

Un appel pour une surveillance des droits humains dans les réponses gouvernementales à la pandémie de COVID-19

Le respect des droits humains demeure primordial en temps de crise. Les principes qui les sous-tendent apportent un cadre précieux pour guider les actions des gouvernements et fournissent les balises nécessaires pour empêcher d'éventuels abus. En temps de crise, le respect des droits humains devient particulièrement fragile – pour le moins ténu. Il en est ainsi peu importe la nature de la crise, que celle-ci soit due à des enjeux de sécurité nationale, à des catastrophes naturelles ou à une urgence de santé publique telle que la pandémie de COVID-19. Il s'agit donc d'un moment critique demandant une surveillance rigoureuse du respect des droits humains : afin d'encourager les divers paliers de gouvernements à adopter des mesures fortes destinées à renforcer l'exercice des droits humains et à se prémunir contre de possibles violations intentionnelles ou involontaires de ceux-ci.

Le droit international indique clairement quelles mesures les gouvernements doivent prendre pour assurer la protection des droits humains – qu'il s'agisse du droit à la vie, du droit à la santé, du droit à un logement convenable ou à des moyens de subsistance menacés en raison de la crise due à la COVID-19. Ils établissent des exigences claires en matière d'égalité entre les genres, de non-discrimination et de droits linguistiques, mettant en évidence la nécessité d'une action délibérée des gouvernements afin de protéger pleinement les droits des individus et des communautés marginalisées. Il permet de fixer les limites que les États ne peuvent franchir lorsqu'ils estiment nécessaire de restreindre certains droits pour faire face à la crise.

Cependant, le fait que les obligations imposées aux États en matière de droits humains soient claires ne garantit pas pour autant qu'elles seront respectées. Le risque de voir les gouvernements outrepasser leurs obligations est particulièrement préoccupant en ce qui concerne bon nombre de droits directement touchés par la pandémie de COVID-19, notamment ceux relatifs à la santé, au logement, à la nourriture et à l'eau potable. Malgré la reconnaissance internationale du principe d'interdépendance et d'indissociabilité des droits humains, il arrive que les différents paliers de gouvernement du Canada affirment que ces droits, tout comme les autres droits économiques, sociaux et culturels, ne devraient pas être soumis aux mêmes normes de mise en œuvre et de surveillance que les droits civils et politiques, laissant leur protection incertaine et entre les mains du politique.

Trop souvent, en temps de crise, les droits humains sont considérés par les gouvernements comme non pertinents voire inutiles, si ce n'est qu'ils soient carrément vus comme des obstacles à une réponse efficace. Et c'est ce qui se passe actuellement avec la crise sanitaire. Les gouvernements sont confrontés à d'énormes défis et doivent prendre des décisions rapidement. Les risques encourus pour la santé publique sont dramatiques et les retombées négatives sur l'économie se multiplient de façon exponentielle. Naturellement effrayés et confrontés à une surcharge d'information, la population est moins susceptible de questionner les gestes posés par les gouvernements et davantage encline à leur accorder une plus grande latitude, même lorsque les mesures mises de l'avant restreignent considérablement leurs droits.

Souvent sous-estimé est l'impact important et différent que ces mesures restrictives ont sur : les communautés des Premières Nations, des Métis et des Inuit, les personnes noires ou racisées (notamment dans ce cas-ci des personnes d'origine asiatique), les personnes handicapées, les femmes et les enfants vivant de la violence à la maison, les personnes réfugiées et migrantes, les personnes marginalisées en raison de leur sexe ou de leur identité ou orientation sexuelles, les minorités

linguistiques officielles, les personnes incarcérées, les travailleuses et travailleurs du sexe, les personnes sans-abri ou vivant dans des logements inadéquats, les personnes dépendantes aux drogues, les personnes dont l'emploi est précaire et toute autre personne ou communauté marginalisée.

En même temps, les mécanismes et les institutions existants jouant traditionnellement un rôle central dans la protection des droits humains - y compris les cours, les commissions et les tribunaux des droits de la personne - sont confrontés à des contraintes et à des limites importantes. Bien que certaines causes urgentes soient toujours entendues par vidéoconférence ou conférence téléphonique, de nombreuses procédures ont été ajournées indéfiniment et la plupart des nouveaux cas ne sont pas inscrits au calendrier. En outre, en raison de la nature spécifique de la pandémie et de l'arrêt des processus démocratiques, les espaces publics de délibération, tels que les comités parlementaires et les consultations publiques, servant habituellement de mécanismes assurant la responsabilité et la transparence en matière de droits humains, sont actuellement non fonctionnels.

