

**Submission to Commissioner Margarette May Macaulay
IACHR President and Country Rapporteur for Canada**

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Christopher Campbell-Duruflé, Assistant Professor
Lincoln Alexander School of Law, Toronto Metropolitan University

Dear Commissioner Macaulay,

Canada's system to incorporate international law into its domestic law has been the object of a long line of criticism. Your visit and the IACHR's ongoing engagement with Canada provide a momentous opportunity to call for 1) stronger engagement with and 2) more effective implementation of the human rights instruments of the Inter-American system. I discuss both issues in turn and provide some final thoughts by way of conclusion.

Stronger Engagement with the Inter-American System

This first issue is a long-standing problem that is well-known, even beyond specialized civil society and academia. For example, at the 2018 Summit of the Americas in Lima, the Prime Minister announced that Canada would begin the process to join the *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women*.¹ Not only has this not been completed after five years, but there is no public information as to where the process stands.

Canada's adherence to the *American Convention on Human Rights* is also a long-standing request from different segments of society as a way to address top human rights challenges in the country (including gender-based violence against Indigenous women and girls, structural discrimination against Indigenous children and children of African descent, and the mandatory detention for certain irregular migrants and asylum-seekers).² As early as 2003, the Standing Senate Committee on Human Rights made the following recommendations:

1. The Committee recommends that Canada take all necessary action to ratify the American Convention on Human Rights, with a view to achieving this goal by July 18, 2008, which is the thirtieth anniversary of the entry into force of the Convention.
2. The Committee further recommends that, upon ratification of the Convention, Canada recognize the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the Convention.³

Canada often casts itself as a human rights champion, as exemplified by its leadership in launching the *Declaration Against Arbitrary Detention in State-to-State Relations* in 2021,

¹ <https://www.pm.gc.ca/en/news/news-releases/2018/04/14/prime-minister-concludes-his-participation-viii-summit-americas>.

² See: Human Rights Council, Canada - Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights, 30 August 2023, A/HRC/WG.6/44/CAN/2.

³ Standing Senate Committee on Human Rights, "Enhancing Canada's Role in the OAS: Canada's adherence to the American Convention on Human Rights", May 2003, at 3.

eventually endorsed by 75 states. Doing the same with regard to the Inter-American instruments and institutions would directly benefit Canadian and ultimately strengthen its leadership.

More Effective Implementation of the Inter-American System Instruments

Canada adhered to the *Charter of the Organization of the American States* in 1990, at the same time recognizing an obligation to respect human rights as provided for in the charter and in the *American Declaration of the Rights and Duties of Man*. While the declaration is not a treaty, the Inter-American Court has clarified its role in defining the obligations contained in the Charter:

45. For the member states of the Organization, the Declaration is the text that defines the human rights referred to in the Charter. Moreover, Articles 1(2)(b) and 20 of the Commission's Statute define the competence of that body with respect to the human rights enunciated in the Declaration, with the result that to this extent the American Declaration is for these States a source of international obligations related to the Charter of the Organization.⁴

As mentioned above, Canada's system to incorporate international law into its domestic law has been the object of a long line of criticism and recommendations by civil society, academia, and international institutions. The IACHR's voice in this context, as an independent and highly respected institution, appears essential to raise the profile of this issue beyond specialists, constructively engage with government officials, and find concrete solutions:

- Twenty-one years ago, two foremost international law scholars described Canada's engagement with international law as, at best, "**a hesitant embrace**" because courts -in the context of a dualist reception system- tended to treat its rules as optional even when binding.⁵ Jutta Brunnée serves as Dean of the University of Toronto Faculty of Law and Stephen Toope, OC is a past chair of the UN Working Group on Enforced and Involuntary Disappearances as well as past Vice-Chancellor of the University of Cambridge.
- In 2008, de Mestral & Fox-Decent found that Canada had not struck the "**appropriate balance**" between domestic and international law. They suggested enacting a *Canada Treaties Act* to guide implementation efforts, recognizing international law as equal in status to the common law, and enhancing the use of the presumption of conformity by judges and administrative decision-makers.⁶
- Manirabona & Crépeau (who served as United Nations Special Rapporteur on the Human Rights of Migrants from 2011 to 2017) warned that failure to incorporate human rights treaties may result in a "**great cost**" for citizens. They proposed creating a National Monitoring Body for treaty implementation in Canada.⁷

⁴ Inter-American Court of Human Rights, Advisory Opinion Oc-10/89, "Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights", July 14, 1989. See also: Bernard Duhaime, "Canada and the Inter-American Human Rights System: Time to Become a Full Player" (2012) 67:3 International Journal 639.

⁵ Jutta Brunnée & Stephen J Toope, "Hesitant Embrace: The Application of International Law by Canadian Courts, A" (2002) 40 Canadian Yearbook of International Law 3.

⁶ Armand de Mestral & Evan Fox-Decent, "Rethinking the Relationship between International and Domestic Law" (2008) 53:4 McGill Law Journal 573.

⁷ Amissi M Manirabona, & François Crépeau, "Enhancing the Implementation of Human Rights Treaties in Canadian Law: The Need for a National Monitoring Body" (2012) 1:1 Canadian Journal of Human Rights 25.

