=cheung+hwang&andorexactfulltext=and&searchid=1115042949187_939&stored_search=&FIRSTINDEX=0&sortspe c=relevance&resourcetype=1&journalcode=cmaj)>.

<sup>93</sup> Elise Roy, Nancy Haley, Pascale Leclerc et al., "Mortality in a Cohort of Street Youth in Montreal" (2004) 292 JAMA 569-574, online: Journal of the American Medical Association <<http://jama.ama-assn.org/cgi/content/abstract/292/5/569>>.

<sup>94</sup> Government of Canada, National Homelessness Initiative, "NHI Programs," online: Government of Canada <[http://www.homelessness.gc.ca/initiative/nhiprograms\\_e.asp](http://www.homelessness.gc.ca/initiative/nhiprograms_e.asp)>.

## CHARTER COMMITTEE ON POVERTY ISSUES

In previous reviews of Canada, a primary concern of the CESCR was the failure to take appropriate steps to ensure effective remedies for Covenant rights in domestic law. Governments and courts, however, have failed to respond to the concerns and recommendations of the Committee. The availability of effective remedies for Covenant rights has been further diminished since 1998, particularly in the following areas:

### ***A. Charter Interpretation Consistent with the Covenant***

This Committee has repeatedly emphasized that governments ought to promote interpretations of the broadly framed rights in the *Canadian Charter of Rights and Freedoms* to ensure effective remedies to violations of Covenant rights. However, governments have continued to oppose such interpretations of the *Charter* in their pleadings in court and, for their part, courts in Canada have demonstrated what UN High Commissioner for Human Rights, Louise Arbour, has described as a “timidity” in applying the *Charter* consistently with the Covenant.<sup>95</sup> The following three cases are of particular concern:

#### **i) Gosselin: The Right to an Adequate Standard of Living**

The Gosselin<sup>96</sup> case, a Charter challenge to dramatically insufficient levels of assistance for people under the age of 30 in Québec who were not participating in ‘workfare’ programs, was the first under Canada’s *Charter* in which the Supreme Court considered the right to an adequate standard of living. Ontario, Alberta, British Columbia and Québec all argued against an interpretation of the “right to life, liberty and security of the person” in section 7 of the *Charter* that would impose any positive obligation on governments to provide adequate financial assistance to those in need. In response to pleadings from the appellant and interveners referring the Court to the General Comments and Concluding Observations of the CESCR, the Government of Ontario argued that the Court “should reject the notion that the general commentaries of the

<sup>95</sup> Louise Arbour, LaFontaine-Baldwin Lecture 2005: [‘Freedom from Want’ - From Charity to Entitlement](#)

<sup>96</sup> [Gosselin v. Canada](#), [2002] 4 S.C.R. 429.

CESCR could assist courts to establish minimum guaranteed income levels.”<sup>97</sup> In the result, the majority decided that, in this case, it did not need to decide whether the ‘right to life and security of the person’ in the Canadian Charter created obligations on governments to provide adequate assistance to those in need.<sup>98</sup>

ii) [Chaoulli v. Québec \(Attorney General\)](#)<sup>99</sup>: **Right to Health**

In the 2005 Supreme Court of Canada judgment in [Chaoulli](#), a four person majority of the Court held that excessively long waiting lists in the public health care program violated the right to life and personal security in Québec’s human rights legislation. Three members of the majority also found that waiting times violated section 7 of the Canadian *Charter*, but at the same time found that “the *Charter* does not confer a freestanding constitutional right to health care.”<sup>100</sup> Rather than interpreting the right to life and personal security consistently with the Covenant, as protecting the right to health for all, including those unable to afford or qualify for private health care, the majority concerned itself only with the rights of the more advantaged, and declined to require the government to remedy problems in the public health care system. Instead, it declared that in these circumstances, the prohibition of private health insurance violated the rights of those who could secure quicker treatment by joining a private health insurance scheme. The Court ignored arguments from interveners for interpretations consistent with General Comment No. 14.

iii) [Auton](#): **Obligation to Meet Needs of Children with Autism**

In the [Auton](#) case, the Supreme Court dealt for the first time with the question of whether the right to equality under s.15 of the *Charter* imposes positive obligations to provide specialized treatment for autistic children. British Columbia, supported by six other provinces and the Federal Government, argued successfully that the right to equality imposes no obligation to provide services for autistic children. The Chief Justice, writing for a unanimous Court, agreed, declaring that “the legislature is under no obligation to create a particular benefit. It is free to target the social programs it wishes to fund as a matter of public policy, provided the benefit itself is not conferred in a discriminatory

<sup>97</sup> [Factum of the Attorney General of Ontario](#) in *Gosselin*, at page 23, para. 55.

<sup>98</sup> See *Gosselin* at paras. 79 – 81.

<sup>99</sup> [Chaoulli v. Quebec \(Attorney General\)](#), [2005] 1 S.C.R. 791, 2005 SCC 35.

<sup>100</sup> [Chaoulli](#) at para. 104

manner.”<sup>101</sup> The Court made no reference to international human rights law, and made no effort to interpret the right to equality in a more substantive manner, consistent with this Committee’s General Comment No. 9.

The positions adopted by governments in a number of *Charter* cases involving the right to an adequate standard of living and the right to health have been incompatible with the obligation under the Covenant to promote and ensure effective remedies to violations of the Covenant, as described in General Comment 9. The judicial rulings in these cases have made no reference to the Covenant, and may have seriously undermined the effectiveness of the *Charter* as the primary vehicle through which the Covenant is given domestic legal effect in Canada.

### ***B. Absence of Rights and Effective Remedies in Social Programs***

Prior to the repeal of the Canada Assistance Plan (“CAP”) in 1995, Canada correctly informed the CESCR that it was one of the “major cornerstones of the social security system in Canada.” In the wake of CAP’s repeal, and the loss of effective legal remedies that had been available under CAP, the Committee recommended that the Federal Government adopt new measures to ensure, *inter alia*, “an enforceable right to adequate assistance”, and a “right to freely chosen work.” It also recommended that Covenant rights be made “enforceable within the provinces and territories through legislation or policy measures and the establishment of independent and appropriate monitoring and adjudication mechanisms.”<sup>102</sup>

The State party should act on the Committee’s critical recommendations from 1998 for restoring mechanisms of accountability and effective remedies with respect to adequate income assistance, work freely chosen and other Covenant rights.<sup>103</sup> The Federal Government should also negotiate with the provinces a national poverty reduction strategy with a complaints mechanism and enforceable requirements.

<sup>101</sup> *Auton*, *supra* note 138 at para. 41.

<sup>102</sup> [Concluding Observations by the CESCR on Canada \(December 1998\)](#) at para. 52.

<sup>103</sup> [Concluding Observations by the CESCR on Canada \(December 1998\)](#) at para. 40.

### **C. Forced Evictions and Security of Tenure**

The CESCR has recommended urgent attention to the causes of homelessness in Canada and improvements to security of tenure. However, thousands of households continue to be evicted every month without proper hearings, and with no consideration of whether the households will face homelessness.<sup>104</sup> Courts and tribunals regularly exercise discretion to evict for minimal arrears of rent without considering whether families have a place to go. In other instances, ex parte eviction orders are issued on mere suspicion or allegation of criminal activity.<sup>105</sup>

Legislative measures must be adopted in all provinces and territories to ensure that any household threatened with eviction is provided a fair hearing, with adequate representation, and that no one is rendered homeless by an eviction.

### **D. The North American Free Trade Agreement**

In its List of Issues, the Committee has asked Canada to report on how NAFTA tribunals ensure that in adjudicating investors' challenges to government measures under NAFTA, Covenant rights are given appropriate consideration. In fact, NAFTA tribunals consider investor challenges to measures that may be required to protect the right to health or other Covenant rights, and may order massive compensatory awards against Canadian governments, without any consideration of Covenant obligations or even constitutional rights. In a constitutional challenge to the investor-state dispute procedures under NAFTA for their failure to adequately protect human rights, the Government of Canada has argued that "domestic laws and constitutional requirements do not apply to the establishment or the proceedings of the international NAFTA tribunals"<sup>106</sup>

The Government of Canada should negotiate with its NAFTA partners to ensure that Covenant and constitutional rights can be fully protected in the adjudication of any investor challenges to government measures under NAFTA Chapter 11.

<sup>104</sup> In Ontario, 30,000 households, 60% of eviction applications – most for minimal arrears of rent - result in evictions without any hearing or mediation, or any consideration of the whether the result will be homelessness. Ontario Rental Housing Tribunal Workload Reports, 1998 to 2004.

<sup>105</sup> See Saskatchewan's [Safer Communities and Neighbourhoods Act](#), S.S. 2004, c. S-0.1, as amended.

<sup>106</sup> See B. Porter "'Canadian Constitutional Challenge to NAFTA Raises Critical Issues of Human Rights in Trade and Investment Regimes" (2005) 2(4) *ESC Rights Law Quarterly* at <http://www.cohre.org/downloads/Vol3-No1-Quarterly.pdf>; Factum of the Respondent, January 20, 2005 at [http://www.dfait-maeci.gc.ca/tna-nac/disp/cupw\\_archive-en.asp](http://www.dfait-maeci.gc.ca/tna-nac/disp/cupw_archive-en.asp)

## CHILD CARE ADVOCACY ASSOCIATION OF CANADA

### *Early Learning and Child Care Section as it relates to Article 10: Protection of the Family, Mother and Child*

In 1998 the Committee on Economic, Social and Cultural Rights recommended that federal and provincial agreements be adjusted so that services such as child care are available at levels that ensure the right to an adequate standard of living.<sup>107</sup> Article 18 of The Convention on the Rights of the Child backs up the International Covenant on Economic, Social and Cultural Rights by saying “State Parties...shall ensure the development of institutions, facilities and services for the care of children” and “children of working parents have the right to benefit from child-care services and facilities for which they are eligible.”<sup>108</sup>

Unfortunately, early learning and child care has been on and off Canadian public policy agendas since the 1970’s. Finally, in 2004 a five-year, \$5 billion national early learning and child care system based on quality, universality, accessibility and developmental [programming] principles was proposed. In 2005 nine provinces signed bilateral agreements-in-principle, two provinces submitted action plans and signed funding agreements with the Government of Canada. The federal government also signed a five-year funding agreement with Quebec to support their existing system of early learning and child care.