Nous appelons donc les paliers de gouvernement - fédéral, provincial, territorial et municipal - **à prendre des mesures urgentes pour améliorer et renforcer la surveillance des droits humains** dans leurs réponses à la pandémie de COVID-19, notamment :

- En veillant à ce que les gardiens du savoir autochtones, les représentant.e.s des commissions fédérales, provinciales et territoriales des droits humains, les représentant.e.s des bureaux municipaux des droits humains concernés, et les commissaires aux langues officielles aient un **rôle consultatif officiel**, voire accru, auprès des comités spéciaux, des groupes de travail d'urgence, des groupes de travail d'intervention en cas de crise et d'autres instruments créés par les gouvernements afin de coordonner leur réponse à la pandémie de COVID-19.
- Établir ou identifier immédiatement des **comités indépendants de surveillance des droits humains** composés de représentant.e.s des Premières Nations, des Métis et des Inuit, des collectivités touchées, des fournisseurs de services de première ligne, des défenseur.e.s des droits humains, des travailleuses et des travailleurs, ainsi que des universitaires, avec pour mandat de :
 - identifier les mesures nécessaires pour renforcer la protection des droits humains dans les stratégies de réponse à la pandémie ;
 - surveiller les violations des droits humains associées aux mesures d'intervention prises pour contrer la COVID-19, y compris par le biais des forces de police ;
 - rendre visible et disponible les informations et les statistiques, désagrégées par sexe et genre, selon l'identité autochtone, la race, le handicap s'il y a lieu ou toute autre caractéristique identitaire, nécessaires pour améliorer la protection des droits humains ;
 - veiller à ce que les gouvernements appliquent une analyse comparative intersectionnelle entre les sexes à toutes les dimensions de leurs réponses à la crise de la COVID-19 intégrant, entre autres, des cadres antiracistes, anti-capacitisme et anti-oppression;
 - encourager et tirer parti d'une approche communautaire de veille des droits humains et du signalement des violations des droits associées à la COVID-19 ;

- faire des recommandations régulières aux gouvernements ;
- et faire rapport publiquement, sur une base régulière et par le biais de mécanismes à être déterminés par les Comités, une fois ceux-ci mis sur pied.

A call for human rights oversight of government responses to the COVID-19 pandemic

Respect for human rights is essential in times of crisis. Human rights principles provide a valuable framework for government action and establish crucial safeguards against abuses. Yet respect for human rights is particularly vulnerable – tenuous at best – in times of crisis. That holds true whether the crisis is related to national security, natural disasters or a public health emergency such as the COVID-19 pandemic. **It is, therefore, a vital time to ensure robust human rights oversight: to encourage strong human rights measures are adopted by governments, and to guard against intentional or unintended human rights violations.**

Human rights obligations enshrined in international law, the Charter, treaties, legislation and other instruments make it clear what action governments must take to protect human rights – such as the rights to life, health, adequate housing and livelihoods – that are at risk due to the COVID-19 crisis. They establish clear requirements with respect to gender equality, non-discrimination and language rights, and highlight the necessity of deliberate action to protect fully the rights of marginalized individuals and communities. And they lay out the permissible limits on restricting other rights, to the extent that is necessary to address the crisis.

The fact that the human rights obligations are clear, however, is *not* an assurance they will be upheld. That is of particular concern with many of the key human rights obligations that are at stake in the COVID-19 pandemic, including with respect to health, housing, food, safe water and other basic needs. Governments across Canada have long asserted that those and other economic, social and cultural rights are not amenable to the same enforcement as other rights, leaving their protection to the more uncertain and arbitrary political realm. However, international human rights standards require that economic, social and cultural rights be equally subject to effective oversight and enforcement as other human rights. This is particularly important during the current crisis.

Too often, in times of crisis, human rights are dismissed by governments as being irrelevant and unnecessary at best, or unhelpful barriers to an effective response at worst. That is certainly so with the current COVID crisis. Governments face enormous challenges and need to make decisions rapidly. The public health risk is dramatic and the economic fall-out is spiralling exponentially. Understandably fearful and facing an information overload, people are less likely to second-guess government action and are inclined to give greater latitude to measures that significantly restrict their rights.

