



# Asamblea General

Distr. general  
19 de diciembre de 2019  
Español  
Original: inglés

## Consejo de Derechos Humanos

43<sup>er</sup> período de sesiones

24 de febrero a 20 de marzo de 2020

Tema 3 de la agenda

**Promoción y protección de todos los derechos humanos,  
civiles, políticos, económicos, sociales y culturales,  
incluido el derecho al desarrollo**

## Visita al Canadá

### Informe de la Relatora Especial sobre los derechos de las personas con discapacidad\*

#### *Resumen*

La Relatora Especial sobre los derechos de las personas con discapacidad, Catalina Devandas Aguilar, realizó una visita al Canadá del 2 al 12 de abril de 2019. En su informe sobre la visita, la Relatora Especial examina diversas cuestiones relacionadas con los derechos de las personas con discapacidad desde la perspectiva de las normas y preceptos internacionales de derechos humanos. Sobre la base de la información recopilada antes, en el transcurso y después de la visita, la Relatora Especial pone de relieve los progresos realizados por el Gobierno federal y los gobiernos provinciales y territoriales en la aplicación de la Convención sobre los Derechos de las Personas con Discapacidad. También destaca las deficiencias existentes y los ámbitos en que se podría mejorar, y formula recomendaciones con miras a ayudar al Canadá a reforzar sus iniciativas destinadas a lograr un cambio sistémico y a ofrecer respuestas y soluciones inclusivas a todas las personas con discapacidad, en igualdad de condiciones con las demás personas.

\* El resumen del informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo del resumen, se distribuye únicamente en el idioma en que se presentó.



## Annex

### Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Canada

#### I. Introduction

##### A. Programme of the visit

1. At the invitation of the Government, the Special Rapporteur on the rights of persons with disabilities visited Canada, from 2 to 12 April 2019, to assess the measures taken by the authorities to implement the Convention on the Rights of Persons with Disabilities. She sought to determine the impact of such efforts on the level of enjoyment of persons with disabilities of their rights, to identify opportunities and challenges and to formulate concrete recommendations.

2. The Special Rapporteur visited Ottawa, Toronto, Montreal, Fredericton and Halifax. In Ottawa, she met with senior officials representing different federal Government departments, agencies, crown corporations and special operating agencies, including Global Affairs Canada, the Department of Justice, Employment and Social Development Canada, the Treasury Board, Health Canada, Women and Gender Equality Canada, Indigenous Services Canada, Statistics Canada, the Canada Mortgage and Housing Corporation, the Canadian Radio-television and Telecommunications Commission, Transport Canada and the Canadian Transportation Agency. She also met the Minister of Public Services and Procurement and Accessibility, the Chairperson of the Standing Senate Committee on Social Affairs, Science and Technology and representatives of the Canadian Human Rights Commission.

3. In Toronto, the Special Rapporteur met with the Lieutenant Governor and other officials of the government of Ontario, including the Minister for Seniors and Accessibility and representatives of the Ministry of Education, the Ministry of Children, Community and Social Services, the Ministry of Health and Long-Term Care and the Office of the Public Guardian and Trustee. The Special Rapporteur also visited the Centre for Addiction and Mental Health.

4. In Montreal, she met with the Director of the Office des personnes handicapées du Québec and representatives of the Ministère du travail, de l'emploi et de la solidarité sociale, the Ministère des transports, the Ministère de la justice, the Ministère de la santé et des services sociaux, the Ministère de l'éducation et de l'enseignement supérieur and the Ministère des relations internationales et de la francophonie. She also met with representatives of the Commission des droits de la personne et des droits de la jeunesse and visited the Centre intégré universitaire de santé et de services sociaux du Centre-Sud-de-l'Île-de-Montréal.

5. In Fredericton, she met with the New Brunswick Minister of Education and Early Childhood Development and officials responsible for inclusive education and the integrated service delivery model. She visited Nashwaaksis Middle School to learn how inclusive education works in practice.

6. In Halifax, she met with the Speaker of the Nova Scotia House of Assembly, the Minister of Justice, the Executive Director of Accessibility, the Vice-Chair of the Accessibility Advisory Board and officials of the Nova Scotia Health Authority and the Nova Scotia Department of Community Services. She met the Nova Scotia Human Rights Commission and visited the Emerald Hall unit for persons with psychosocial and intellectual disabilities at the Nova Scotia Hospital.

7. In all the cities visited, the Special Rapporteur met with persons with disabilities and their organizations, including self-advocates with intellectual disabilities, persons with

psychosocial disabilities and women and young girls from various socioeconomic backgrounds. She received additional information through 44 written submissions from civil society organizations and persons with disabilities.

8. The Special Rapporteur also engaged through teleconferencing with officials of British Columbia, including from the Ministry of Social Development and Poverty Reduction, the Ministry of Attorney General, the Ministry of Health and the Ministry of Mental Health and Addictions. She also spoke with officials from the Assembly of First Nations to learn about the situation of indigenous persons with disabilities.

9. The Special Rapporteur thanks the federal, provincial and territorial governments for the transparency, openness and excellent cooperation extended to her prior to and during the visit. She is grateful to the federal Office for Disability Issues and Global Affairs Canada for coordinating her visit. She particularly thanks all the persons with disabilities and their organizations who shared information on their situations, their concerns and their desire for change.

## **B. General context**

10. Canada is a federation of 10 provinces and 3 territories. It is a parliamentary democracy and a constitutional monarchy. The Governor General represents the Queen, who is the Head of State, and the Prime Minister is the Head of Government.

11. Canada ranks thirteenth out of the 189 countries on the 2018 human development index, placing it in the “very high human development” category and among the world’s highest income countries.<sup>1</sup> The average life expectancy of Canadians reached 82 years in 2017. It is expected that one in five Canadians will be aged 65 or older in 2024. The country’s Gini coefficient is 34.0. In 2017, Canada achieved its lowest poverty rate of 9.5 per cent.<sup>2</sup>

12. On 1 January 2019, the population of Canada stood at 37,314,442;<sup>3</sup> of that total, 4.9 per cent reported having indigenous origins. According to the 2017 Canadian Survey on Disabilities, one in five Canadians (22 per cent) aged 15 years and older are persons with disabilities. Women (24 per cent) are more likely to have a disability than men (20 per cent). At the provincial level, the prevalence of disability ranges from as low as 6.9 per cent in Nunavut, to as high as 30.4 per cent and 26.7 per cent in Nova Scotia and New Brunswick respectively. The percentage of persons with disabilities in Ontario and British Columbia was 24.1 and 24.7 respectively, compared to 16.1 per cent in Quebec.<sup>4</sup>

## **II. Cross-cutting considerations**

### **A. Legal framework**

13. Canada is party to several core international human rights treaties but not to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights or the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Canada ratified the Convention on the Rights of Persons with Disabilities in 2010 and acceded to its Optional Protocol in 2018. The Government made an interpretative declaration and a reservation to its article 12. In 2016, Canada acceded to the Marrakesh Treaty to Facilitate

<sup>1</sup> United Nations Development Programme, *Human Development Report 2019* (New York, 2019).

<sup>2</sup> *Ibid.*

<sup>3</sup> See [www150.statcan.gc.ca/n1/pub/91-002-x/91-002-x2018004-eng.htm](http://www150.statcan.gc.ca/n1/pub/91-002-x/91-002-x2018004-eng.htm).