In January 2006, a new federal government took over and announced they would cancel the five-year, \$5 billion national child-care program, after giving the required notice of one year. (All territories and provinces will receive one year of funding.) The national child care program will then be replaced with an annual Child Care Allowance of \$1,200 for each child under six years of age (to be taxed in the hands of the lower-income spouse).

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<sup>107</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada 10/12/98 E/C/12/1/Add.31, Recommendation 42.

<sup>108</sup> Convention on the Rights of the Child, Article 18, [http://www.pch.gc.ca/progs/pdp-hrp/docs/crc/cn\\_e.cfm](http://www.pch.gc.ca/progs/pdp-hrp/docs/crc/cn_e.cfm).

The Child Care Allowance works out to \$100.00 per month. Most licensed-daycare fees for small children are about \$50.00 a day in the Greater Toronto Area.<sup>109</sup> Employers and Communities that create child care spaces are to get a \$10,000 tax credit for every space. The Conservative government is hoping this will create 125,000 new spaces over five years. Given that non-profits and community groups don't pay taxes and one quality space costs \$20,000 in Toronto and up to \$40,000 in Vancouver, this is unlikely to happen. A similar program launched by former Ontario premier Mike Harris in 1997 failed to produce a single space.<sup>110</sup>

The cancellation of a national daycare plan worth \$1.9 billion to Ontario means the province will fall far short of its goal to create 25,000 licensed daycare spaces by the end of the decade. Without \$1.4 billion of that money, the province will spread out the last \$63.5 million instalment over the next four years to maintain the existing 14,000 spaces. 3 Manitoba stands to lose \$126 million over the next three years due to the Child Care agreement cancellation. One-third of Manitoba's \$105 million dollar child Care budget comes from the federal government. Since 1999 Manitoba has significantly improved their Child Care program but services are still expensive and scarce. There are less than 26,000 licensed full and part day spaces, with 14,000 of them in Winnipeg. But there are almost 15,000 children on waiting lists in Winnipeg alone.<sup>111</sup> A table outlining the bilateral agreements-in-principle and funding agreements between Ottawa and each province as well as provincial spending, space figures, and workforce participation rate are included at the end of this section (separate pdf file).<sup>112</sup>

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<sup>109</sup> Talaga, Tanya "Life lessons and the state of daycare", Toronto Star, March 24, 2006, p. E7.

<sup>110</sup> Talaga, Tanya "Life lessons and the state of daycare", Toronto Star, March 24, 2006, p. E7.

<sup>111</sup> Prentice, Susan, Canadian Centre for Policy Alternatives – Manitoba, Childcare progress at risk in Manitoba: Provincial and federal action needed, March 16, 2006.

<sup>112</sup> Childcare Resource and Research Unit. (2006). *The state of the national early learning and child care program and provincial contexts*. BRIEFing NOTE. Toronto: Childcare Resource and Research Unit, University of Toronto.

## COUNCIL OF CANADIANS WITH DISABILITIES

### ***Unemployment (Article 6)***

In contravention of Article 6, the Government of Canada has failed to effectively ensure meaningful access to work for persons with disabilities.

- In 2001, only 51.2% of working-age (25-54) adults with disabilities were employed, compared to 82.3% of adults without disabilities.<sup>113</sup>
- Women with disabilities are the least likely of all groups of women to be employed and are three times more likely to rely on government programs than non-disabled women.<sup>114</sup>
- Persons with disabilities is the only designated group to have experienced net declines in employment almost every year for the past fifteen years.<sup>115</sup>

In the 1998 *Concluding Observations*, the CESCR recommended that the Government of Canada take additional steps to ensure the enjoyment of economic and social rights for people with disabilities. In the *List of Issues*, the Committee asked what percentage of persons with disabilities have obtained employment as a result of the adoption of employment benefits and support measures.

The State party has failed to meet its obligations under articles 2 and 6 to ensure that people with disabilities, and in particular, women with disabilities, benefited equally from improved employment rates in recent years.

### ***Poverty (Articles 2 and 11)***

Contrary to Articles 2 and 11, a disproportionately high number of persons with disabilities are deprived of an adequate standard of living in Canada.

<sup>113</sup> Canada, Human Resources Development Canada, *Disability in Canada: A 2001 Profile*, (Ottawa: Human Resources Development Canada, 2003), online:

<<http://www.sdc.gc.ca/asp/gateway.asp?hr=en/hip/odi/documents/PALS/PALS000.shtml&hs=pyp>>.

<sup>114</sup> Women with Disabilities: Accessing Trade. (n.d.). online at

[http://www.swccfc.gc.ca/pubs/0662367391/200407\\_0662367391\\_7\\_3.html](http://www.swccfc.gc.ca/pubs/0662367391/200407_0662367391_7_3.html); Gail Fawcett, Gail Fawcett *Bringing Down the Barriers: The Labour Market and Women with Disabilities in Ontario*, (2000). Canadian Council on Social Development.

<sup>115</sup> Canada, Human Resources and Skills Development Canada, *Annual Report: Employment Equity Act, 2004*, (Ottawa: Human Resources and Skills Development Canada, 2005).



- In 2001, 27.9% of working-age adults with disabilities lived below the Low Income Cut-Offs, compared to 12.7% of the non-disabled population.<sup>116</sup>
- The average household income for children with disabilities was significantly lower than for children without disabilities. In the preschool age group, the difference was \$11,478; among school age children, the difference was \$8,703.

In the 1998 *Concluding Observations*, the CESCR recommended that all levels of government provide adequate support services to reduce poverty and homelessness among persons with disabilities.

The low-income rate among persons with disabilities has not significantly improved since Canada's last review despite robust economic growth. More concerted effort must be made to reduce poverty among people with disabilities.

### ***Women with Disabilities (Articles 2 and 3)***

Contrary to Articles 2 and 3, women with disabilities (13.3% of all Canadian women) do not equally enjoy social and economic rights.

- In 2001, working-age women with disabilities were significantly more likely to be out of the labour force than their male counterparts (46.3% compared to 28.4%).<sup>117</sup>
- The low-income rate among women with disabilities is significantly higher than among men with disabilities.<sup>118</sup>

In the *List of Issues*, the CESCR requested detailed information on what specific strategies have been undertaken to address the critical situation facing women with disabilities. The Government of Canada made no mention of any specific strategies in its reports.

Evidence of the prevalence of low income and lack of labour force attachment among women with disabilities in Canada shows a disturbing pattern of poverty and social exclusion that is incompatible with obligations under articles 2, 6 and 11 of the Covenant, and requires urgent and concerted efforts to correct.

<sup>116</sup> Canada, Human Resources Development Canada, *Disability in Canada: A 2001 Profile*, (Ottawa: Human Resources Development Canada, 2003) online: <<http://www.sdc.gc.ca/asp/gateway.asp?hr=en/hip/odi/documents/PALS/PALS000.shtml&hs=pyp>>.

<sup>117</sup> *Ibid.*

<sup>118</sup>

### **Access to Education and Training (Articles 2 and 13)**

Contrary to Articles 2 and 13, persons with disabilities do not equally enjoy the right to education in Canada.

- In 2001, only 13.9% of working-age adults with disabilities completed university, compared to 24.8% in the non-disabled population.<sup>119</sup>
- Almost one-third of adults with disabilities (29.5%) had less than a high-school education compared to 18.2% in the non-disabled population.

Canadian governments have not reported any measurable progress in improving access rates of people with disabilities to education and training.

### **Reductions in Support Services (Articles 11 and 12)**

In the 1998 *Concluding Observations*, the CESCR expressed concern over cuts in home care, attendant care and special needs transportation systems, and tightened eligibility rules for social assistance for people with disabilities.<sup>120</sup> The 2005 federal budget included measures to improve tax fairness for persons with disabilities. However, as multiple authorities have recognized, “[p]riority should be given to expenditure programs rather than tax measures to target new funding where the need is greatest.”<sup>121</sup> The tax measures are of no benefit to the many Canadians with disabilities who live in poverty and have no taxable income.<sup>122</sup>

The Government of Canada and provincial governments have failed to respond to the Committee’s previous concern about cuts to disability related supports and services. The Government should commit to a national strategy, developed in consultation with persons with disabilities, to address the increasingly neglected needs of persons with disabilities through targeted programs.

<sup>119</sup> Canada, Human Resources Development Canada, *Disability in Canada: A 2001 Profile*, (Ottawa: Human Resources Development Canada, 2003) online:

<<http://www.sdc.gc.ca/asp/gateway.asp?hr=en/hip/odi/documents/PALS/PALS000.shtml&hs=pyp>>.

<sup>120</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 36, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [*Concluding Observations*].

<sup>121</sup> Council of Canadians with Disabilities, News Release, “Canadians with Disabilities Once Again Left Without Supports” (23 February 2005), online: <[http://dawn.thot.net/budget\\_2005.html](http://dawn.thot.net/budget_2005.html)>.

<sup>122</sup> Council of Canadians with Disabilities, News Release, “Canadians with Disabilities Once Again Left Without Supports” (23 February 2005), online: <[http://dawn.thot.net/budget\\_2005.html](http://dawn.thot.net/budget_2005.html)>.

