Action Canada for Sexual Health & Rights

SEXUAL RIGHTS INITIATIVE

Submission to the UN Committee on the Elimination of Discrimination Against Women

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Action Canada for Sexual Health & Rights is a progressive, pro-choice charitable organization committed to advancing and upholding sexual and reproductive health and rights in Canada and globally.

Sexual Rights Initiative is a coalition of national and regional organizations that work together to advance human rights related to sexuality at the United Nations.

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Introduction

1. This report is submitted by Action Canada for Sexual Health and Rights (Action Canada) and the Sexual Rights Initiative in advance of Canada's review during the 89th Session of the UN Committee on the Elimination of Discrimination Against Women, taking place October 7 – 25 2024. This report supplements and provides updates to our 2018 submission[1] on the List of Issues Prior to Reporting which focused on Canada's compliance under articles 10 and 12 of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) with respect to access to comprehensive sexuality education, safe abortion services, forced sterilization and the rights of sex workers.

Article 10 – Right to education

Comprehensive sexuality education

2. Article 10 of CEDAW requires that State parties eliminate discrimination against women in the field of education by eliminating stereotyped roles and through access to information to ensure health, including information on family planning. The Committee on the Elimination of Discrimination Against Women (herein referred to as "the Committee") in its General Recommendations 21, 24, 35 and 36 and through its Concluding Observations has elaborated on states' obligations under this article to ensure access to comprehensive sexuality education.

3. Action Canada has documented discrepancies in the quality and delivery of comprehensive sexuality education curriculums in Canada in violation of Article 10[2]. Through a multistakeholder process, our research found that sexuality education in Canada is not meeting international and national standards, is outdated, not comprehensive, not monitored or evaluated, and is offered by educators who receive little or no support from provinces and education systems.

4. In the List of Issues prior to Canada's Review, the Committee requested information on measures taken to ensure the availability of comprehensive sexuality education in all parts of the State and monitoring mechanisms that have been put into place to ensure accountability from the provinces and territories on this issue.

5. Canada's State Party Report Under the List of Issues Prior to Reporting (LOIPR) states that the federal government of Canada has no direct role in decision making regarding education, including sexual health education curricula. Canada also refers to the availability of 2019 SIECCAN sexuality education guidelines, however, provides no information on how they have been promoted by the federal government to improve the availability and quality of sexuality education across the country.

6. Since Canada reported on the List of Issues, the province of Alberta announced policies to restrict content related to sexuality and gender within sexuality education programs and to require parental consent to opt in to such programs[3]. Additionally, the province of New Brunswick announced changes to its educational inclusion policy which prevents young people under the age of 16 from using their preferred pronouns at school if different from

[1] https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FICS%2FCAN%2F37366&Lang=en
[2] https://www.actioncanadashr.org/sites/default/files/2020-04/8039_AC_StateofSexEd-2ndEd_F-Web_0.pdf
[3] https://www.cbc.ca/news/canada/edmonton/opt-in-sex-education-policies-coming-to-alberta-classrooms-this-fall-province-says-1.7311607

their birth certificate[4]. These policies have been presented within an increasingly polarized environment of misinformation and disinformation on sexuality education and the rights of trans youth which puts all young people's health and well-being at risk.

7. The federal government's lack of attention to ensuring that all young people within its jurisdiction have access to evidence-based, comprehensive sexuality education has created a serious protection gap that must be urgently addressed.

8. Canada's invocation of internal jurisdictional challenges in meeting its treaty obligations related to sexuality education as well as other economic, social and cultural rights, has been criticized by Special Procedures, treaty bodies (including this Committee) and other states through the Universal Periodic Review as being wholly unacceptable under international human rights law.

9. Canada has no institutional process to effectively implement human rights recommendations or to ensure the implementation of human rights law across governmental jurisdictions, nor is there a federal ministry accountable for the implementation of UN recommendations or decisions. The Department of Canadian Heritage is designated as the National Mechanism for Monitoring, Implementing and Follow-Up, however, this ministry holds a coordination mandate and not an implementation mandate, thereby limiting the scope of its authority. Different committees of officials responsible for human rights at federal, provincial and territorial levels have not delivered a cohesive framework under which UN recommendations are considered, monitored and implemented nor have they put in place mechanisms for meaningful participation of civil society and Indigenous Organizations.