<sup>4</sup> See [www150.statcan.gc.ca/t1/tb11/en/tv.action?pid=1310037401](http://www150.statcan.gc.ca/t1/tb11/en/tv.action?pid=1310037401).

Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.

14. At the regional level, Canada has ratified the Charter of the Organization of American States and is bound by the human rights obligations set out in the American Declaration on the Rights and Duties of Man. However, it is not a party to the American Convention on Human Rights and its Protocols, the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities or the Inter-American Convention on Protecting the Human Rights of Older Persons.

15. Canada regularly engages with the United Nations human rights mechanisms, including by extending a standing invitation to the special procedures. Its first report to the Committee on the Rights of Persons with Disabilities was reviewed in 2017. At the country's universal periodic review in May 2018, the Government accepted all recommendations concerning the rights of persons with disabilities and pledged to work on advancing social and economic inclusion and promoting the coherence and complementarity of its legislation and policies (A/HRC/39/11/Add.1, para. 23).

16. At the national level, the Constitution protects the rights of persons with disabilities. Section 15 of the Canadian Charter of Rights and Freedoms guarantees the right to equality without discrimination, including on the grounds of disability. The adoption of specific laws, policies and programmes aimed at accelerating or achieving de facto equality of persons with disabilities is not considered discriminatory. The federal, provincial and territorial governments must cooperate in promoting, protecting and ensuring respect for human rights in their respective jurisdictions.

17. The Canadian Human Rights Act guarantees protection against discrimination on grounds of disability by the federally regulated organizations and provides that the denial of accommodation of individual needs constitutes a prohibited form of discrimination. All governments in Canada have similar legislation prohibiting discrimination on various grounds, including disability, in the private and public sectors. The Supreme Court has indicated that human rights legislation takes precedence over other legislation.

18. At the federal level, persons with disabilities are considered under various laws, including the Criminal Code, the Canada Evidence Act, the Corrections and Conditional Release Act, the Canada Elections Act, the Employment Equity Act, the Canada Health Act, the Canada Pension Plan Act, the Income Tax Act, the Canada Disability Savings Act, the Student Loans Act, the Canada Student Financial Assistance Act, the Canada Transportation Act, the Personnel Training for the Assistance of Persons with Disabilities Regulations and the Broadcasting Act. The amendment to the Criminal Code permitting medical assistance in dying, which came into force in June 2016, is also of relevance.

19. On 11 July 2019, the Accessible Canada Act came into force. The Act aims to enhance the full and equal participation of all persons in society, especially those with disabilities, by helping to create a barrier-free Canada through the identification, removal and prevention of barriers. The Act gives the federal Government the authority to create new accessibility standards and regulations for itself and for sectors under its jurisdiction, such as the banking, telecommunications and federally regulated transportation services sectors. The State has committed 290 million Canadian dollars over six years to implement the Act.

20. At the provincial and territorial level, only Ontario, Manitoba, Nova Scotia and Quebec have enacted disability-specific and accessibility legislation, none of which is comprehensive nor fully in line with the Convention on the Rights of Persons with Disabilities. Various provincial and territorial laws explicitly refer to persons with disabilities and their families but there are great variations from one jurisdiction to another, resulting in different levels of enjoyment of rights throughout the country. Policy areas that fall within these jurisdictions include health and social services, administration of justice and education.<sup>5</sup>

<sup>5</sup> Constitution Acts, 1867 to 1982, chap. VI.

## **B. Institutional and policy framework**

21. The Office for Disability Issues is the federal focal point on disability, as provided for by article 33 (1) of the Convention on the Rights of Persons with Disabilities. The Office works to build capacity, improve knowledge and foster coherent disability-related programmes across federal agencies and departments. Each provincial and territorial government has a similar office responsible for providing policy advice and expertise on disability issues within their jurisdiction. However, there is no national mechanism to coordinate disability-related action in the different sectors or among the federal, provincial and territorial levels. The Special Rapporteur encourages the authorities to consider establishing such a mechanism to enhance national coherence in the implementation of the Convention.

22. The Accessible Canada Act amends the Canadian Human Rights Acts by designating the Canadian Human Rights Commission as the independent body responsible for monitoring the Government's implementation of the Convention on the Rights of Persons with Disabilities as required by its article 33 (2). The Special Rapporteur welcomes this positive development and underlines the importance of providing the Commission an unequivocal national monitoring mandate and appropriate financial and human resources to implement this function. In addition, she encourages each province and territory to designate its own independent monitoring mechanism, which could coordinate with the national mechanism and support national monitoring efforts.

23. Although there are several examples in which the federal, provincial and territorial governments have come together to coordinate actions in diverse areas, there is no pan-Canadian strategy on the rights of persons with disabilities. Prior to the adoption of the Convention on the Rights of Persons with Disabilities, in 1998, the federal, provincial and territorial governments, with the exception of Quebec, which passed the *Loi assurant l'exercice des droits des personnes handicapées* in 1978, adopted a common vision and long-term policy directions aimed at addressing gaps in the provision of support services, employment and income security for persons with disabilities.<sup>6</sup> A new comprehensive national policy is needed to secure the implementation of the Convention.

24. The Special Rapporteur welcomed the availability of data disaggregated by disability status and the use of the Canadian Disability Screening Questions and the short set of questions of the Washington Group on Disability Statistics. These positive efforts are key to monitoring the implementation of the Convention and the Sustainable Development Goals in an internationally comparable manner. However, it is worrying that the statistical and administrative information available is not adequately used at the provincial and territorial level to inform the design, implementation and monitoring of policies and programmes. Moreover, there are information gaps in relation to persons with disabilities in institutions.

25. The Special Rapporteur welcomes the increased domestic commitment towards the implementation of the Sustainable Development Goals, which provides an opportunity to include the rights of persons with disabilities in national development policies and plans. She encourages the federal, provincial and territorial governments to work together to implement these obligations as part of their efforts to leave no one behind.

## **C. Issues to be addressed in the area of legal and policy harmonization**

26. While acknowledging the existing disability framework, the Special Rapporteur recommends that the Government of Canada conduct a comprehensive legislative review to fully harmonize the federal, provincial and territorial normative frameworks with the provisions of the Convention on the Rights of Persons with Disabilities. Current legislation does not yet reflect the model of substantive equality introduced by the Convention, which challenges structural discrimination and the exclusion of persons with disabilities and does

<sup>6</sup> Federal/Provincial/Territorial Ministers Responsible for Social Services, *In Unison: A Canadian Approach to Disability Issues*.

not address discrimination only in individual cases. The federal Government can encourage provinces and territories to also harmonize their legal and policy frameworks with the Convention by utilizing existing mechanisms for collaboration such as the intergovernmental committees and working groups, as well as financial disbursements.