### **Homelessness (Article 11)**

Surveys have shown that the majority of persons with disabilities lack basic accessibility features in their homes and are unable to move to more appropriate accommodation because of affordability issues.<sup>123</sup> People with disabilities are at high risk of homelessness. The CESCR expressed concern in 1998 that large numbers of discharged psychiatric patients end up on the street, while others suffer from inadequate housing, and recommended that all levels of government provide adequate support services for persons with disabilities to reduce homelessness.<sup>124</sup>

Little progress has been made to reduce high levels of homelessness among people with disabilities. Governments in Canada have not addressed this problem with the urgency it deserves.

### **Transportation (Article 11)**

Persons with disabilities continue to encounter significant barriers in accessing transportation services.<sup>125</sup> Since the development of Voluntary Standards of Practice the disability community has seen an erosion of accessibility in all modes of transportation.<sup>126</sup> Downloading of many services to municipalities has been implemented without creating any mechanisms of accountability to Covenant standard for people with disabilities.

The disability community in Canada is calling on the government of Canada to regulate access on all modes of transportation similar to the American model.

<sup>123</sup> Canadian Mortgage Housing Corporation, "Research Highlights, Socio-economic Series 03-008, July 2003, Examining the Housing Choices of Individuals with Disabilities," online: <[https://www.cmhc-schl.gc.ca:50104/b2c/b2c/init.do?shop=Z01en&z\\_category=0/0000000012/0000000030/0000000044](https://www.cmhc-schl.gc.ca:50104/b2c/b2c/init.do?shop=Z01en&z_category=0/0000000012/0000000030/0000000044)>.

<sup>124</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1/Add.31 at para. 46, online: UN HCHR Treaty Body Database <<http://www.unhchr.ch/tbs/doc.nsf>> [Concluding Observations].

<sup>125</sup> Michelle Owen and Colleen Watters, *Housing for Assisted-Living in Inner City Winnipeg: A Social Analysis of Housing Options for People with Disabilities* (January 2005).

<sup>126</sup> David Baker, *Moving Backwards: Canada's State of Transportation Accessibility in an International Context, Final Report to the Council of Canadians with Disabilities* (February 2005).

## **FEMINIST ORGANIZATION FOR WOMEN'S ADVANCEMENT, RIGHTS AND DIGNITY**

### **BURNED BY THE SYSTEM, BURNED AT THE STAKE: POOR, HOMELESS AND MARGINALIZED WOMEN SPEAK OUT<sup>127</sup>**

FORWARD began as a human rights education program at a Toronto drop-in centre for women who are homeless and socially isolated. Since April 2005, over 40 women have participated in weekly meetings. The majority of participants have been migrant women, women who are racialized, and psychiatrized women. Our report is based on testimonies, discussion, and analysis that have emerged from these meetings. This synopsis highlights just a few of the issues from our full report.

#### ***Articles 2(2) & 3: Poor Women Marginalized by the State and Targeted for Violence***

The Covenant guarantees non-discrimination in economic, social and cultural rights, and equal enjoyment of these rights by women and men. In Canada, this is not the case. Women—and especially women who are racialized, Aboriginal, disabled, psychiatrized, and migrants—are disproportionately represented among Canadians who

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<sup>127</sup>In this report, “poor women” is to be understood as referring to low-income and homeless women who are migrant and Canadian-born, racialized, Aboriginal, psychiatrized, disabled, older, queer, mothers, and/or survivors of violence. The rights violations, marginalization, and targeting described are on the basis of the interaction of income and gender with these other factors. By definition, poor women are experiencing rights violations under Article 11(1). All of the other violations described here should be understood as occurring in that context.

“Migrant” refers to women born in other countries who have arrived in Canada under a range of circumstances, including those brought to Canada as children by their parents; those without status; refugees; refugee claimants; temporary workers under programs such as the Live-In Caregiver program; those sponsored in adulthood by a spouse or family member; and those who immigrated independently.

“Homeless” refers to women who are currently without their own housing, or who have been so in the past. In addition, the report reflects the experiences of women living in extremely inadequate housing, including housing that is unsafe, overcrowded, or unhealthy; housing that costs so much that women must rely on free meals at drop-ins in order to survive; housing in which women experience abuse from landlords, neighbours, cohabitants, and family members; insecure housing in which women face harassment and eviction; and housing that has been deemed unfit for children, causing women’s children to be taken into State care.

“Racialized” refers to women who have been marked as non-white by socially constructed categories of race.

“Aboriginal” refers to indigenous women of the Americas, including First Nations, Inuit and Métis women, as well as women of indigenous communities of Latin America.

“Psychiatrized” refers to women who have been labelled with a diagnosis of “mental illness” or “mental disorder,” those who have taken or been forcibly given psychoactive pharmaceuticals, and those who have been held against their will in psychiatric facilities.

“Queer” refers to women seen as sexually deviant by dominant values, for example women who are lesbian, bisexual, or sex trade workers.

experience poverty and severe housing problems including homelessness.<sup>128</sup> Poor women are disproportionately affected by cuts and eligibility restrictions in welfare, unemployment insurance, and housing.<sup>129</sup> We are represented as cheats and bad mothers, and targeted by legislation that mandates increased surveillance and coercion by social assistance and child protection.<sup>130</sup> When women are marginalized economically and socially in this way, we become receptacles for mistreatment, degradation, exploitation, and violence.<sup>131</sup> And then, in a cycle that is truly vicious, the degraded image of poor women is used by representatives of the State to justify the very policies that increase our poverty.<sup>132</sup>

State policies and practices during the period of this report have contributed to the creation of a class of citizens—poor women—who are portrayed and treated as society’s garbage cans. We have endured harassment, threats, attacks and sexual assaults because, as one group member has said, “Women of a certain economic class are stereotyped as whores. This is used as an excuse for violence.”

*We demand that the federal, provincial and territorial governments acknowledge the connections between violence against women and social and economic exclusion. These governments must re-evaluate all policies and practices in social assistance, child protection, and mental health to ensure that they reflect the worth and dignity of poor women, instead of contributing to our degradation.*

### **Articles 9 & 11 (1): No Social Security for Poor & Homeless Women**

In its 1998 Concluding Observations on Canada this Committee expressed concerns with the ways in which changes to social assistance and unemployment

<sup>128</sup> CERA, *Women and Housing in Canada: Barriers to Equality*, March 2002.

<sup>129</sup> Ibid.

<sup>130</sup> Mosher, J. (2002). The shrinking of the public and private spaces of the poor. In Hermer, J. and J. Mosher, (Eds.), *Disorderly people: Law and the politics of exclusion in Ontario* (pp. 41-53). Halifax: Fernwood Publishing.

<sup>131</sup> For example, the Native Women’s Association of Canada and Amnesty International report that over 500 Aboriginal women—most of them impoverished and homeless—have disappeared or been murdered, and that the murders often were marked by extreme brutality. These acts of violence are motivated by racism against Aboriginal women, and enabled by the economic and social marginalization of Aboriginal women and girls. Amnesty International Canada Public Brief, October 2005,

[http://www.amnesty.ca/campaigns/resources/sisters\\_brief\\_oct2005.pdf](http://www.amnesty.ca/campaigns/resources/sisters_brief_oct2005.pdf).

<sup>132</sup> For example, former Ontario Premier Mike Harris famously commented that he was terminating the \$26 per month nutrition allowance for pregnant social assistance recipients because he wanted to make sure they weren’t spending it on beer. <http://www.alternatives.com/capp/v-rebick.htm>

insurance policies interfered with women's right to social security.<sup>133</sup> Many of the people who need them the most are still completely excluded from access to these inadequate programs. For example, in Ontario, people who are homeless can't collect welfare because you must have a permanent address in order to qualify for social assistance. Women who are living on the streets, in shelters, or in places not intended for human habitation, and women who are released from psychiatric hospitals and jails with no fixed address, have to get a "promise to rent" letter from a landlord in order to begin receiving benefits. Trying to get this letter without money for a down payment can lead to sexual exploitation. Another example is the application process for the Ontario Disability Support Plan. This process is so difficult and there are so many barriers that many women who need disability supports just can't get them.<sup>134</sup> And finally, migrant women without status and women in some temporary worker programs have no access to any social security, even though they support the Canadian economy with their work and spending.

*We demand that governments in Canada ensure that all social security programs are adequate, available and accessible to all women who need them, especially women who are poor, homeless, disabled, psychiatrized, and migrants.*

### **Article 10: Poor Mothers Targeted By Child Protection Agencies**

Many of the women in FORWARD can testify to the irreparable harm our families have experienced from child protection agencies. These agencies are supposed to investigate *any* allegations of harm to children, but in practice, mothers who are Aboriginal, poor, homeless, racialized, migrants, young, and psychiatrized are vastly overrepresented among those involved with CAS.<sup>135</sup> Child protection agencies are mandated to take whatever action is needed to protect and support a child at risk, but the actions they take rarely include practical support measures to provide the necessities of life, improve the family's living conditions, and support mothers in being the best parents we wish to be. Instead of protecting the child by supporting the family unit, child protection agencies put us under a microscope and make it even harder for us to take

<sup>133</sup> CESCR (1998), paras. 19, 20.

<sup>134</sup> See "Denial By Design," a report by the Income Security Advocacy Centre, viewed 19 March 2006 at [http://dawn.thot.net/denial\\_by\\_design.html#8](http://dawn.thot.net/denial_by_design.html#8)

<sup>135</sup> Young Mothers In/From Care Project, 2001, School of Social Work, University of Victoria.

good care of our kids. Some of us know from personal experience that women who are homeless often have our babies taken away at birth. We are left to cope with the grief and loss while still homeless, and we lose custody permanently because we lack the housing, income and supports we need to parent.