Often overlooked is the greater or differential impact of the pandemic itself on First Nations, Métis and Inuit communities, Black and other racialized communities (especially individuals of Asian origin), the elderly, people living with disabilities, women and children at risk of violence in the home, refugees and migrants, people marginalized because of gender identity or sexual orientation, minority official language communities, prisoners, sex workers, people who are homeless or living in inadequate housing, people who use drugs, precariously-employed workers, and other at-risk communities. Governments have, importantly, taken action to respond to the needs of many of these communities, but more is needed, and oversight is a vital safeguard.

At the same time, bodies and institutions that traditionally play a central role in protecting human rights – including courts, and human rights commissions and tribunals – are facing considerable constraints and limitations. While some urgent matters are still being heard by way of video and telephone conferencing, many proceedings have been indefinitely adjourned and most new cases are not being scheduled. Moreover, due to the specific nature of the pandemic and the shutdown of democratic processes and civic space, public forums, such as parliamentary committee hearings and public community meetings, that serve as human rights accountability and transparency mechanisms of a sort, are now also unavailable.

We are therefore calling on governments at all levels – federal, provincial, territorial and municipal – to **take urgent steps to enhance and strengthen human rights oversight** of their responses to the COVID-19 pandemic, including by:

- Ensuring that Indigenous knowledge-keepers, representatives of federal, provincial and territorial human rights commissions, representatives of relevant municipal human rights offices and language commissioners have or strengthen their **official advisory role** to special committees, emergency task forces, crisis response working groups and other bodies established by governments to coordinate their response to the COVID-19 pandemic.
- Immediately establishing or identifying **independent human rights oversight committees** made up of First Nations, Métis and Inuit representatives from both rural and remote Indigenous communities and urban centres, impacted communities, frontline service providers, human rights advocates, labour representatives, academics and other experts, with mandates to:
 - o Identify measures needed to strengthen human rights protection in COVID response strategies;
 - o Track human rights violations associated with COVID response measures, including through police enforcement;
 - o Highlight information and statistics, disaggregated by sex, gender, Indigenous identity, race, disability and other identities, that are needed to improve human rights protection;
 - o Ensure that governments apply intersectional gender-based analysis plus (GBA+) to all dimensions of their responses to the COVID crisis incorporating, *inter alia*, anti-racist, anti-ableist and anti-oppression frameworks;
 - o Encourage and draw upon community-based human rights monitoring and reporting of human rights violations associated with COVID-19;
 - o Make regular recommendations to governments; and
 - o Report publicly on a regular basis, through mechanisms to be determined by the Committee, once established.

Endorsed by / Appuyé par :

ORGANIZATIONS

Action Canada for Sexual Health and Rights

Alberta Prison Justice Society

Amnesty International Canada (English branch)

Amnistie internationale Canada francophone

Anglican Church of Canada

ARCH Disability Law Centre

Assemblée des Premières Nations Québec-Labrador (APNQL)

Association des juristes progressistes

Association pour la défense des droits du personnel domestique de maison et de ferme (ADDPD) /
Association for the Rights of Household Workers

Association québécoise des avocats et avocates en droit de l'immigration

Association québécoise des organismes de coopération internationale

Atira Women's Resource Society

Atlantic Human Rights Centre, St. Thomas University

Avocats sans frontières Canada

Black Legal Action Centre

British Columbia Civil Liberties Association

British Columbia Treaty Commission

Bureau international des droits des enfants / International Bureau for Children's Rights