27. Furthermore, certain pieces of legislation at the federal, provincial and territorial levels are contrary to the rights of persons with disabilities set out in the Convention. These include, for example, provisions on: substitute decision-making regimes, such as guardianship or *tutelle*; the involuntary hospitalization and treatment of persons with psychosocial disabilities; and, in the Criminal Code, on deprivation of liberty resulting from declarations of unfitness to stand trial or non-criminal responsibility on grounds of mental health conditions.<sup>7</sup>

28. The Special Rapporteur would like to stress that, while the Canadian anti-discrimination framework allows for individual remedies, it is insufficient for the systemic transformation of society that is needed to ensure the rights of persons with disabilities. Responsibility falls upon individuals to draw attention to discriminatory practices or policies and initiate lengthy and onerous legal procedures to achieve the recognition and enjoyment of their rights. Currently, close to 60 per cent of the complaints to the Canadian Human Rights Commission involve cases of discrimination on the basis of disability. More proactive governmental responses at the federal, provincial and territorial levels are needed to ensure systemic change and the promotion and protection of the human rights of persons with disabilities.

29. The Government needs to ensure that all public policies, including disability-specific ones, reflect a human rights-based approach to disability and strive to remove barriers that impede the effective and full participation of persons with disabilities on an equal basis with others. The authorities need to increase the awareness, knowledge and capacity of all government officials, civil servants, service providers and civil society representatives to implement articles 4 (1) and 8 of the Convention and to engage in a broad-ranging public awareness campaign on the Convention and the rights-based approach to disability.

#### **D. Indigenous persons with disabilities**

30. The indigenous peoples of Canada include the First Nations, the Métis Nation and the Inuit. Indigenous persons with disabilities live both on and off reserves in communities. According to the 2017 Aboriginal Peoples Survey,<sup>8</sup> 32.7 per cent of off-reserve First Nations people aged 25–54 years had a disability and women were more likely to have a disability than men (39.3 per cent of women compared with 24.5 per cent of men). First Nations persons with disabilities living off reserves were less likely to be employed (47.9 per cent) than those without disabilities (75.8 per cent), a gap similar to that observed in the total population in Canada. There is no official information on the number of persons with disabilities on reserves or from Métis and Inuit origin.

31. The federal, provincial, territorial and indigenous governments are jointly responsible for the implementation of the rights of indigenous persons with disabilities. The Non-Insured Health Benefits Program provides eligible First Nations and Inuit people with coverage for a range of health benefits, including medication, dental and eye care, medical supplies and equipment, mental health counselling and transportation to access health services not available locally. It complements provincial and territorial health-care programmes as well as other First Nations and Inuit community-based programmes and services. The Income Assistance Program provides funding to help individuals and families living on reserves meet their basic needs, and the Assisted Living Program provides income-tested funding for non-medical social support services to persons with disabilities living on reserves, including in-home care, adult foster care and institutional care.

<sup>7</sup> The statutory framework governing the treatment of accused persons deemed unfit to stand trial or not criminally responsible is set out in part XX.1 of the Criminal Code.

<sup>8</sup> See [www.aadnc-aandc.gc.ca/eng/1321384019753/1322059098232](http://www.aadnc-aandc.gc.ca/eng/1321384019753/1322059098232).

32. In 2007, Parliament adopted a unanimous House of Commons resolution on Jordan's Principle which has led to the development of a child-first initiative to ensure that all First Nations children living on and off reserves have access to the products, services and supports they need when they need them. In September 2018, the federal Government announced that Inuit children too were eligible. Jordan's Principle can cover requests for health, social and educational products, services and supports.

33. Despite these measures, indigenous persons with disabilities, including children, are far behind in the enjoyment of their rights. They experience higher rates of domestic violence, particularly women with disabilities, and have limited access to the products, services and supports they need, even when these are normally available to others. Consequently, many are forced to seek services outside their reserve, which means they face an increased risk of discrimination and a lack of culturally sensitive services. Moreover, it is often the case that indigenous persons with disabilities cannot access services, whether on or off reserves, due to jurisdictional disputes between different levels of government concerning who is responsible for covering the costs.

34. Many persons with disabilities, particularly children and older adults, are sent to long-term care facilities far from their communities to receive health-, residential or palliative care services that are not culturally appropriate. Indigenous children represent more than half of all children in foster care and it is estimated that more than 40,000 First Nations children live away from their families, in the care of child welfare services funded and regulated by provincial or territorial governments or by the federal government. Many of them are children with disabilities, often removed from their homes because of the lack of appropriate support services in indigenous communities. The Special Rapporteur was informed that some families are afraid of reporting the disability status of a relative due to the risk of separation.

35. It remains unclear how the Accessible Canada Act applies to indigenous persons with disabilities living on reserves. The Special Rapporteur encourages the federal and indigenous governments to work closely so as to ensure that all persons with disabilities benefit from the Act and enjoy all their rights on an equal basis with others. She also encourages the Government of Canada to continue working with indigenous governments to support the development of measures aimed at addressing the unique realities of indigenous persons with disabilities.

### **III. Challenges and opportunities identified in Canada**

#### **A. Accessibility**

36. The Government has taken various steps towards making Canada more accessible, including through the recent adoption of the Accessible Canada Act. The Act helps identify, remove and prevent barriers in different areas of federal competence, including employment, the built environment, information and communications technologies, communications other than information and communication technologies, the procurement of goods, services and facilities, the design and delivery of programmes and services, and transportation. In 2019, the Canadian Transportation Agency published the Accessible Transportation for Persons with Disabilities Regulations, applicable to air, rail, ferry and bus carriers and terminals falling within federal jurisdiction. The regulations are expected to become effective in 2020.

37. Public Services and Procurement Canada, the Government's central purchaser, has established the Accessible Procurement Resource Centre to ensure that goods and services purchased are accessible by design, where possible, so that Canadians with disabilities can use them without adaptation. The Government's leadership in this area is very welcome, since it involves the country's single largest purchaser of goods and services. The Special Rapporteur considers the Canadian inclusive procurement model to be a good practice to be shared internationally.

38. Some provinces have followed or are expected to follow the federal leadership and adopt their own accessibility initiatives. However, progress in removing barriers remains slow. In all the places visited, the Special Rapporteur faced problems with accessibility. Public and private infrastructures, including the public transport systems, were still not fully accessible to persons with disabilities, with variations between provinces. For example, only 15 of 68 metro stations in Montreal have elevators<sup>9</sup> and 45 of 75 metro stations in Toronto have elevators.<sup>10</sup> According to information provided by the Commission des droits de la personne et des droits de la jeunesse of Quebec, the rate of complaints on the inaccessibility of public transportation and places (22.8 per cent) was second-highest after discrimination in employment. There are no clear baselines on the current status of accessibility at the federal, provincial and territorial levels, which is crucial for tracking progress and fostering accountability.

39. In terms of access to information and communications, it is positive that the Accessible Canada Act recognizes American Sign Language, Quebec Sign Language and Indigenous sign languages. The Canadian Radio-television and Telecommunications Commission guarantees accessible broadcasting services through closed captioning and audio description in English and French, and has established an obligation for carriers to provide relay services. Nevertheless, deaf, deafblind and hard-of-hearing persons reported difficulties in obtaining sign language interpretation or assistance to access services such as education, health care and legal aid, or to attend public events. The Special Rapporteur received allegations that deaf students could not access direct instruction in sign language and had limited opportunities to study sign language as a school subject.

40. Furthermore, the use and teaching of Braille is becoming less common, partly due to the more widespread use of audio technologies. For example, blind and partially sighted children in inclusive schools do not get adequate instruction in learning to read Braille, which undermines their literacy. Similarly, plain language and easy-to-read formats are rarely used for providing information.