10. The Federal Government must establish a robust human rights accountability framework to ensure compliance with international human rights law. Such a framework or mechanism would engage all levels of government, maintain adequate resources for the implementation of human rights recommendations and Concluding Observations, incorporate regular monitoring and evaluation functions, and regularly engage civil society organizations and Indigenous peoples' organizations towards greater implementation of and compliance with human rights law.

11. **Recommendations:**
    - **Federal Government: Actively promote the 2019 SIECCAN Canadian Sexuality Education Guidelines endorsed by the Public Health Agency of Canada with the provinces and territories as well as the Canadian public.**
    - **Federal Government: In collaboration with the World Health Organization, provide resources Statistics Canada to conduct population level research into adolescent knowledge, attitudes and behaviour on sexual and reproductive health to better understand gaps in sexuality education delivery and access to health services across the country.**

[4] https://ccla.org/major-cases-and-reports/policy-713/

- **Provinces and Territories: Adopt, resource and report on standardized benchmarks for the delivery of comprehensive sexuality education.**
- **Provinces and Territories: Immediately stop the retrogression of human rights through restrictions on evidence- based comprehensive sexuality education and the implementation of discriminatory policies that put trans youth's health, safety and well-being at risk.**
- **Federal Government: Implement a robust accountability framework for the implementation of UN human rights recommendations**

Article 12 – Right to health

Right to access to safe abortion services

12. Article 12 of CEDAW requires State parties to take measures to ensure women have access to family planning and appropriate services in connection with pregnancy.[5] The Committee along with other treaty bodies and Special Procedures, have outlined governments' obligation to ensure access to safe abortion services, as part of the right to health. General Comment 22 (2016) of the Committee on Economic, Social and Cultural Rights (CESCR) affirms that "[p]hysical accessibility [of abortion care] should be ensured for all, especially persons belonging to disadvantaged and marginalized groups, including, but not limited to, persons living in rural and remote areas, persons with disabilities, refugees and internally displaced persons, stateless persons and persons in detention."[6]

13. Abortion is a common and essential healthcare procedure. About half of all confirmed pregnancies in Canada are unintended[7] and around one third of people who can become pregnant will have an abortion in their lifetime.[8] Abortion access is a crucial component of a broader sexual and reproductive rights framework, which encompasses "the right to a pleasurable, satisfying and safe sex life free from discrimination, coercion and violence; and the freedom to decide whether, when and how often to reproduce, as well as the right to have the information and means to make this decision."[9]

14. We welcome the advances that Canada has made in this area over the last six years including vocal leadership on sexual and reproductive health and rights, new and expanded funding to non-governmental organizations to connect people to safe abortion services, and the facilitation of greater access to medication abortion. However, although abortion is a decriminalized healthcare service in Canada and widely supported by the Canadian public, barriers to access persist as many people lack access to the public health system entirely and others face prohibitive barriers to abortion care.

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[5] CEDAW. General Recommendation 24 on women and health. (1999).
[6] United Nations Committee on Economic, Social and Cultural Rights (UN CESCR). 2016. *General Comment 22 on the Right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights.)* para. 16. Retrieved from: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQfQejF41Tob4CvIjeTiAP6sGFQktiae1vlbbOAekmaOwDOWsUe7N8TLm%2BP3HJPzxjHySkUoHMavD%2Fpyfcp3Ylzg
[7] Public Health Agency of Canada (PHAC). 2017. "Chapter 2: Preconception Care" in Family-centred maternity and newborn care: National guidelines. Retrieved from https://www.canada.ca/en/public-health/services/publications/healthy-living/maternity-newborn-care-guidelines-chapter-2.html
[8] Norman, W. 2012. Induced abortion in Canada 1974-2005: Trends over the first generation with legal access. *Contraception*, 85, 185–191.
[9] Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2021. *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health - Sexual and reproductive health rights: challenges and opportunities during the COVID-19 pandemic.* A/76/172, para 18. Retrieved from: https://www.ohchr.org/en/documents/thematic-reports/a76172-report-special-rapporteur-right-everyone-enjoyment-highest

15. Action Canada runs the Access Line, a national informational telephone and text service for those seeking information and services related to sexual and reproductive health. We also manage the Norma Scarborough Emergency Fund (NSEF), which helps people facing financial barriers in accessing abortion. These services provide unique insights into the barriers people face when seeking healthcare information. In 2022, the Access Line received an average of 400 calls per month from across Canada, the vast majority of which were related to abortion care. Over 70 percent of callers faced major barriers to abortion, including travel costs, long wait times, precarious housing, immigration status, and intimate partner violence. On average, about 40 percent of the people Action Canada supports through our financial assistance program are uninsured.