*We demand that the money spent maintaining children in State care be redirected to providing supports for poor families. Poor mothers need access to adequate and affordable housing, nutritious food, respite care and voluntary ongoing counselling. The punitive and degrading nature of the current child protection system does nothing to improve our parenting.*

### **Article 12: Poor Women Harmed in the Psychiatric System**

In its 1998 Concluding Observations, this Committee expressed concern about cuts to services for people with disabilities and people who had been in the psychiatric system, and acknowledged the link between these cuts and increasing rates of homelessness. In Canada's Fifth Report, Ontario claims to be enhancing needed services through increased funding of supportive housing, crisis management, assertive community treatment, and case management.<sup>136</sup> But we worry that these services will work alongside Ontario's new mental health laws to put poor and homeless women at further risk of being forced into the psychiatric system.<sup>137</sup> Too often, "supportive housing" for poor women who are disabled or psychiatrized means group homes in which women are abused, exploited and overmedicated.<sup>138</sup> The depression, anger and anxiety we experience because of homelessness, poverty, violence and marginalization is not helped by psychiatric labels or drugs. When we are labelled as "crazy" it becomes even easier for the public and the government to disregard our opinions and experiences.

*We demand supports for independent living, and programs to improve our mental and emotional well-being, such as counselling and access to traditional remedies. The most important mental health "treatment" is an adequate standard of living.*

<sup>136</sup> Fifth Report of Canada at paras 354 & 355

<sup>137</sup> In 2000, the Ontario government amended the Mental Health Act and the Health Care Consent Act to widen criteria for involuntary admission to psychiatric facilities, and to allow for the forced drugging of people living in the community.

<sup>138</sup> Toronto Star, date n/a, "Adults beaten in group homes: Hundreds of cases may just be tip of iceberg" viewed 21 March 2006 at <http://www.ont-autism.uoguelph.ca/adults.PDF>.

# KAIROS: CANADIAN ECUMENICAL JUSTICE INITIATIVES

## Introduction

Between January 17 and March 21, 2006, eleven public dialogues or “People’s Forums” were held in Canadian cities and towns in six provinces with 290 participants to document economic, social and cultural rights violations. Many marginalized people – Aboriginal People, women, people with disabilities, homeless people, and low-income people more generally – participated at the Forums. Below is a summary of case data provided by participants at Forums, along with recommended government actions.

### **Articles 2 and 3. *Enjoyment of Rights Without Discrimination***

**Case data:** Participants spoke about:

- Discrimination against Aboriginal people, women, injured workers, people with disabilities, people of colour and refugees and immigrants
- Discrimination against Aboriginal people in areas of employment, housing, services or education.
- Loss of status by children of Native women who marry off-reserve.

**Relevant CESCRC concerns and issues:** Concern about gross disparities between Aboriginal people and the majority of Canadians was raised in 1998 Concluding Observations, and loss of reserve membership for children of Aboriginal women marrying off-reserve was raised in the June 2005 list of issues).

**Recommended actions:** Participants called for:

- Implementation of pay equity legislation in Saskatchewan
- The Ontario Workplace Safety & Insurance Board to acknowledge discrimination due to age, sex and colour
- Governments to recognize that there is a problem with discrimination, and to encourage awareness building.



**Article 7. Right to Just and Favourable Conditions of Work**

**Case data:** Participants at most Forums raised concern about low and inadequate wages. Inadequate wages mean that the working poor:

- Cannot afford safe housing, clothing, eye or hearing tests, medication costs, clothing, transportation and education opportunities
- Are forced to work multiple jobs and many overtime hours.

Concern was also raised about the increase in non-standard and precarious work arrangements with little job security (part-time, contract, seasonal), and the falling proportion of workers who are qualifying for employment insurance.

**Relevant CЕСSR concerns and issues:** In their 1998 Concluding Observations, CЕСSR raised concern about the insufficiency of minimum wages and reductions to unemployment insurance benefits. CЕСSR also asked Canada to provide data on minimum wages levels in relation to the Low-Income Cut Off (LICO) in its June 2005 List of Issues.

**Canada's Reports:** Canada does not directly address this issue in its 5<sup>th</sup> Report.

**Recommendations:** Participants called for:

- Increases to minimum wages (to at least \$10/hour)
- Improved working conditions, including breaks, holidays, safety

**Article 9. Right to Social Security**

**Case data:** The inadequate income provided by social assistance was a common concern (see Article 11). Social security programs were also criticized on a number of other grounds:

- Inadequate breadth and level of services available, particularly for disabled people, and Aboriginal women fleeing family violence
- Case overload amongst social workers
- Lack of support for people who are looking for direction to get a job.

Barriers to services are created through:

- The use of call centres to process applications for social assistance in Saskatchewan, which creates barriers for people without telephones

- The complexity of application processes in Alberta.
- Lack of support for applicants with mental health issues in Sudbury.

Rules and regulations that prevent people from accessing full benefits, including:

- Ineligibility for welfare by those who own property
- Inability to apply for and receive social assistance without an address
- Lack of money for dependents of families on disability assistance in Alberta.

Concern was raised that money is clawed back from social assistance recipients for various reasons (going to school, earning additional money), impeding people from moving from welfare to work.

The treatment that people receive as welfare recipients was described as stigmatizing and condescending. Participants spoke of the need to restore dignity to people who encounter the welfare system. Participants raised concern about the lack of provision of proper information to social assistance recipients.

**Relevant CESCRC concerns and issues:** The 1998 Concluding Observations and 2005 list of issues raised concern about adequacy of social assistance, lack of national standards for social program, cuts to services, and the deduction of the National Child Tax Benefit.

**Canada's Reports:** Canada's 5<sup>th</sup> Report does not address lack of national standards for social programs.

**Recommendations:** Recommendations included:

- Equal access to services for all
- A simplified process of applying for assistance and services ("one stop shopping")
- Greater access to financial and other resources (less restrictive qualification criteria)
- Elimination of temporary bans on income assistance
- Reform the adversarial and punitive mind set of the social welfare system
- Provide recipients with a fuller explanation of their rights.

**Article 11. Right to an Adequate Standard of Living**

**Case data:** Participants from across Canada felt strongly that rates of social assistance, employment insurance, disability benefits and work-related injury compensation are not adequate to maintain a decent standard of living (welfare levels are often set at less than half the LICO). This problem is compounded by a lack of accessible and affordable housing, and a lack of affordable and healthy food. Specifically:

- Welfare rates and shelter allowances are dismally low, often at 1980s levels
- Recipients of disability assistance (AISH) often have to skip a month of household bills to put food on the table and pay rent
- Ontario Disability Support Program (ODSP) levels haven't been raised in 10 years.

**Relevant CESCRC concerns and issues:** 1998 Concluding Observations raise concern about poverty levels (particularly among Aboriginal people and single mothers), homelessness, inadequate social assistance rates and increased food bank use. The list of issues from 2005 request information on poverty rates of specific groups, food insecurity, and measures to address core housing need.

**Canada's Reports:** Canada's 5<sup>th</sup> Report speaks of the Canada's Affordable Housing Initiative (para. 57), but fails to mention that about half of its funds are still not allocated.<sup>139</sup> Canada's report states that there is a "comprehensive policy approach" to reduce poverty (para. 120), whereas there is no official plan (or targets) for reducing poverty.

**Recommendations:** Participants felt that:

- social assistance rates must be immediately increased to meet accommodate basic standards of living
- a Guaranteed Annual Income for all should be implemented to cover basic needs
- the poverty line should be updated
- a "decent" living wage should be established for all workers.

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<sup>139</sup> See Michael Shapcott, "Housing dollars in the pipeline (federal)", Memo, March 4, 2006, Wellesley Central Health Corporation. Contact [Michael@wellesleycentral.com](mailto:Michael@wellesleycentral.com) for information.

# LIGUE DES DROITS ET LIBERTÉS

## **Our rights scorned by our governments**

Since the summer of 2005, the United Nations Committee of Experts that monitors how economic, social and cultural rights are respected has been examining the situation in Quebec and Canada, with a view to issuing its findings in May 2006. Concerned about the situation, the Ligue des droits et libertés has, with the support of more than 50 community, labour and grassroots organizations in Quebec, prepared the 2005 Social Report, which vividly documents various violations of their international commitments by our governments and the resulting setback for economic and social rights in Quebec. The purpose of this document is to give a brief overview of some of the leading conclusions of the Social Report<sup>140</sup>, whose objective is not only to inform the UN about the situation in Quebec but also to provide social movements in Quebec with additional arguments to help force our governments to honour their obligations.

### **The Social Report condemns our governments' violations of our economic and social rights**

#### ***Respecting, protecting and implementing economic, social and cultural rights (Art. 2)***

In adhering to the ICESCR in 1976, our governments pledged to act in such a way as to respect, protect and promote economic, social and cultural rights.

We denounce the behaviour of the Canadian and Quebec governments, which have not taken any steps to follow up on the 1998 Committee's Conclusions, which indicated that the collective wealth of Canada and Quebec was such that the government could not justify its failure to honour all ICESCR rights. Instead, our governments have continued to put improving corporate economic competitiveness, balancing the budget, paying down the debt and cutting taxes ahead of the well-being of citizens, by reducing the share of

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<sup>140</sup> *Rapport Social*, Ligue des droits et libertés, published in French, March 2006.

the GDP allocated to public spending between 1994 and 2005 (from 14.9% to 11.6% for the federal government, and from 22.3% to 17.6% for the Quebec government).

***Violations of the right to just and favourable conditions of work (Art. 7)***

In Quebec, having a job doesn't necessarily protect against poverty. Although the low-income cutoff in Quebec is \$16,600 after taxes, the annual income earned from full-time work at the legal minimum wage is only \$15,808 before taxes.

We denounce the Quebec government's total lack of consideration for the Committee's finding that "the minimum wage is not sufficient for a worker to have an adequate standard of living, which also covers his or her family."