- My own study of Canada's main legislation to implement the *Paris Agreement* on climate change (the *Canadian Net-Zero Emissions Accountability Act*) identifies numerous discrepancies between the treaty and the act, and qualifies the overall approach as a “**tepid response**”.⁸

It is not only academics who are running out of words to press for a more effective international law implementation system, especially in the human rights sphere:

- During Canada's 2017 Universal Periodic Review, the Canadian Human Rights Commission warned that Canada's international law reception system is “**flawed**” insofar as human rights are concerned, chiefly because of a lack of enacting legislation and because of the judiciary's limited use of the presumption of conformity.⁹
- In 2023, Dr. Alex Neve¹⁰ published a comprehensive report on this specific topic: ***Closing the Implementation Gap: Federalism and Respect for International Human Rights in Canada***.¹¹ Among many suggestions, Dr. Neve called for the creation of a national framework for international human rights implementation entailing the following:
 - Ensuring that all policies and actions taken by federal, provincial and territorial governments conform to international human rights obligations
 - Enacting international human rights implementation laws by federal, provincial and territorial governments
 - Enhancing the role of Indigenous governments in implementing international human rights obligations, in keeping with the UNDRIP
 - Formalizing the role of municipal governments in implementing international human rights obligations
 - Enhancing stakeholder and public engagement to improve the capacity of stakeholders to monitor the implementation of human rights in Canada.

In June 2023, a Forum of Ministers on Human Rights (also known as Federal, Provincial and Territorial (FPT) Ministers' Meeting) was held, with the Government of Alberta only present as observer. This forum raised hopes that some of the recommendations laid out here and made by others would be adopted, but the final declaration fails to identify any concrete action.¹²

The latest compilation of information by the UN in preparation of Canada's fourth UPR in November 2023 also shows the urgency that the IACHR address Canada's capacity to fully

⁸ Christopher Campbell-Durufié, “The Canadian Net-Zero Emissions Accountability Act: A Tepid Response to the Paris Agreement” (2023) 56:2 UBC Law Review 339.

⁹ Canadian Human Rights Commission, “Submission to the U.N. Human Rights Council for its Review of Canada” 3rd Cycle of the Universal Periodic Review (October 2017) at 3.

¹⁰ Dr. Neve has a distinguished track record in international law advocacy in Canada as Secretary General of Amnesty International Canada from 2000 to 2020. He is a Senior Fellow at the Graduate School of Public and International Affairs, University of Ottawa and a Fellow with the Atlantic Human Rights Centre at St. Thomas University. Among other distinctions, he is Officer of the Order of Canada and a recipient of the Queen Elizabeth II Diamond Jubilee Medal.

¹¹ Alex Neve, (2023). *Closing the Implementation Gap: Federalism and Respect for International Human Rights in Canada*. IRPP Study 90. Montreal: Institute for Research on Public Policy.

¹² Press Release, Federal, provincial and territorial ministers responsible for human rights meet to discuss key priorities in relation to Canada's human rights obligations, June 20, 2023, <https://www.newswire.ca/news-releases/federal-provincial-and-territorial-ministers-responsible-for-human-rights-meet-to-discuss-key-priorities-in-relation-to-canada-s-human-rights-obligations--851597054.html>.

implement international human rights instruments, including those of the Inter-American System. The following independent mechanisms directly addressed this issue: Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (para. 7), Special Rapporteur on disability (para. 8 and 67), Committee on the Rights of the Child (para. 9 and 62), and Special Rapporteur on violence against women (para. 10).¹³

Conclusion

Civil society, academia, national institutions, and international monitoring bodies have long noted the tension between Canada's aspiration to be a global champion of international human rights law and the reality of both 1) its limited engagement with internal instruments, and particularly those of the Inter-American system and 2) its failure to effectively implement the human rights instruments to which it has adhered. The sources discussed throughout this submission also identify certain oft-mentioned causes, including the dualist nature of Canada's reception system (whereby treaties must be given effect through legislation) and the division of power between federal, provincial, territorial, and Indigenous governments.

Such legal and political obstacles are not insurmountable, as laid bare by the plethora of concrete reform proposals identified throughout this submission. What is more, failure to address this issue as a matter of urgency will disproportionately affect those currently at risk of seeing their rights trampled on intersecting grounds including gender, race, class, age, and Indigenous identity. The IACHR's future engagement with Canada, including Country Reports, Thematic Reports, and Hearings of a General Nature, could play an essential role in gathering greater perspectives on this topic and constructively engaging with state representatives to find durable solutions at last.

I am obviously interested in participating in this process, together with my colleagues from the International Law and Global Justice Initiative (ILGJ) at the Lincoln Alexander School of Law. Please contact us whenever you feel that we could make a useful contribution.

With renewed thanks for your visit and the expression of my highest consideration,



Christopher Campbell-Durufle | Assistant Professor (He/Him)
Lincoln Alexander School of Law, Toronto Metropolitan University
350 Victoria St., Toronto, ON, M5B 2K3, POD 470J
416-979-5000 ext. 544750
ccampbelldurufle@torontomu.ca
<https://ilgj-tmu.ca>

¹³ Human Rights Council, Canada - Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights, 30 August 2023, A/HRC/WG.6/44/CAN/2.