## **B. Participation of persons with disabilities**

41. The Special Rapporteur was pleased to learn that persons with psychosocial and intellectual disabilities enjoyed legal recognition of their right to vote and to stand for elections. Section 3 of the Canadian Charter of Rights and Freedoms guarantees every citizen the right to vote. According to the Canada Elections Act, every Canadian citizen who is 18 years old or older on polling day is entitled to vote. Nevertheless, persons with disabilities are not well represented in elected bodies.

42. In relation to participation in decision-making processes, the Special Rapporteur was informed that the authorities consult with persons with disabilities and their organizations as a general practice. For instance, the Government carried out extensive consultations on the Accessible Canada Act. Similar consultation processes were reported at the provincial and territorial level. However, organizations of persons with disabilities expressed the need to transition from mere consultation towards active involvement in all decisions that affect them directly or indirectly. The Special Rapporteur encourages the authorities to make additional efforts to ensure the participation of the diversity of persons with disabilities in decision-making processes, including women and children with disabilities, persons with intellectual and psychosocial disabilities and persons with disabilities belonging to indigenous and minority communities.

43. The federal Government supports organizations of persons with disabilities through the Social Development Partnerships Program, which provides 11 million Canadian dollars annually in core and project funding to national disability organizations. In 2019, 28 such organizations from across the country received funding for their operations. Over the coming years, the Government will provide an additional 2.6 million Canadian dollars to support the engagement of the disability community in the implementation of the

<sup>9</sup> See [www.stm.info/en/access](http://www.stm.info/en/access).

<sup>10</sup> See [www.ttc.ca/TTC\\_Accessibility/Easier\\_access\\_on\\_the\\_TTC/Elevators\\_and\\_escalators.jsp](http://www.ttc.ca/TTC_Accessibility/Easier_access_on_the_TTC/Elevators_and_escalators.jsp).



Convention on the Rights of Persons with Disabilities. While acknowledging these efforts, the Special Rapporteur is concerned that federal core funding for organizations of persons with disabilities has not significantly increased in recent years and that the funding available has benefited mainly nationwide organizations with the capacity to afford all the administrative and economic requirements.

### C. Women with disabilities

44. Women with disabilities face serious challenges in Canada. They are almost twice as likely as women without disabilities to have been sexually assaulted, with 24 per cent of women with cognitive disabilities and 26 per cent of women with mental health-related disabilities reporting having been sexually abused before the age of 15 years.<sup>11</sup> Women with disabilities are also at a greater risk of intimate partner violence: in 45 per cent of all self-reported violent crime incidents involving a female victim, the victim had a disability.<sup>12</sup> However, services for survivors of intimate partner violence are often not able to respond to the needs of women with disabilities. The lack of accessibility in shelters across Canada prevents many women with disabilities from using those services.

45. The Government of Canada uses an analytical process known as Gender-based Analysis Plus (GBA+) to examine the impact that various intersecting facets of identity have on the effectiveness of government initiatives.<sup>13</sup> The “Plus” in the title acknowledges that the process takes into consideration not only sex and gender, but also many other facets of identity, like race, ethnicity, religion, age and disability. The Special Rapporteur welcomes the explicit recognition of intersectionality for policy analysis and programming, and encourages the Government to reinforce efforts to raise awareness and help analysts to adequately address disability-related issues.

### D. Education

46. Provincial and territorial governments are responsible for the development and enactment of education policy, which results in significant disparities in the way Canadians with disabilities access education, depending on where they live. The Special Rapporteur welcomes the progress in inclusive education achieved in New Brunswick, where all children with disabilities attend regular schools. In the view of the Special Rapporteur, that situation is one of the best in the world and should be taken as a role model. The government of New Brunswick adopted legislation and policies requiring the inclusion of students with disabilities in general schools and the provision of support in an integrated and interdisciplinary way. Inclusion was strengthened and became sustainable due to the introduction of an integrated services delivery framework. Currently, the government of New Brunswick is part of an interprovincial collaboration aimed at developing rights-based and evidence-based tools to support the educational inclusion of children with autism.

47. While there has been a shift in policy from special to inclusive education, most provinces and territories maintain segregated educational systems. For example, in Ontario, the Education Act and Regulation 181/98 allow the segregation of students in a special education class or school. During the school year 2017/18, at least 15 per cent of students with “special education needs” received segregated services.

48. Article 235 of the Education Act of Quebec grants school boards the power to decide on the inclusion or segregation of students with disabilities following a case-by-case evaluation. In 2017, the government of Quebec adopted its first policy on educational achievement,<sup>14</sup> which prioritizes the inclusion of students with disabilities in mainstream educational settings. This new policy has resulted in an increase in the proportion of

<sup>11</sup> See [www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54910-eng.htm](http://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54910-eng.htm).

<sup>12</sup> Ibid.

<sup>13</sup> See <https://cfc-swc.gc.ca/gba-acis/index-en.html>.

<sup>14</sup> See [www.education.gouv.qc.ca/references/tx-solrtypercherchepublicationtx-solrpublicationnouveau/resultats-de-la-recherche/detail/article/politique-de-la-reussite-educative](http://www.education.gouv.qc.ca/references/tx-solrtypercherchepublicationtx-solrpublicationnouveau/resultats-de-la-recherche/detail/article/politique-de-la-reussite-educative).

students with disabilities receiving education in mainstream schools (77 per cent of all students with disabilities). However, simultaneously, the government is investing 20 million Canadian dollars in the creation of at least 150 new segregated classes within regular schools in 2019–2020.

49. Inclusive education requires integrated actions to remove barriers and provide resources at multiple levels, including policy and legislation, educational reforms that address the entire system, teacher training and ensuring that all necessary supports are provided for all children. A national database on the provision of education for students with disabilities across Canada should also be implemented.

50. With regard to post-secondary education, persons with disabilities are less likely than persons without disabilities to graduate from university. Statistics Canada data indicate that almost 80 per cent of persons with disabilities complete high school but that only 19.6 per cent have a university or higher-level degree, compared with 31.4 per cent of Canadians without disabilities.<sup>15</sup> To address this situation, in 2019 the federal Government revised the National Student Loan Services Program and introduced new measures specifically for students with disabilities, including the expansion of the eligibility criteria for loans and the increase in the cap for services and equipment from 8,000 to 20,000 Canadian dollars per year. While this is a good example of federal leadership, unless the systemic barriers preventing students with disabilities from accessing inclusive education from kindergarten to university are addressed in law and policy at all levels of government, the new measures will fail to produce all the intended results.

## E. Work and employment

51. At the federal level, the 1995 Employment Equity Act aims to promote employment equity, including by removing the workplace-related equity barriers faced by women, visible minorities, indigenous peoples and persons with disabilities. The Act's jurisdiction is limited to industries that are federally regulated under the Constitution (e.g. railroads, airlines and banks). Some provinces and territories have legislation requiring employers to proactively change their hiring and employment practices to remove barriers faced by persons with disabilities. For example, in Quebec, the Act Respecting Equal Access to Employment in Public Bodies prevents public sector employers from discriminating against employees and potential employees with disabilities. The Accessibility for Ontarians with Disabilities Act requires employers to provide for individual accommodations for employees with disabilities.