***Violations of the right to organize (Art. 8)***

The ICESCR commits signatory States to protecting labour rights and freedom of association, because it recognizes that the unionization of workers and free collective bargaining of their working conditions are fundamental in protecting their dignity and establishing decent working conditions. But the Quebec government has clearly breached the ICESCR with its adoption of amendments to Sections 45 and following of the Labour Code, as well as various pieces of anti-labour legislation. Two laws (Bills 7 and 8) deny the right to organize for three significant groups of working women: home child-care providers, workers in intermediate resources and family-type resource providers. A third law (Bill 30) imposed the reorganization of bargaining units in the health and social services sector – a violation of the principle of freedom of association.

***Violation of the right to social security (Art. 9)***

The main purpose of social security is to guarantee an income for people without jobs that allows them to meet their own needs and those of their families. The idea is to

guarantee an adequate income for all. In Quebec, there are at least two programmes designed to fulfil the right to social security: employment insurance and social assistance.

Regarding employment insurance, we denounce the Canadian government for taking successive steps to tighten eligibility criteria and reduce the level of duration of benefits, to the detriment of the well-being of people who lose their jobs, despite the existence of large surpluses in the employment insurance fund that were diverted to help balance the federal government's budget and pay back the debt. We denounce the Quebec government for keeping social assistance benefits at 41% of the low-income cutoff, which is definitely not enough to ensure the right to an adequate standard of living.

Furthermore, the government continues to discriminate against those receiving social assistance on the basis of their ability to work.

### ***Violation of the right to an adequate standard of living (Art. 11)***

Governments must take various steps to ensure the right to an adequate standard of living, for example by raising the minimum wage and unemployment and social assistance benefits, and fighting systemic discrimination against women, immigrants and persons with functional limitations.

They have an obligation to take steps to ensure the right to adequate housing and food.

We denounce:

- the fact that about 17% of people in Quebec live under the poverty line;
- the lack of effective legal protection aimed at guaranteeing the right to housing and the inadequate construction of new social housing in Quebec, despite the fact that waiting lists grew from 10,000 to 22,000 names between 2001 and 2005, and the large number of homeless people;
- the 10% increase in the use of food banks from 2003 to 2004; 40% of those using food banks are children;
- the fact that the Quebec government considers it normal that fulfilling a fundamental right like the right to food depend on private charity.

***Violation of the right to health (Art. 12)***

In ratifying the ICESCR, our governments recognized “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and pledged to “assure to all medical service and medical attention in the event of sickness”. As well, according to the ICESCR Committee, “equal access to health care and health-related services is an aspect of the right to health that should be emphasized.” (our translation) We denounce the impact of the inadequate funding of our health and social services system, which has reduced the system’s ability to provide access to appropriate care and services on a timely basis.

We denounce the fact that free prescription drugs for the aged and people on social assistance were abolished when Quebec introduced its public drug insurance plan in 1997.

***The primacy of economic and social rights***

In Quebec, economic and social rights do not take precedence over all Quebec legislation, because they do not have the quasi-constitutional status that civil and political rights uphold in the Quebec Charter of Human Rights and Freedoms. If we want the people who are wronged to have access to legal remedy when their rights are violated, Quebec courts must be able to refer to a Quebec charter that incorporates these rights as set out in the ICESCR.

Translated from French by Margaret Heap

## LOW INCOME FAMILIES TOGETHER

### *The LEAD Project Report*

Community residents in the uniquely multicultural community of St. James Town, located in downtown Toronto, Canada (a.k.a. the “United Nations of St. James Town”) saw the need for a community-based project so that a human rights culture might take root and begin to grow. This project is designed to promote ESCR and empower local residents to develop a human rights based strategy to improve the well-being and quality of life in St. James Town, the most diverse community in the world.

The St. James Town L.E.A.D Project is a joint effort by LIFT (Low Income Families Together) and Ryerson University. Using CDESCR as a guide, L.E.A.D trained residents to facilitate focus groups with other residents to explore our human rights and begin to identify changes needed for a healthy community.

Between September 24, 2005 and February 15<sup>th</sup> 2006, residents conducted 19 focus groups with neighbours to determine the human rights priorities of the community. The L.E.A.D project trained 12 facilitators from the community to conduct focus groups in their own language. Over 500 people were involved in the process. In all, people from over 24 ethnic backgrounds participated in the 19 focus groups and participants ranged in age from 12 to 85. There are over 150 languages spoken in St. James Town.

The project team was disturbed by the scope of struggle and suffering people silently endure in St. James Town, arising from isolation and fear, racism, the random effects of widespread drug abuse and the overall sense of neglect by police, government and services felt by most participants. Many had no idea what their rights are, or what is available in the community. Those that did, felt that many services were inaccessible or inappropriate. Long term residents believed that the problems in St. James Town of increasing violence, racism, local drug trade, and crack use have gotten much worse in the past decade due to the erosion of accountability to basic human rights within all levels of government. People in the focus group sessions generally agreed that Human Rights



are key to well-being, and that their experience of poor health, poverty and stress were, in part, the result of not having access to community interaction and space, and/or enough available support services and opportunities.

All Human Rights are based on freedom from fear and want, and the first principle of self-determination requires that people may work together to promote and respect their collective rights, yet most people in St. James Town face isolation, fear or want, every day, resulting in poor health and lack of basic human rights here in the heart of Canada's largest city. The reality of life within this high density neighborhood, the lack of many basic human rights and deep inequality surrounded by vast material wealth, presents a tragic case of neglect, wasted human potential and broken dreams.

We have done our best to provide the committee with a useful case study to help shed light on the unique effects and realities of ESCR violations and urban poverty in the context of a wealthy western country. As Canada prides itself on multi-culturalism, we also thought it appropriate to explore these issues in the context of diversity. We hope this report will help provide insight not just into the impacts of ESCR issues but also the possibilities for empowering communities to work towards the realization of their human rights. This report is only a beginning...

### ***Ontario List of Issues***

The list of issues for Ontario is a brief overview of concerns that have arisen or continue to linger since our more comprehensive 1998 Ontario People's Report. In cases where we point to no change having occurred, the 1998 report provides the detail of the issue that remains unresolved. Essentially, in spite of promises to the contrary made by the current government, there has been very little done to address the concerns expressed by the committee in 1998. The details of current policy issues are captured adequately and in more depth in the **Hamilton City** report which details the policies currently impacting the ESC rights of Ontario residents.

The **Seniors Report** is a brief overview compiled by seniors of issues facing the elderly in Canada and Ontario. Many of the concerns are national as many programs affecting seniors are under federal jurisdiction. The concerns range from falling incomes from income benefit programs, to diminishing health care and home care, and a complete lack of dental coverage affecting the health of many old people, among other concerns.

## NATIONAL ANTI-POVERTY ORGANIZATION

### **1. Review Process**

1.1 NAPO notes that the Concluding Observations in 1998 requested that the State Party “ensure the wide dissemination in Canada of its present concluding observations and to inform the Committee of steps taken to implement those recommendations in its next periodic report.” We are not aware of any follow-up on this by the Canadian government.

*1.2 NAPO urges the Committee on Economic, Social and Cultural Rights to ask the Canadian government what was done about the Concluding Observations from the 3<sup>rd</sup> Review and recommend that more effective follow-up mechanisms be implemented this time.*

1.3 The Standing Senate Committee on Human Rights recommended in its Promises to Keep report that a parliamentary Human Rights Committee be created and that it have as part of its responsibilities “reviewing and scrutinizing Canada’s reports to treaty bodies, as well as those bodies’ observations and decisions on complaints concerning Canada.”<sup>141</sup>

*1.4 NAPO urges CESCR to endorse this call for parliamentary review of the human rights reporting process.*

### **2. Article 6 – Right to Work Freely Chosen**

2.1 A number of provinces including British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and New Brunswick have implemented various work training, work search and workfare requirements in order for someone to be eligible or to continue to receive welfare. If people refuse to participate their payments may be reduced, or they can be denied welfare payments. We believe these policies are a violation of Article 6, which asserts a ‘right to work freely chosen or accepted.’

*2.2 NAPO urges CESCR to recommend that all training and other work requirements be optional and not mandatory for the receipt of welfare.*

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<sup>141</sup> Standing Senate Committee on Human Rights, **Promises to Keep: Implementing Canada’s Human Rights Obligations** <http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/huma-e/06cv-e.htm>

### **3. Article 7 – Just and Favourable Conditions of Work... including Fair Wages**

3.1 Up until 1996 the federal government had a federal minimum wage that applied to all workers in federally regulated sectors (about 10% of the work force). Now, the minimum wage rate applicable in regard to workers under federal jurisdiction is the general adult minimum rate of the province or territory where the work is performed. But provincial minimum wage rates are all below the poverty line and vary considerably.

3.2 The minimum wage in every province and territory is \$5000 to \$9000 below the before tax Low Income Cut Off poverty line for an individual working full time. Rates are even more inadequate if a minimum wage worker has to support a family.

*3.3 NAPO urges CESCR to recommend that minimum wages be raised to a level where an individual working full time can escape poverty.*

3.4 NAPO believes the federal government needs to reinstate a federal minimum wage set at \$10 an hour, indexed annually according to changes in the cost of living index. For provinces with large cities the minimum wage needs to be at least \$10 an hour and \$9.45 or \$9.40 for provinces with smaller cities.

### **4. Article 9 – The Right to Social Security**

4.1 Eligibility requirements for welfare have been tightened up to the point that in many cases people who desperately need help can't get it. This is one of the reasons homelessness in Canada has increased so much.