16. Demand for our services has accelerated, indicating that civil society organizations are facing increased pressures because of otherwise unmet needs for information and services.[10] In 2022, the Access Line saw an overall 65 percent rise in calls compared to 2021.[11] We have also seen a 181 percent increase in the number of people supported by our fund from 2021 to 2022 and a 300 percent increase in the financial support provided. In 2022, over 45 percent of those receiving our financial and logistical assistance were migrants without documentation or with precarious status. During the COVID-19 pandemic, we found that most people who were ultimately unable to access abortion in Canada had precarious immigration status or were undocumented.[12]

17. Across the country, abortions are frequently only available in urban centres, and access is sparse or absent in rural and Northern communities. As gestational terms increase so too do barriers; medical abortion is approved only until nine weeks and in many jurisdictions surgical abortion is only available in limited hospital settings, sometimes only until twelve to thirteen weeks. Very often, people must travel to access abortion, which entails additional expenses related to transportation, accommodation, food, childcare, and lost wages.

18. Costs associated with accessing care can inhibit access, especially for those who are "uninsured." Residents must register with the healthcare insurance plan in their province, but the criteria of residency and requirements for coverage vary. Recent immigrants, undocumented migrants, and international students are frequently ineligible for these plans. Those without active health cards in their province of residence, which can include people experiencing homelessness or intimate partner violence, are eligible but may face difficulties registering or be turned away from services. For people experiencing homelessness, lack of a health card or other identification is often cited as the largest barrier to care.[13] For those without access to the public health system, who disproportionately already experience financial strain, out-of-pocket procedure costs alone can vary from CAD 500 to 3200. This often culminates in prohibitive financial hardship in contravention of the right to health as well as the principles of universal health coverage.

[10] The rise in calls likely does not imply an increase in people seeking abortion care but rather increased awareness of our services.
[11] See "*Trends in barriers to abortion care*" for a detailed account: https://www.actioncanadashr.org/resources/reports-analysis/2022-12-14-trends-barriers-abortion-care
[12] Chabot, Frédérique. 2021. "Access to Abortion for Undocumented Persons During the COVID-19 Pandemic." *The Statelessness & Citizenship Review* 3 (1), 142-47. Retrieved from: https://statelessnessandcitizenshipreview.com/index.php/journal/article/view/305.
[13] Homeless Hub. n.d. *Public Health Care & Service Delivery.* Retrieved from: https://www.homelesshub.ca/about-homelessness/service-provision/public-health-care-service-delivery

19. While the experience of accessing healthcare in Canada for migrants is varied, many experience generalized precarity rooted in their migration status and poor labour protections. They face intensified barriers related to their exclusion from the public health system, economic marginalization, lack of independent access to transportation or other material supports, lack of accessible information, and the isolated contexts in which many live and work. These barriers intersect with and amplify one another and are further aggravated by racism and xenophobia "embedded in countries' immigration laws, policies, institutions and practices, which often subject migrants to dangerous conditions or impose obstacles to health services and resources."[14]

20. **Recommendations**

- **All Jurisdictions: Recognizing that people in Canada experiencing intersectional forms of discrimination have the least access to abortion care, all jurisdictions in Canada must turn their efforts towards establishing low-barrier pathways to abortion care.**
- **Federal Government: Provide resources for research on the reproductive health needs and experiences of people who face intensified systemic barriers. This is vital to inform effective resourcing, planning, and service delivery by healthcare and civil society organizations and ensuring equitable access.**
- **Federal Government: Make permanent and increase resources to Health Canada's Sexual and Reproductive Health Fund to address barriers to access and provide essential core funding to civil society organizations.**
- **Federal Government: Strengthen compliance with the Canada Health Act by establishing benchmarks for the availability and accessibility of abortion care through the public health system, and holding provinces to account.**
- **Federal Government: Increase Federal Health Transfers with ties to the expansion of reproductive and sexual health services, with emphasis on facilitating equal access to abortion, across the country. Guarantee the provision of healthcare to undocumented people and migrant workers through a no-exclusions regularization program granting full and permanent immigration status.**

[14] Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2022. *Report by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health - Racism and the right to health.* A/77/197, para 28. Retrieved from: https://www.ohchr.org/en/documents/thematic-reports/a77197-report-special-rapporteur-right-everyone-enjoyment-highest