52. At the time of the Special Rapporteur's visit, persons with disabilities represented 5.6 per cent of all public servants. In 2018, the federal Government introduced an accessibility strategy that, among other priorities, will lead to hiring 5,000 persons with disabilities into the federal public service and establishing a centralized accommodation fund for public service employees with disabilities. The Government has also established new workforce development agreements with provincial and territorial governments that include specific funding so that persons with disabilities can benefit from skills training and employment support. The Opportunities Fund for Persons with Disabilities provides financial support for projects aimed at enabling persons with disabilities to prepare for, obtain and maintain employment or self-employment.

53. Persons with disabilities face higher levels of unemployment and earn less than Canadians without disabilities. Among persons with disabilities aged 25–64 years, only 59 per cent were employed compared to 80 per cent of persons without disabilities.<sup>16</sup> More than 30 per cent report difficulties in changing jobs or advancing in their careers and at least 40 per cent report feeling stigmatized by their employer.<sup>17</sup> Of the complaints received by the Canadian Human Rights Commission on grounds of disability, three quarters are

<sup>15</sup> See [www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2015001-eng.htm](http://www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2015001-eng.htm).

<sup>16</sup> See [www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2018002-eng.htm](http://www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2018002-eng.htm).

<sup>17</sup> Canadian Human Rights Commission, *Roadblocks on the Career Path: Challenges Faced by Persons with Disabilities in Employment*, p. 4.

related to employment discrimination.<sup>18</sup> Moreover, many persons with intellectual disabilities continue to work in sheltered workshops. While the Special Rapporteur welcomes the federal Government's initiative to improve the recruitment, retention and promotion of persons with disabilities, similar efforts are necessary at the provincial and territorial level to increase the employment of persons with disabilities in the public and private sectors.

## F. Social protection

54. Persons with disabilities are at greater risk of living in or almost in poverty. The Canadian Survey on Disability 2017 revealed that adults with severe disabilities are more likely to be living below the poverty line than those without disabilities. Adults with severe disabilities living alone have the highest rate of poverty (61 per cent), followed by lone parents with disabilities (41 per cent). Lone parents with disabilities have a far higher rate of poverty (41 per cent) than lone parents without disabilities (24 per cent). Population surveys reveal that persons with disabilities, particularly those with intellectual and psychosocial disabilities, are significantly overrepresented among the poorest and the homeless. According to data from 2017, 1.6 million Canadians with disabilities were unable to afford required aids, devices or prescription medications due to cost.<sup>19</sup>

55. The Canada Social Transfer is the primary source of federal funding to support provincial and territorial policies in the area of social assistance and services, early childhood development and childcare. Provinces and territories have flexibility for designing and administering programmes, which results in a diverse set of services and benefits across the country. Thus, persons with disabilities may, depending on where they live, be entitled to different supplements, such as renting allowances to pay for shelter or special needs allowances to pay for items or services not covered by other programmes such as prescription drugs, dental care and transportation. The existence of different overlapping benefits and programmes makes it difficult to navigate the system.

56. Access to some of the benefits is difficult due to strict eligibility criteria. Everyone who applies for income assistance has to undergo an assessment that includes an evaluation of their assets and hardship situation, a medical evaluation, an employment assessment (ability to do paid work) and an assessment of needs for support services. Although the assessment criteria and the amount received by persons with disabilities may differ in each jurisdiction, the income support payments in all provinces and territories remain below the poverty line in Canada.

57. The Canada Pension Plan and the Quebec Pension Plan provide disability benefits to persons who have made enough contributions to the Canada Pension Plan and who cannot resume their employment on a regular basis. Persons with disabilities are encouraged to make financial savings under the Disability Savings Program, to which the federal Government provides grants of up to three times the private contributions made. Targeted tax measures like the Disability Tax Credit are also available, but the application and review process is costly and complicated. Many persons with disabilities receive little or no benefit from the credit itself because their taxable income is too low.

58. The first poverty reduction strategy of Canada, "Opportunity for all", launched in August 2018, could have been an opportunity to address the link between disability and poverty. The strategy sets an official poverty line for Canada, as well as concrete targets for halving the poverty rate by 2030. However, the Market Basket Measure, which is used to calculate the official poverty line, does not consider the extra cost of living with a disability. The Government should consider improving the way in which poverty is measured and track the extent to which poverty eradication efforts benefit persons with disabilities.

59. More efforts need to be made to ensure that all persons with disabilities enjoy an adequate standard of living. Existing social protection schemes and benefits, including the

<sup>18</sup> Ibid., p. 19.

<sup>19</sup> See [www150.statcan.gc.ca/n1/en/catalogue/89-654-X2018002](http://www150.statcan.gc.ca/n1/en/catalogue/89-654-X2018002).

eligibility criteria and assessment of beneficiaries, should be reviewed in line with a human rights-based approach to disability. In addition, the different benefit packages need to take into account principles of universality, coherence and coordination if they are to be accessed on an equal basis by all persons throughout the country.

## **G. Living independently in the community**

60. The Special Rapporteur is highly concerned about the lack of comprehensive responses to guarantee the right of persons with disabilities, particularly those with high support needs, to live independently in the community. Legislation, services and programmes on the provision of access to in-home, residential and community support services vary across provinces and territories. While some provincial and territorial governments are taking steps to improve community support, generally, access to support is not considered as a right but rather as a social assistance programme dependent on the availability of funding. Information received by the Special Rapporteur from across Canada echoed a common concern about the lack of adequate services and support to live in the community, resulting in increased use of residential institutions.

61. Statistics Canada estimates that, in stark contrast with the process of deinstitutionalization conducted decades ago, half a million persons with disabilities with long-term support needs and health-related conditions, including older persons with disabilities, reside in nursing homes, group homes and other specialized long-term facilities.<sup>20</sup> It is also estimated that persons waiting to be placed in a residential care facility occupy 15 per cent of all “acute-care hospital beds” in Canada.

62. The government of Nova Scotia is investing three times the amount of financial resources in delivering community services for independent living compared to institutional care. Programme funding is provided directly to participants or through non-profit organizations contracted to provide support services for persons with disabilities. The Disability Support Program determines eligibility and maintains waiting lists. While some of these programmes have shown the potential to transform service provision, the overall impact is limited. Consequently, more than 900 persons with disabilities in Nova Scotia live in institutions.

63. A similar concern relates to the lack of community services for persons with disabilities and their placement in medical institutions and other residential settings in Quebec. In 2017, more than half of persons with disabilities in Quebec reported having “unmet support needs”. Many had to wait for long periods before they could access at least some services. Some 3,700 adults under 65 with disabilities were forced to live in hospitals and nursing homes due to a lack of community-based support services. It is estimated that the provincial government spends 42,000 Canadian dollars each year to keep a person in an institutional setting. According to persons with disabilities, the same amount of money provided in the form of direct funding would allow them to pay for 50–60 hours of personal assistance services per week.

64. The government of Ontario supports Direct Funding, a programme for self-managed attendant care services that is administered by the Centre for Independent Living in Toronto and that enables adults with physical disabilities to become employers of their own personal assistants (attendants), determining how and when services are provided. Demand for the programme is strong but, due to the limited resources, many people have been waiting for years to access it. Currently, applicants can expect to wait approximately one year before they are invited for an interview. Meanwhile, although large institutions for persons with disabilities have closed in Ontario, many persons with disabilities receive residential support in nursing homes because of the lack of adequate community support.