4.2 A recent study by the Canadian Centre for Policy Alternatives called Denied Assistance: Closing the Front Door on Welfare in BC found that the acceptance rate for those who apply for welfare has dropped dramatically from 90% in June 2001 to 51% in September 2004 in the wake of changes to eligibility rules and the application system.<sup>142</sup>

*4.3 NAPO urges CESCR to recommend that changes be made to eligibility requirements for welfare to ensure that all those who require social assistance are able to get the help they need.*

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<sup>142</sup> Bruce Wallace, Seth Klein, and Marge Reitsma-Street, **Denied Assistance: Closing the Front Door on Welfare in BC**, Canadian Centre for Policy Alternatives, March 2007.  
[http://www.policyalternatives.ca/documents/BC\\_Office\\_Pubs/bc\\_2006/denied\\_assistance.pdf](http://www.policyalternatives.ca/documents/BC_Office_Pubs/bc_2006/denied_assistance.pdf)

### **5. Article 10 – Protection and Assistance for the Family and Dependent Children**

5.1 In 1989, Canada's Parliament vowed to end child poverty in the country. Sixteen years later, 1.2 million children still live in poverty. 17.6% of Canadian children live in poverty despite continued economic growth, rising employment and strong job creation.<sup>143</sup> The number of children living in poverty has risen by 20% since 1989.

*5.2 NAPO urges CESCR to recommend Canada develop a poverty reduction strategy to reduce child and family poverty with a range of policies, targets and timelines and measures to evaluate progress.*

### **6. Article 11 – The Right to an Adequate Standard of Living**

6.1 While there has been strong economic growth for over ten years, low unemployment rates and nine consecutive years with federal budget surpluses, over 4.9 million Canadians or 15.9% still live in poverty.<sup>144</sup> While the rate of poverty has increased only slightly from 2001, the depth of poverty (or how far below the poverty line those who are poor fall below the poverty line) has grown significantly as welfare rates and minimum wage rates have fallen in real terms.

6.2 Marginalized groups such as Aboriginals, racialized people, disabled people, youth and seniors all suffer higher rates of poverty, particularly women in these groups. There has been a significant increase in the poverty rate of immigrant families, even though their educational levels have been rising. From 1980 to 2000 the rate of poverty for this group rose by 8.3%.

6.3 Work is no longer a guarantee against poverty. Even households with two low-wage workers cannot earn sufficient income to escape poverty. There has been an increase in precarious, part time and temporary low-wage jobs in Canada. 25.3% of Canadian

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<sup>143</sup> Latest available child poverty data is for year 2003. Child poverty data prepared by the Canadian Council on Social Development (CCSD) using Statistics Canada's *Income Trends in Canada*, 2003, 13F0022XIE and *Survey of Labour and Income Dynamics* (SLID) masterfile data (1993 to 2003), via remote access. Poor children are those living in families whose total income before taxes falls below the Low Income Cut-Off (LICO) as defined by Statistics Canada. A child is defined as a person under the age of 18 living with parent(s) or guardian(s), excluding those who are unattached individuals, those that are the major income earner or those who are the spouse or common law partner of the major income earner. Statistics Canada data excludes those on First Nations reserves; those in the Yukon, Northwest Territories and Nunavut; and children living in institutions.

<sup>144</sup> Statistics Canada, CANSIM table (for fee) [202-0802](#) and Catalogue no. [75-202-X](#).

Last modified: 2005-08-12.

workers are in low-wage jobs. In 2001, over 41% of poor families had at least one family member who worked at least 910 hours in the year.<sup>145</sup>

6.4 Welfare rates in every province and territory for every household type are grossly inadequate. The National Council of Welfare, Welfare Incomes 2004 report, issued in August 2005, shows that a single “employable” person on social assistance in New Brunswick is expected to live on just \$3168 a year. Even with the addition of the Goods and Services Tax Credit of \$220, this puts a social assistance recipient \$14,127 below the LICO poverty line of \$17,515 or just 19% of the poverty line. In British Columbia a couple with two children on social assistance receives only \$18,258, \$19,533 below the poverty line of \$37,791 or 48% of the poverty line. Even the best rate, for a single parent with one child in Newfoundland, only reaches 70% of the poverty line at \$15,228 or \$6,576 less than the poverty line of \$21,804.<sup>146</sup>

6.5 Welfare rates have generally been falling in real dollar terms. The National Council of Welfare reports that “many welfare incomes were significantly lower than they were ten or fifteen years ago.”<sup>147</sup>

*6.6 NAPO urges CESCR to recommend increases in welfare rates to ensure an adequate standard of living for all Canadians.*

6.7 The National Child Benefit Supplement continues to be “clawed-back” from social assistance recipients, despite the recommendation in the Concluding Observations from the 1998 review that this practice be stopped. Only three provinces, Manitoba, New Brunswick, and Quebec, do not reduce social assistance cheques by the amount of the NCBS.

*6.8 NAPO urges CESCR to recommend ending this unfair practice, which discriminates against those receiving social assistance who are among the poorest families in Canada.*

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<sup>145</sup> Canadian Labour Congress, The Economy

<sup>146</sup> National Council of Welfare, Welfare Incomes 2004.

<http://www.ncwcnbes.net/htmdocument/reportWelfareIncomes2004/WI2004EngREVISED.pdf>

<sup>147</sup> National Council of Welfare, “Fix Welfare Financing and End the Clawback of Child Benefits”, News Release, June 7, 2005.

## **NATIONAL WORKING GROUP – WOMEN AND HOUSING IN CANADA**<sup>148</sup>

### ***THE RIGHT TO ADEQUATE HOUSING FOR WOMEN IN CANADA: ARTICLES 2(2), 3 and 11(1)***

Across Canada low-income women identify access to safe, secure, affordable housing as an immediate and desperate need. Low-income women's housing conditions and homelessness was of grave concern to the Committee on Economic, Social and Cultural Rights in its 1998 review of Canada. Since that time, governments in Canada have done little to address the Committee's concerns, despite the fact that the country continues to prosper.

#### **1. *Women's Homelessness is Different than Men's – Women Try to Stay Off the Streets to Avoid Violence and the Apprehension of their Children.***

The increasing number of women in shelters is only a small fraction of the number of women across Canada experiencing housing crises and homelessness. Women will do almost anything to avoid living on the streets and even in shelters because of the threat of violence this poses and because it can easily result in their children being taken away by State authorities.<sup>149</sup> In its Fourth Periodic Report to the Committee, the Government of Canada indicates that it intends to undertake a national street count of homeless persons to "enhance the knowledge base on homelessness" (par. 341). This type of "count" is not a full insight into women's homelessness and will not lead to gender-inclusive policy-making.

*The federal government should coordinate the collection of statistics of the numbers of low-income women waiting for subsidized housing across the country and the numbers of low-income women evicted from their housing, as was recommended by the Committee in its 1993 review of Canada.*<sup>150</sup>

<sup>148</sup>The National Working Group on Women and Housing in Canada (NWG) is comprised of members from every province and territory, whose combined experience and expertise represents many decades of service provision, research and policy development on women's housing, poverty, and homelessness. The NWG is the only national organization on women's housing issues in Canada.

<sup>149</sup> Ibid, pp. 1-2.

<sup>150</sup> CESCR (1993), *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*, E/C.12/1993/5, at par. 19.

**2. Women Do Not Have Access to Subsidized Housing. Within the Private Market they Experience Discrimination.**

The most direct role of the federal government with respect to housing and homelessness has traditionally been through the provision of assisted rental housing. Since the majority of low-income women are tenants, access to affordable rental housing is central to addressing women's homelessness.

In 1993 the federal government announced a freeze on federal funding contributions to social housing, and the cancellation of funding for any new social housing (except for a few limited exceptions). The federal government has downloaded responsibility for social housing programs to the provinces/territories without ensuring that women receive the equal benefit of federal spending in this area. Women are more likely than men to meet income qualifications for assisted housing and therefore more adversely affected by cuts to assisted housing.

In response to the housing crisis in Canada, in 2001 the Government of Canada initiated the Affordable Housing Program (AHP) through Framework Agreements signed with several provinces and territories. Absent from the initiative is an accountability mechanism to ensure that a minimum proportion of units be allocated to core need households and in keeping with principles of equality.<sup>151</sup> Without subsidized housing, women are increasingly relying on the private rental market to meet their housing needs. Within the private market, women commonly confront discrimination: landlords who do not want to rent to them because they are single-parents, because they are Aboriginal and/or non-white, because they have children or large/extended families, because they are in receipt of social assistance, because they are newcomers.<sup>152</sup>

*The Government of Canada must uphold the Affordable Housing Framework Agreements with the provinces and territories and invest the agreed upon \$1 billion CDN in subsidized housing through the construction of new housing units, the provision of rent supplements and other mechanisms. Funding for new rental housing supply should be made*

<sup>151</sup> As of October 2005 it is estimated that only 12,000 new homes – 10% of the total committed under the AHP – had been built. See: National Housing and Homelessness Network, *Dying for a place to call home: Women and Homelessness in Toronto and Canada*, October 2005.

<sup>152</sup> CERA, *Barriers to Equality*, at pp. 18 – 21. See also: , *Response to the Affordable Housing Strategy Stakeholders Consultation*, December 2004 at pp. 2, 4;



*conditional on non-discriminatory rental practices and on ensuring that the stock will remain affordable rental in the future.*

**3. *Low-Income Women Cannot Afford Housing in Canada. Income Support Programs such as Social Assistance and Employment Insurance are set at Inadequate Levels.***

In its 1998 review of Canada, the Committee noted the particularly harsh impact that the repeal of CAP and cuts in social assistance rates and social services had on women, particularly sole support mothers.<sup>153</sup> Coupled with an inadequate supply of affordable housing stock, and increasing rents in the private market this has meant that available housing is unaffordable for most low-income women.<sup>154</sup>

In 1998 the Committee made a series of recommendations to the Government of Canada with respect to housing and anti-poverty measures that, if acted upon in a meaningful way, could have dramatically improved the housing conditions of low-income women. To date, none of these measures has been undertaken.