Canada-Hong Kong Link

Canada Tibet Committee

Canada Without Poverty

Canadian Alliance for Sex Work Law Reform

Canadian Arab Federation

Canadian Association for Community Living

Canadian Association of Elizabeth Fry Societies

Canadian Association of Human Rights Institutes

Canadian Association of University Teachers
Canadian Centre for Victims of Torture
Canadian Civil Liberties Association
Canadian Coalition for the Rights of Children
Canadian Council for International Co-operation
Canadian Council for Refugees
Canadian Council of Muslim Women
Canadian Federation of Students - Fédération canadienne des étudiantes et étudiants
Canadian Feminist Alliance for International Action
Canadian Friends Service Committee (Quakers)
Canadian HIV/AIDS Legal Network (EN) - Réseau juridique canadien VIH/sida
Canadian Journalists for Free Expression
Canadian Muslim Lawyers Association
Canadian Office and Professional Employees' Union
Canadian Prison Law Association
Canadian Union of Public Employees
Canadian Voice of Women for Peace
Canadians for Justice and Peace in the Middle East
Centrale des syndicats du Québec
Centre for Free Expression, Ryerson University
Centre for Human Rights Research, University of Manitoba
Centre for Law and Democracy
Centre international de solidarité ouvrière
Centre Oblat – A Voice for Justice
Chinese and Southeast Asian Legal Clinic
Chinese Canadian National Council for Social Justice
Christian Peacemakers Teams - Canada
Citizens for Public Justice
Clinique de droit international pénal et humanitaire, Université Laval

Clinique internationale de défense des droits humains de l'UQAM, Université du Québec à Montréal

Colour of Poverty Colour of Change

Comité pour les droits humains en Amérique latine – Committee for Human Rights in Latin America

Community Legal Aid and Legal Assistance of Windsor

Conseil central du Montréal métropolitain-CSN

Conseil national des chômeurs et chômeuses

Council of Agencies Serving South Asians

Council of Canadians

Council of Canadians with Disabilities

Criminal Defence Advocacy Society

Dalhousie Legal Aid Service

David Suzuki Foundation

Desmarais Desvignes Crespo s.e.n.c.r.l., étude légale

Disability Rights Coalition (Nova Scotia)

DisAbled Women's Network of Canada

East Coast Prison Justice Society

Egale Canada

The Equality Fund

Equitas

Evangelical Lutheran Church in Canada

Fédération autonome de l'enseignement

Fédération des femmes du Québec

Fédération interprofessionnelle de la santé du Québec

Federation of Medical Women of Canada, WPS Committee

Federation of Sisters of St. Joseph of Canada

Femmes autochtones du Québec

First Nations Child and Family Caring Society

Fondation David Suzuki (Québec)

Friends of the Earth Canada

Front d'action populaire en réaménagement urbain

Gender and Women's Studies, Trent University

Grand Council of the Crees/Cree Nation Government

Greenpeace Canada

Human Rights Research and Education Centre, University of Ottawa

Indigenous Climate Action

Indigenous House of Bishops Leadership Circle of the Anglican Church of Canada

Indigenous Law Centre, University of Saskatchewan

Indigenous Ministries of the Anglican Church of Canada

Indigenous World Association

Interdisciplinary Research Laboratory on the Rights of the Child, University of Ottawa

International Civil Liberties Monitoring Group

Interagency Coalition on AIDS and Development

International Commission of Jurists, Canada

International Human Rights Program, University of Toronto

International Justice and Human Rights Clinic, Peter A. Allard School of Law, University of British Columbia

International Women's Rights Project

Inter Pares

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Justice for Girls

KAIROS: Canadian Ecumenical Justice Initiatives

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Law, Disability & Social Change Project, University of Windsor

Lawyers' Rights Watch Canada

Ligue des droits et libertés

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Mennonite Central Committee Canada
Millennial Womxn in Policy
Montreal Institute for Genocide and Human Rights Studies, Concordia University
National Council of Canadian Muslims
Nobel Women's Initiative
Nonviolence International Canada
Ontario Council of Agencies Serving Immigrants
Oxfam Canada
Oxfam-Québec
Peace Brigades International – Canada
PEN Canada
Pivot Legal Society
Plan International Canada
Primate's World Relief and Development Fund
Prisoners' Legal Services
Project Ploughshares
Projet Accompagnement Québec-Guatemala
Public Service Alliance of Canada
Punjabi Community Health Services
Queen's Prison Law Clinic
Rainbow Faith and Freedom
Regroupement Naissances respectées
Rideau Institute
Sisters Trust Canada
Social Rights Advocacy Centre
South Asian Legal Clinic of Ontario
Table de concertation au service des personnes réfugiées et immigrantes
Tides Canada
Toronto Association for Democracy in China

UNICEF Canada

Unifor

Union of BC Indian Chiefs

United Nations Decade for People of African Descent Push Coalition

United Steelworkers Canada

Urban Alliance on Race Relations

Urban Native Youth Association

Uyghur Refugee Relief Fund

Uyghur Rights Advocacy Project

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