<sup>20</sup> See [www12.statcan.gc.ca/census-recensement/2016/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=1&PID=109538&PRID=10&PTYPE=109445&S=0&SHOWALL=0&SUB=0&Temporal=2016&THEME=116&VID=0&VNAMEE=&VNAMEF=](http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=1&PID=109538&PRID=10&PTYPE=109445&S=0&SHOWALL=0&SUB=0&Temporal=2016&THEME=116&VID=0&VNAMEE=&VNAMEF=).

65. In British Columbia, Choice in Supports for Independent Living is a self-directed option for eligible persons with physical disabilities. It is a self-managed model of care whereby persons with disabilities receive funds and assume full responsibility for managing their own services. However, the amount of money provided is insufficient to cover all support needs, which often need to be supplemented with services paid for out-of-pocket. Neither the Ontario or British Columbia self-directed programmes are “portable”, meaning that persons with disabilities from those provinces risk losing their payments and access to services if they move to other parts of the country.

66. Access to support services for children and youth with disabilities remains problematic. For example, in Quebec two thirds of families with at least one child with disabilities reported not receiving the support they needed and, in some regions, persons with disabilities were on waiting lists for family support for as long as five years. In most provinces and territories, the organization of service provision is fragmented, undermining continuity and complementarity. Family members have to take over the responsibility of providing support, give up their jobs to provide personal care, manage the delivery of multiple services and make themselves available at short notice when service provision is cancelled. The Special Rapporteur was informed that parents might consent to foster care placement because it is the only option available. At the age of 18, young persons with disabilities who cannot be supported by their families’ risk being placed in nursing homes for older persons.

67. In November 2017, the Government launched the National Housing Strategy, which set targets to make 20 per cent of the new units and 20 per cent of renewed housing accessible for persons with disabilities. Some 2,400 new units will be created for persons with intellectual disabilities. While acknowledging these measures, the Special Rapporteur notes that absent adequate income support and services to live independently in the community, major investments in infrastructure alone will not lead to systemic improvements in housing for persons with disabilities.

## H. Right to life

68. In June 2016, the Parliament of Canada passed federal legislation allowing adults to request medical assistance in dying. The Criminal Code was amended to allow physicians and nurse practitioners to provide medical assistance in dying and to allow pharmacists, family members or other people to assist in the process without being charged under criminal law.<sup>21</sup> As a general rule, the Criminal Code provides that persons who have a grievous and irremediable medical condition that causes them enduring and intolerable suffering are allowed to seek medical assistance in dying. The definition of a grievous and irremediable medical condition includes disability. Recently, the Superior Court of Quebec invalidated sections of both the federal and Quebec laws on medically assisted dying, ruling invalid the Criminal Code requirement that a natural death be “reasonably foreseeable” before someone can be eligible for assisted death.

69. The Special Rapporteur is extremely concerned about the implementation of the legislation on medical assistance in dying from a disability perspective. She has learned that there is no protocol in place to demonstrate that persons with disabilities deemed eligible for assistive dying have been provided with viable alternatives. Moreover, she has received worrisome information about persons with disabilities in institutions being pressured to seek medical assistance in dying and of practitioners not formally reporting cases involving persons with disabilities. The recent judgment of the Superior Court of Quebec might put additional pressure on persons with disabilities who are in a vulnerable situation due to insufficient community support. As many persons with disabilities said during the visit, they are being offered the “choice” between a nursing home and medical assistance in dying.

<sup>21</sup> Act To Amend the Criminal Code and To Make Related Amendments to other Acts (Medical Assistance in Dying).

## I. Health

70. The health-care system of Canada is largely organized through the Constitution, which sets out which roles and responsibilities are divided among the federal, provincial and territorial governments and which are shared.<sup>22</sup> The federal Government sets out the legislative framework for universal publicly funded hospital and physician services through the Canada Health Act, and provides provinces and territories with the financial support necessary for the delivery of health-care services. The federal Government is also responsible for the health-care services for First Nations and Inuit peoples, as well as serving military and veterans, refugees and inmates in the federal corrections system.

71. Provincial and territorial governments are responsible for funding the provision of health-care services in their own jurisdictions. Each province or territory has health insurance plans which cover hospital and physician services, and provides additional coverage to persons eligible for health-care services not covered under the universal publicly funded health-care system, including prescription drugs outside hospitals, dental care, eye care, medical equipment and appliances such as prostheses, and wheelchairs, and the services of other health professionals. Because of that, the level of coverage and the availability of services vary across the country.

72. While acknowledging the universal publicly funded health-care system of Canada, the Special Rapporteur remains concerned about the disparities in the levels of coverage and the availability of health services across the country, particularly between urban and rural areas and between on-reserve and off-reserve populations. She has also learned that community-based mental health-care support services, as well as palliative care services, were significantly underfunded.

73. Assistive devices and technologies are generally covered through separate provincial and territorial programmes. In some cases, the province or territory pays a fixed amount for a device or provides grants directly to a person with disabilities for supplies. Usually, these payments do not cover the full cost of assistive devices, batteries or repairs, and persons with disabilities must contribute with a co-payment.

## J. Legal capacity

74. Canada is recognized at the international level as one of the first countries that developed the notion of supported decision-making, which was later embedded in the Convention on the Rights of Persons with Disabilities. Some provinces and territories have introduced legislative measures for supported decision-making that aim at enabling persons with disabilities to exercise choice and control over their own lives, instead of having others make decisions on their behalf. However, there are disability-related restrictions in much of the legislation, guardianship is still provided for and there is little investment to ensure that people can create and sustain the decision-making supports they may require. While supported decision-making has existed in practice for many years, its impact and the possibility of scaling it up have been limited due to the lack of an enabling legal framework that ensures universal legal capacity through the provision of support.

75. Accordingly, many persons with intellectual and psychosocial disabilities continue to be denied the exercise of their legal capacity through substitute decision-making systems such as guardianship and curatorship. For example, in Ontario and Quebec alone, there are approximately 54,800 adults under different forms of guardianship or curatorship. Although this is reportedly done for their own protection, in reality persons with disabilities placed under these measures are far from protected: they are deprived of equal recognition before the law, have limited opportunities to exercise other rights and are at a higher risk of abuse, neglect and institutionalization.

76. Some provinces are revising their legal framework with the aim of introducing less restrictive measures such as advance directives, enduring powers of attorney or

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<sup>22</sup> See [www.canada.ca/en/health-canada/services/health-care-system/reports-publications/health-care-system/canada.html#a4](http://www.canada.ca/en/health-canada/services/health-care-system/reports-publications/health-care-system/canada.html#a4).

representation agreements, and enabling greater choice of substitute decision makers. Although these measures represent an important initial step, the relevant legislative authorities at all levels of governance need to complete the process of legal harmonization, to ensure that all persons with disabilities fully enjoy their legal capacity in accordance with article 12 of the Convention on the Rights of Persons with Disabilities. The Special Rapporteur reiterates her recommendation of withdrawing the interpretative declaration and reservation to this article.

## **K. Deprivation of liberty and involuntary treatment**

77. Provincial and territorial legislation across Canada allows for the involuntary hospitalization and treatment of persons with psychosocial disabilities, in contradiction to articles 14, 17 and 25 of the Convention on the Rights of Persons with Disabilities. For example, the Mental Health Act of British Columbia contains very broad criteria for involuntary admissions.<sup>23</sup> Moreover, once detained, a person can be forcibly treated, including through forced medication and electroconvulsive therapy, without his or her free and informed consent.