*Governments in Canada should:*

- *consider re-establishing a national program with specific cash transfers for social assistance*<sup>155</sup>;
- *increase shelter allowances to realistic levels*<sup>156</sup>;
- *amend the National Child Benefit Scheme to prohibit provinces/territories from deducting the benefit from social assistance entitlements*<sup>157</sup>; and
- *direct a greater proportion of government budgets to address women's poverty, the poverty of their children, affordable day care, and to provide adequate support for shelters for battered women.*<sup>158</sup>

**4. *Women Are Forced to Stay in Abusive Relationships Because They Have Few Housing Options.***

<sup>153</sup> CESCR (1998), paras. 19, 21, 23.

<sup>154</sup> CERA, *Barriers to Equality*, pp. 8 – 15, 47 – 54 and National Anti-Poverty Organization (NAPO), *Voices: Women, Poverty and Homelessness in Canada*, May 2004, pp.27- 29.

<sup>155</sup> CESCR (1998), *supra*, note 1 at par. 40.

<sup>156</sup> *Ibid.*

<sup>157</sup> *Ibid.*, at par. 44.

<sup>158</sup> *Ibid.*, at par. 54.

In 1998 and 1993 the Committee expressed concern that the lack of housing options for women was forcing many women to stay in abusive relationships and was leading to the apprehension of children by the State.<sup>159</sup> This remains the case today. Women report that the two biggest systemic barriers to women and children escaping violence is inadequate income assistance and the lack of affordable housing.<sup>160</sup> In the Yukon and the Northwest Territories women trying to leave abusive situations are not given priority status for subsidized housing. In many Indigenous communities the lack of shelters or places within existing shelters means women cannot leave abusive relationships.<sup>161</sup> With few housing options women are compelled to return to abusive situations and then risk the apprehension of their children by child protection agents.<sup>162</sup>

*Funding for women's shelters and second stage housing needs to be restored and enhanced. Women fleeing abuse must be given priority for subsidized housing.*

#### **5. Low-Income Women are Discriminated Against by the Federal Government's Home Ownership Program.**

Federal programs that promote access to affordable home ownership and renovation and repair of owned homes are not of equal benefit to women. This is because of discriminatory policies maintained by the Canada Mortgage and Housing Corporation (CMHC), which disqualify the majority of sole support mothers and low-income women from homeownership on the basis of a 32% "gross debt service to income ratio". Under this policy, women are denied access to homeownership on the basis of their income, even if they have been paying more in rent than would be required by mortgage and property tax payments. In this way, the CMHC's underwriting system about which the Government of Canada boasts (par. 328) is discriminatory.

*CMHC's restrictions on mortgage insurance should be removed and regulation of banks should ensure that women and low income households are provided with alternative ways of demonstrating credit worthiness.*

<sup>159</sup> CESCR (1998), at par. 28 and CESCR (1993) at par. 14.

<sup>160</sup> OAITH, *Response to the Affordable Housing Strategy Stakeholders Consultation*, December 2004, p. 2.

<sup>161</sup> Native Women's Association of Canada, *Participant Briefing for the Canada-Aboriginal Peoples Roundtable Sectoral Follow-Up Session on Housing* (24 – 25 November 2004).

<sup>162</sup> Mosher et al., *Walking on Eggshells: Abused Women's Experiences of Ontario's Welfare System*, April 2004, p.14. See also: OAITH, *Response to the Affordable Housing Program*.

## **NATIVE WOMEN'S ASSOCIATION OF CANADA**

### ***Article 1: Right to Self-Determination***

The right to self-determination is a right of central importance to Indigenous Peoples in Canada since self-determination is necessary in order to remedy the colonial impacts associated with the dispossession of lands, territories and resources, including the current socio-economic marginalization of Indigenous peoples. Rights without remedies are empty rights, which is the rationale for NWAC's previous calls for the development of a comprehensive Optional Protocol to the ICESCR applying to all rights in the Covenant, including the right to self-determination in Article 1.

#### ***Actions Required of Canada:***

Support the development of a comprehensive Optional Protocol to the ICESCR as proposed by the NGO Coalition for an OP-ICESCR that covers all rights contained within the ICESCR (including the right to self-determination). Individuals, groups of individuals and organizations should have standing to launch complaints under the Optional Protocol.

### ***Articles 2(2) & 3: Non-Discrimination and Equal Rights between Men and Women as it relates to Matrimonial Property Rights, Membership/Status Rules, Human Rights Legislation and Participation of Indigenous Women***

There are several areas in which the right to non-discrimination (between non-Indigenous and Indigenous peoples in Canada and the right to equality (between Indigenous women and Indigenous men) are not provided to Indigenous people nor to Indigenous women. First, in the context of matrimonial property rights, Indigenous individuals living on-reserve do not have access to the same legislative protections as individuals living off-reserve. This has a particularly detrimental effect on Indigenous women. Where violence is involved lack of matrimonial property rights puts both Indigenous women and their children at greater risk for staying in an abusive environment due to a lack of alternative housing choices. Despite numerous national and international reports documenting this human rights violation, Canada has failed to make policy or legislative changes, in conjunction with Indigenous peoples, to address these inequities.

Bill C-31, which amended the 1985 *Indian Act*, ostensibly to remove discriminatory provisions of the Act related to membership and Indian status, has led to continued residual gender discrimination against First Nations women and their descendants, as well as to a two-tiered status system that negatively impacts all First Nations individuals. Upon marriage to a Non-Status individual, a Status individual loses his or her right to pass on status and membership rights to his or her descendants.

Section 67 of the *Canadian Human Rights Act* makes the Act inapplicable to all matters governed by the *Indian Act*. The result has been that First Nations individuals and individuals living in First Nations communities have not had the protection of human rights law. Ironically, the federal legislation designed to ensure the right to live free from discrimination for all Canadians has failed to be applied on a non-discriminatory basis, excluding from its application one sector of Canadian society.

Finally, NWAC is recognized as the national Indigenous women's voice in Canada. Throughout recent high level policy dialogues, NWAC has been given a place to provide a culturally relevant, gender based analysis. However, NWAC has not received equivalent funding to the other national Aboriginal organizations, resulting in discriminatory treatment. Further, there is no mechanism to ensure the full and effective participation of Indigenous women in self-government agreements, treaties and intergovernmental agreements dealing with such matters as employment, health, education, child welfare and other social services for Indigenous people, or for consultation on *Indian Act* reforms.

***Actions Required of Canada:***

***Matrimonial Property Rights***

Implement policy and legislative changes identified in numerous national and international reports aimed at ensuring that Indigenous individuals living on-reserve have equal matrimonial property rights to those individuals living off-reserve.

***Bill C-31***

Implement policy and legislative changes that will remove the residual gender discrimination against First Nations women and their descendants and redress the current erosion of rights to membership and status under the *Indian Act* of all First Nations individuals.

***Human Rights Legislation***

Ensure that all Indigenous people have access to remedies for violations of their economic, social and cultural rights, including through human rights legislation. Section 67 of the CHRA should be repealed and a consultation process initiated with Indigenous representative organizations in Canada with the aim of developing a parallel human rights system and legislative and/or policy reforms aimed at ensuring that self-government agreements are consistent with international human rights protections, including equality.

***Participation of Indigenous Women in Self-Government Agreements, Treaties, Intergovernmental Agreements and Policy Discussions***

Canada must ensure the full and effective participation of Indigenous women in all levels and forms of decision-making affecting the rights and well-being of Indigenous peoples. This includes providing equitable funding of Indigenous women's organizations to ensure the full and effective participation of Indigenous women in the negotiation of self-government agreements, treaties and intergovernmental agreements and on reforms to the Indian Act.

***Article 10: Protection of the Family, Mother and Child***

Indigenous women in Canada suffer from disproportionately high rates of violence, particularly sexualized, racialized violence, that lead to alarmingly high rates of missing and murdered Indigenous women in Canada. Canada has failed to adequately address the overall socio-economic marginalization of Indigenous women and their children that leads to their increased vulnerability to systemic forms of violence. Access to justice remains limited to Indigenous women and serves to their further marginalization.

***Actions Required of Canada:***

Gather adequate statistical information on violence against Indigenous women, "fully address the root causes of this phenomenon, including the economic and social marginalisation of Aboriginal women."<sup>163</sup>

Ensure effective access to justice, including ensuring that police have adequate training and resources to respond effectively and without discrimination to reports of all missing Indigenous women.

***Article 11: The Right to an Adequate Standard of Living***

Indigenous women and their families suffer from high rates of homelessness and overall low standards of living. Policy dialogues with Indigenous peoples in Canada, including

<sup>163</sup> Paragraph 23 of the Concluding Observations of the Human Rights Committee, document number CCPR/CAN/CO/5. The Human Rights Committee also calls for effective access to justice for Indigenous women.

the Cabinet Retreat in May 2005 and a First Ministers Meeting in November 2005 in Kelowna with Indigenous leaders led to a policy accord signed between NWAC and Canada at the Cabinet Retreat and a Kelowna Agreement between Canada, the provincial and territorial governments and the five national Aboriginal organizations. However, the current government of Canada has not committed to the financial resources required to ensure that the commitments contained within the Kelowna Agreement are honoured.

***Actions Required of Canada:***

Implement existing agreements between Canada and national Aboriginal organizations aimed at ensuring an adequate standard of living is attained for Indigenous peoples in Canada.

***Article 12: The Right to Health***

The life expectancy rate of Aboriginal women is well below that of the mainstream female population and Aboriginal women, because of continuing oppression, abuse, discrimination, and poor socio-economic status, are more apt to experience illness and disease associated with these conditions, including diabetes, certain cancers, cardiovascular diseases, disabilities, addictions, sexually-transmitted infections, and depression. There is an urgent need to provide First Nations, Métis and Inuit women equitable access to health care services, including addressing the health needs of Aboriginal women in a culturally relevant manner.