78. In addition, most jurisdictions have passed legislation permitting clinician-initiated community treatment orders, which compels persons with psychosocial disabilities to comply with a treatment plan that generally includes medication and counselling. The Special Rapporteur received several complaints regarding the implementation of these orders, including in respect of the absence of procedural guarantees, the lack of alternative treatment options and threats of forced hospitalization for lack of compliance.

79. The Special Rapporteur was informed that the number of involuntary hospitalizations was increasing. Furthermore, a significant number of persons with psychosocial disabilities cannot leave hospital due to the lack of community-based alternatives. The extensive use of seclusion and restraints, including chemical restraints, is also a concern, especially since there is no independent monitoring of mental health facilities. The expert urges the Government of Canada to ratify the Optional Protocol on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to establish a national preventive mechanism.

## **L. Access to justice**

80. The Supreme Court of Canada and the provincial and territorial courts of Canada have developed a significant body of jurisprudence concerning the rights of persons with disabilities. Most of the cases heard in court involve complaints of discrimination on grounds of disability. The Canadian Judicial Council has developed training courses and guidelines on access to justice for persons with disabilities.

81. The Canadian Human Rights Act and the Criminal Code establish a duty to accommodate persons with disabilities' needs in all proceedings before federal and provincial courts and federal tribunals. Different provinces and territories also recognize this obligation in their respective legislation. However, there is a lack of judicial protocols and guidelines on procedural and age-appropriate accommodations for persons with disabilities. Ensuring access to reasonable accommodations should not be confused with procedural accommodations in the context of access to justice. Article 13 of the Convention on the Rights of Persons with Disabilities requires procedural accommodations, which are not limited by the concept of "disproportionate or undue burden". That differentiation is fundamental, because the right of access to justice guarantees the effective enjoyment and exercise of all rights.

82. In Canada, legal aid is provided by provincial and territorial governments through specific programmes. The Special Rapporteur learned that there are significant regional disparities in who can access legal aid, the types of issues covered and the amount and type of legal assistance provided. For example, legal aid is often only available for certain types

<sup>23</sup> See [www.health.gov.bc.ca/library/publications/year/2005/MentalHealthGuide.pdf](http://www.health.gov.bc.ca/library/publications/year/2005/MentalHealthGuide.pdf).

of legal problems and on the basis of income.<sup>24</sup> Therefore, a person with disabilities who works may not be eligible for legal aid despite not being able to afford private legal services.

83. Persons with disabilities can be deprived of their liberty if declared unfit to stand trial or deemed not criminally responsible on account of “mental disorder”.<sup>25</sup> These cases are diverted and processed through the provincial and territorial review boards, specialized tribunals that can order the absolute discharge of the person, outpatient community treatment or detention in a mental health hospital. This can lead to detention for an indeterminate period or for a significantly longer period than would be ordered for a similar criminal act tried under the criminal justice system. The accused is placed in custody within a hospital or supervised within the community for as long as he or she is perceived to be posing a risk to public safety. The principle of proportionality between the seriousness of the offence and the sentence that applies in the criminal justice system is not considered. As the review board system is “inquisitorial” and not “adversarial”, the accused have less access to procedural guarantees, such as not being provided with a lawyer, than others in the criminal justice system. Canada must ensure that judicial guarantees and safeguards protecting the rights of those accused of a crime apply to all persons with disabilities.

84. There is an overrepresentation of persons with psychosocial and intellectual disabilities in prisons. Some sources suggest that psychosocial disabilities among inmates in the federal correctional system are up to three times as common as in the Canadian population at large.<sup>26</sup> This situation is largely linked to socioeconomic factors such as lack of employment, housing and adequate support services rather than to criminality itself. In the context of the process of reviewing the criminal justice system to address the overrepresentation of different marginalized groups, the Special Rapporteur is keen to learn more about the reform and the concrete measures taken to reduce the overrepresentation of persons with disabilities in prisons.

#### IV. International cooperation

85. Through its international assistance, the Government of Canada funds a number of initiatives geared towards reducing poverty and promoting the rights of persons with disabilities in partner countries.<sup>27</sup> In 2018, the Government endorsed the Charter for Change, the outcome document of the Global Disability Summit, held in London on 24 July, and announced its commitment to accelerate global action for disability-inclusive development. The Government of Canada has also committed to reviewing its international assistance policy and programming processes to identify ways to improve the availability of equal opportunities, inclusive design and the meaningful involvement of persons with disabilities in the design and delivery of international assistance. The Government committed itself to tracking and reporting on its international assistance using the disability marker approved by the Organization for Economic Cooperation and Development in 2018. The information will be made available publicly through the International Aid Transparency Initiative. Canada is a member of the Global Action on Disability Network, a coordination body of bilateral, multilateral and private donors and agencies, and hosted its 2019 annual meeting.

86. The increased involvement of Global Affairs Canada in activities supporting the inclusion of persons with disabilities in international development is positive. The 2030 Agenda for Sustainable Development presents a unique opportunity to strengthen international cooperation in a disability-inclusive manner. Canada should continue mainstreaming the rights of persons with disabilities and foresee disability-specific funds in

<sup>24</sup> Canadian Bar Association, *Study on Access to the Justice System: Legal Aid* (Ottawa, 2016).

<sup>25</sup> The Criminal Code, part XX.1, establishes the statutory framework that governs the treatment of accused persons who are deemed to be unfit to stand trial or not criminally responsible.

<sup>26</sup> Fiona Kouyoumdjian and others, “Health status of prisoners in Canada: narrative review”, *Canadian family physician*, vol. 62, No. 3 (2016), pp. 215–222.

<sup>27</sup> Global Affairs Canada, *Report to Parliament on the Government of Canada’s Official Development Assistance 2017–2018* (Ottawa, 2018).



its international assistance. Disability markers to monitor mainstream international cooperation efforts can contribute to these ends.

## V. Conclusions and recommendations

### A. Conclusions

87. In Canada there are all the conditions to fully implement the Government's obligations under the Convention on the Rights of Persons with Disabilities, but more must be done to complete the transition from a care and medical approach to a human rights-based approach. During her visit, the Special Rapporteur witnessed the commitment and political will at all levels to protect and guarantee the rights of persons with disabilities. Nonetheless, a review of the Canadian system, albeit through the lens of the federal Government and the provinces of Ontario, Quebec, New Brunswick, Nova Scotia and British Columbia, indicates that systemic problems remain. While inclusion and respect for diversity are two key values promoted by the Government at home and abroad, persons with disabilities do not automatically enjoy the same opportunities and rights as everyone else in their community.

88. One significant challenge preventing comprehensive and sustainable progress in this area is the fact that policymaking is disjointed and that there is poor coordination between the federal Government and the provincial and territorial governments in the implementation of the Convention on the Rights of Persons with Disabilities. This has led to sizeable discrepancies in the levels of protection and in the enjoyment of rights across provinces and territories and a fragmented and complex array of programmes, services and benefits that are difficult to navigate and access. Many of these efforts are unsustainable and even contrary to the rights of persons with disabilities. Systemic and systematic changes are needed to truly provide inclusive responses and solutions for all persons with disabilities, align resources with policy intent and provide much needed services and support in the community on an equal basis with others. While adopting federal legislation to address accessibility for persons with disabilities is an important step, much remains to be done to achieve a barrier-free and inclusive Canada.

89. Canada needs to adopt a human rights-based approach to disability and truly embrace the spirit and principles of the Convention on the Rights of Persons with Disabilities. Such an approach should be integrated into all policies, strategies, programmes and responses, at the federal, provincial, territorial and local levels, to ensure equal outcomes for persons with disabilities. The various pilot initiatives and good practices in place could, if adequately scaled up, promote significant change for persons with disabilities in Canada.

90. The Special Rapporteur looks forward to a continued dialogue and collaboration with the State and other actors on the implementation of her recommendations.

### B. Recommendations

#### General

91. The Special Rapporteur recommends that the Government:

(a) Ensure that all public policies, including disability-specific policies, adopt a human rights-based approach to disability and remove barriers that impede the effective and full participation of persons with disabilities on an equal basis with others;

(b) Increase the awareness, knowledge and capacity of all government officials, civil servants, service providers and civil society representatives to

implement articles 4 (1) and 8 of the Convention and engage in a broad-ranging public awareness campaign on the Convention and the rights-based approach to disability.

#### **Legal and policy framework**

92. The Special Rapporteur recommends that the Government:

(a) Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the American Convention on Human Rights and its Protocols, the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities and the Inter-American Convention on Protecting the Human Rights of Older Persons;

(b) Withdraw its reservation to article 12 (4) of the Convention on the Rights of Persons with Disabilities;

(c) Conduct a comprehensive legislative review to fully harmonize the federal, provincial and territorial normative frameworks with the provisions of the Convention, including by revising legislation on legal capacity, access to justice, mental health and community treatment orders;

(d) Enable full implementation of the right to legal capacity of persons with disabilities and repeal all forms of substitute decision-making;

(e) Adopt a pan-Canadian strategy or framework to coordinate the implementation of the Convention at the federal, provincial and territorial levels;

(f) Take measures to ensure that indigenous persons with disabilities have access to culturally-sensitive, quality services and programmes;

(g) Provide the Canadian Human Rights Commission with appropriate financial and human resources to implement its new mandate as national independent monitoring mechanism in line with article 33 (2) of the Convention and encourage provinces and territories to designate independent monitoring mechanisms in their respective jurisdictions;

(h) Collect data on the situation of indigenous persons with disabilities and persons with disabilities placed in institutions.

#### **Accessibility**

93. The Special Rapporteur recommends that the Government:

(a) Ensure access to persons with disabilities, on an equal basis with others, to the physical environment, to transportation and to information and communications technologies;

(b) Make available the appropriate financial and human resources to ensure the implementation of the Accessible Canada Act, including in First Nations and Inuit communities;

(c) Improve accessibility of information and communications technologies at the federal, provincial and territorial levels, in particular by facilitating the use of Braille, sign language, easy-to-read and alternative and augmentative forms of communication.

#### **Participation**

94. The Special Rapporteur recommends that the Government:

(a) Eliminate obstacles to effective and full participation of persons with disabilities in political and public life on an equal basis with others, including in respect of the right to vote and to be elected;

(b) Review the Social Development Partnerships Program funding mechanism to create an enabling environment for the establishment and functioning of diverse groups of organizations of persons with disabilities;

(c) Support the participation of persons with disabilities from disadvantaged groups in decision-making, especially those who experience discrimination on the basis of race, colour, sex, gender, sexual orientation, language, religion, political opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.

#### **Education**

95. The Special Rapporteur recommends that the Government:

(a) Adopt time-bound plans for the progressive implementation of an inclusive quality education system at the provincial and territorial level, through adjustments to the physical environment, adaptation of educational materials and learning methodologies, teacher training, reasonable accommodations and individualized support for all students with disabilities;

(b) Consider implementing an integrated service delivery model framework for children and youth with disabilities in all provinces and territories to ensure a collaborative, team-based, client-oriented approach.

#### **Work and employment**

96. The Special Rapporteur recommends that the Government take additional measures to enable the effective inclusion of persons with disabilities in the workplace, including by ensuring necessary accommodations to guarantee the recruitment, retention and career development of persons with disabilities.

#### **Social protection**

97. The Special Rapporteur recommends that the Government:

(a) Ensure access to appropriate levels of social protection, income support and benefits for persons with disabilities;

(b) Consider the extra cost of living with a disability when calculating the official poverty line and when allocating benefits for persons with disabilities, including income support benefits;

(c) Ensure universality, coherence and coordination of different benefit packages to guarantee equal access by all persons throughout the country.

#### **Living independently in the community**

98. The Special Rapporteur recommends that the Government:

(a) Take immediate action to stop new admissions of persons with disabilities in all kind of institutions, including nursing homes, and establish time-bound deinstitutionalization plans;

(b) Adopt a rights-based approach to disability supports both in the federal and the provincial or territorial legislation and in programming to address the gaps in access to the supports that persons with disabilities require to live independently and to be included in their communities;

(c) Implement comprehensive, coordinated and sustainable community-based services and supports for persons with disabilities at the provincial and territorial level, including personal assistance;

(d) **Systematize and scale-up initiatives that have the potential to transform service provision and promote greater choice and control over services;**

(e) **Increase the support available to parents to enable them to keep children with disabilities at home.**

#### **Right to life**

99. **The Special Rapporteur recommends that the Government investigate allegations concerning persons with disabilities in institutions being pressured into seeking medical assistance in dying and establish adequate safeguards to ensure that persons with disabilities do not request assistive dying simply because there are no community-based alternatives or palliative care.**

#### **Right to health**

100. **The Special Rapporteur recommends that the Government:**

(a) **Improve access to health care for indigenous persons with disabilities by making comprehensive rights-based medical care available as close as possible to their homes;**

(b) **Provide essential assistive devices and technical aids for free and progressively make all other assistive devices more affordable.**

#### **Denial of legal capacity, deprivation of liberty and involuntary treatment**

101. **The Special Rapporteur recommends that the Government:**

(a) **Take immediate measures to stop all coercive practices against persons with psychosocial and intellectual disabilities and autistic persons in psychiatric facilities, including forced hospitalization, forced medication and the use of restraints and seclusion;**

(b) **Review the legal framework regarding involuntary psychiatric care to ensure that all interventions, including community treatment orders, are provided on the basis of free and informed consent;**

(c) **Develop community-based, non-coercive services that are respectful of the rights and dignity of persons with disabilities;**

(d) **Provide adequate financial and technical assistance to civil society organizations to support the implementation of supported decision-making initiatives;**

(e) **Establish independent monitoring mechanisms at the provincial and territorial level for centres of deprivation of liberty, including hospitals and institutions.**

#### **Access to justice**

102. **The Special Rapporteur recommends that the Government:**

(a) **Review the Criminal Code to ensure that all judicial guarantees and safeguards protecting the rights of those accused of a crime apply to all persons with disabilities;**

(b) **Develop protocols and guidelines for the provision of procedural, gender- and age-appropriate accommodations for persons with disabilities in all legal proceedings, as established in article 13 of the Convention;**

(c) **Expand legal aid services for persons with disabilities.**

#### **International cooperation**

103. **The Special Rapporteur recommends that the Government:**

(a) **Mainstream the rights of persons with disabilities in its international assistance at all levels;**

(b) **Implement disability markers to monitor mainstream international cooperation efforts.**

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