***Actions Required of Canada:***

Provide First Nations, Métis and Inuit women equitable access to health care services. This must be done in a gender-specific, culturally appropriate manner with the full and effective participation of Indigenous women at all stages.

Make resources available to address all issues that negatively impact on Aboriginal women's well-being, including poverty, lack of housing, sexualized, racialized violence, employment, education, etc.

Implement the Aboriginal Health Blueprint Objectives identified by NWAC in its Companion Document to the Cabinet Retreat of May 2005.

## POVERTY AND HUMAN RIGHTS CENTRE

### *The Rights of Women in the Province of British Columbia*

The Province of British Columbia: Steady Growth and Budget Surpluses

In its recent February 2006 budget, the government of British Columbia forecast economic growth of 3.3 per cent in the next year and surpluses of \$600 million in 2006/07, \$400 million in 2007/08 and \$150 million in 2008/09. On top of these projected surpluses, the government also included forecast allowances of \$850 million in 2006/07, \$550 million in 2007/08, and \$400 million in 2008/09. Budget surpluses in 2004/05 and 2005/06 were between \$2 billion and \$3 billion each year.<sup>164</sup>

### **Article 2(2) – Non-discrimination**

#### **Discrimination Against Women**

The matters discussed in this submission all raise issues of substantive infringement of specific rights elaborated in the Covenant. In addition, these government actions disproportionately negatively impact women and, as such, are also discriminatory on the basis of sex, contrary to Articles 2 and 3 of the Covenant.

#### **Access to Justice**

There are profound and documented deficiencies in current provincial provision of legal aid. In 2002, the government of British Columbia drastically reduced the availability of legal aid, with budget cuts of almost 40 per cent. No legal aid services at all are currently provided for family maintenance or custody disputes, except where there is evidence that violence is involved. As well, direct services for poverty law matters, that is, for

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<sup>164</sup> The BC Office of the Canadian Centre for Policy Alternatives estimates considerably larger surpluses—\$2.9 billion in 2006/07 and \$3.9 billion in 2007/08—claiming that the BC government consistently underestimates its available revenues at budget time. Indeed, the past four BC budgets have understated the province's budget position by a combined total of \$7.9 billion. *Balanced Budget 2006: Growing With Confidence*, Backgrounder, Government of BC (online: <http://www.bcbudget.gov.bc.ca/2006/backgrounder/default.htm>, accessed 27 March 2006); CCPA *BC Solutions Budget 2006*, online: [http://www.policyalternatives.ca/documents/BC\\_Office\\_Pubs/bc\\_2006/solutions\\_budget\\_2006.pdf](http://www.policyalternatives.ca/documents/BC_Office_Pubs/bc_2006/solutions_budget_2006.pdf) > (date accessed: 12 March 2006)

landlord/tenant, employment insurance, employment standards, welfare, and disability pension claims or appeals, have been eliminated.<sup>165</sup>

This disproportionately affects women, who make up the majority of poor adults and family law litigants. Studies show that criminal law legal aid is used mainly by men, whereas civil law legal aid, especially family law legal aid, is used mainly by women. Thus, these legal aid changes effectively deny legal representation to the most vulnerable women in matters that affect their ability to pay for food and shelter for themselves and their children, to escape violent spouses, and to seek spousal support and custody of their children.<sup>166</sup>

## ***Article 11 – The right to an adequate standard of living***

### **Women’s Poverty**

Latest available data shows British Columbia with one of the highest rates in Canada of poverty for single mother-led families: at 47.4 per cent, the rate is higher than in Canada generally. Indeed, the situation of these women and their children deteriorated from 2001 – 2003. These BC women also have the second deepest level of poverty among single mother-led families in Canada, on average \$11,600 below Statistics Canada’s LICO.<sup>167</sup> Generally, BC has the highest low-income rate in Canada among families at 11.5 percent.<sup>168</sup>

### **Cutbacks to Social Assistance and the Impact on Women**

In 2002, the provincial government of British Columbia restructured and cutback provincial social assistance, instituting a number of changes to eligibility and benefit provision. For instance, welfare income for single mother-led families, already below Statistics Canada’s LICO lines, was significantly reduced. This was the result of, first, a

<sup>165</sup> Legal Services Society, Backgrounder, “Legal Aid Services and Tariffs Summary of Cuts” (25 February 2002), online: Legal Services Society <<http://www.lss.bc.ca>> (date accessed: 6 August 2002).

<sup>166</sup> “Women Pay the Price of Legal Aid Cuts,” *BC Issues: A snapshot of recent provincial policy changes*, CCPA-BC, Issue #1 September 2004 (online:

<sup>167</sup> Statistics Canada, *Income Trends in Canada*, 2003; Poverty Profile 2001, National Council of Welfare, 2005 (online: <http://www.ncwcnbes.net/>, accessed 28 March.)

<sup>168</sup> “Family Income”, *The Daily*, May 12, 2005 (online: <http://www.statcan.ca/Daily/English/050512/d050512a.htm>, accessed 27 March 2006.)



cut in welfare benefits for families. Second, single mothers are not longer allowed to keep a monthly \$100 of child support and up to \$200 of earnings exemptions for these same families have been eliminated. These changes mean that, for some families (disproportionately single mother-led families), benefit levels have been drastically reduced. For example, a single mother-led family with two children could see a reduction of up to \$390, or 25 per cent. The result is benefit levels even further below Statistics Canada's LICOs.<sup>169</sup>

In June 2002, The BC Association of Social Workers passed a motion censuring the Minister responsible for income assistance for these changes, stating that the new legislative changes would:

...reduce financial assistance, reduce eligibility for assistance and refuse assistance to others and in doing so, inflict harm on individuals and families, increase poverty, inequality and health risks, and deny an adequate standard of living for those whom the Ministry is committed to assist.<sup>170</sup>

Recent research demonstrates that this has in fact been the case. First, the process of seeking income assistance (welfare) has become so restrictive and difficult to navigate that many of the very people most in need of help are being systematically excluded from receipt of benefits. Second, benefit provision levels are so inadequate that there is widespread housing, food and social insecurity among welfare recipients. In 2003, for example, 78.6 per cent of all BC food bank recipients were on income assistance.<sup>171</sup>

These cuts have had a disproportionate negative impact on women. For example, one third of welfare recipients are single parents, 88.5 percent of who are single mothers.<sup>172</sup>

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<sup>169</sup> Seth Klein and Andrea Long, *A Bad Time to be Poor: An Analysis of British Columbia's New Welfare Policies* (Vancouver: Canadian Centre for Policy Alternatives, June 2003), at 4.

<sup>170</sup> BC Association of Social Workers, (2002), Press Release: BC Social Workers Vote to Censure Minister of Human Resources, Murray Coell, Vancouver.

<sup>171</sup> *Denied Assistance: Closing the Front Door on Welfare in BC*, Bruce Wallace, Seth Klein, and Marge Reitsma-Street (Vancouver Island Public Interest Research Group and the Canadian Centre for Policy Alternatives, 2006) (online: [www.policyalternatives.ca](http://www.policyalternatives.ca), accessed 27 March 2006); *Losing Ground: The Effects of Government Cutbacks on Women in British Columbia, 2001 – 2005*, Gillian Creese & Veronica Strong-Boag, March 2005, a report prepared for the BC Coalition of Women's Centres, *et al*, (online: <http://www3.telus.net/bcwomen/archives/rep-iwd-reese-strong+boag-losing+ground+report.pdf>, accessed 27 March 2006).

<sup>172</sup> *Losing Ground*, Creese & Strong-Boag, *Id.*, at 17.

Gendered negative impacts include the following: (i) women are forced to turn to the sex trade for survival. Two recent studies report accounts of women put at increasing risk of being trapped in the sex trade because of income assistance delays and denials; (ii) women are forced to remain in or return to abusive relationships; (iii) women's poverty rates—particularly the poverty of especially vulnerable women—have remained unacceptably high, both in terms of numbers of women living in poverty and the depth of poverty in which these women and their families live; (iv) women who are single mothers are unable to choose the balance of stay-at-home mothering and paid work that best suits their and their children's needs.<sup>173</sup>

First Call BC, a coalition focused on child poverty, has stated that it has uncovered through Freedom of Information requests “that virtually no research went into the changes.” Thus, the government has been willfully negligent as to the discriminatory and destructive impact of these changes.<sup>174</sup>

In 2003, the Committee on the Elimination of Discrimination Against Women in its Concluding Observations from Canada's fifth periodic review expressed concern about these recent changes to legal aid and welfare, noting the disproportionate negative impact on women, in particular aboriginal women. The Committee urged the government of British Columbia to analyse its recent legal and other measures as to their negative impact on women and to amend the measures, where necessary.<sup>175</sup> The government of British Columbia shows no intention of doing this.

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<sup>173</sup> *Human Rights Denied: Single Mothers on Social Assistance in British Columbia*, Gwen Brodsky, et. al., 2005, Poverty and Human Rights Centre (online: <http://www.povertyandhumanrights.org/docs/denied.pdf>, accessed 28 March 2006); *Losing Ground*, Creese & Strong-Boag, id., at 6; *Denied Assistance*, Wallace et. al., id.

<sup>174</sup> First Call, the BC Child and Youth Advocacy Coalition, (2004), *The 2005 British Columbia Budget: Time for Profound Changes*, at 4.

<sup>175</sup> Report of the Committee on the Elimination of Discrimination against Women, Twenty-eighth session (13-31 January 2003) and Twenty-ninth session (30 June-18 July 2003), Fifty-eighth Session Supplement No. 38 (A/58/38) at para. 357.