THE UDHR TURNS 75: TIME FOR CANADA TO GET SERIOUS ABOUT IMPLEMENTING INTERNATIONAL HUMAN RIGHTS DOMESTICALLY

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This year's 75th anniversary of the Universal Declaration of Human Rights is clearly a notable and auspicious milestone and invites reflection. Most obviously, and rather urgently, it compels us to take stock of the state of human rights around the world. Unquestionably that leads to a deeply worrisome report card. Be it Russia's invasion in Ukraine, the endless failure to meaningfully protect the rights of Palestinians, abdication of the responsibility to prevent genocide against the Uyghur and Rohingya peoples, and the inability to tackle such monumental worldwide human rights concerns as the climate crisis, staggering levels of forced displacement and the rapid rise of hate, polarization and misinformation, our world faces enormous human rights challenges.

Against that troubling global landscape lies a crucial question for Canada. How does our country stack up when it comes to advancing respect for the UDHR and the wider array of international human rights norms that have been negotiated and adopted over these past 75 years?

One measure of that is to look at positions adopted and actions taken in our dealings with other governments and in multilateral settings such as the United Nations Human Rights Council. While far from perfect and often inconsistent, Canada is frequently and rightly commended as being a global human rights champion. Undeniably the Canadian government and individual Canadians have made vital contributions to strengthening the international human rights system and addressing human rights concerns around the world.

But how about when we bring that question closer to home and look at how well Canada does when it comes to domestic implementation of and compliance with those same international human rights obligations? Here the assessment is far less flattering.

In a general sense, there has often been a tendency to think of international human rights as something that is relevant to the rest of the world. There is a propensity to assume those principles are relevant when the Canadian government is advocating at the UN or pressing for human rights improvements on the ground in other countries, but not so much with respect to the human rights situation within Canada. After all, we have the Charter of Rights and Freedoms and federal, provincial and territorial human rights legislation such as the *Canadian Human Rights Act* to respond to domestic human rights issues. International human rights law is generally seen as largely redundant and unnecessary here at home.

But, of course, those international standards — starting with the UDHR 75 years ago — apply directly to us, as well. The laws we adopt, the policies we set and the decisions we take, at all levels of government across the country, must live up to those obligations. That is, after all, what "universal" entails.

That universality matters for two reasons. First, respecting international human rights norms domestically helps address ongoing, serious human rights shortcomings in Canada. The Charter and the country's human rights acts and codes are important — of course they are. But they are not enough. The Charter, after all, has no explicit guarantees with respect to fully one-half of the rights that are protected under international law, namely economic, social and cultural rights. That includes such vital human rights as housing, healthcare, education, adequate livelihoods, food security and safe water. And human rights legislation within almost all jurisdictions in Canada focuses entirely on concerns about discrimination which, while of vital importance, is again an incomplete guarantor of the full range of rights enshrined internationally.

Second, scrupulous domestic respect for international human rights matters as well because it helps strengthen regard for those rights around the world. After all, how credible and how effective are the efforts of Canada's diplomats to press other countries to respect the UDHR and comply with UN human rights rulings and recommendations if our own willingness to do so is uneven, reluctant and even at times uncooperative? Essentially, complying with international human rights obligations at home strengthens the standing of those norms globally. The converse is also true. Turning our back on those obligations domestically adds one more naysaying voice when it comes to respect for international human rights around the world.

All of which begs the question: What stands in the way? Why is Canada, on the one hand, on board with the overall importance and value of international human rights while, on the other hand, failing to uphold those principles where we have the greatest control, here at home?

That is not to suggest that Canada is unique in this respect; obviously not. The world is replete with governments that unreservedly sign on to international human rights treaties and then cavalierly and shamelessly undermine and violate those standards and defy the UN bodies and experts charged with oversight responsibility. That level of defiance is certainly not improving, well witnessed by the contempt exhibited by Russia when it comes to international human rights concerns associated with the invasion of Ukraine. That does not in any way mean that Canada's shortcomings when it comes to upholding international human rights compare, even remotely, to the gravity and consequences of Russia's behaviour. Obviously not. But it still matters. With so many states thumbing their noses at the international human rights system, the need for countries like Canada to show up and exhibit full support and respect is more important than ever.

There are several factors that lie behind Canada's international human rights deficit. First, the role of the courts in enforcing compliance is limited because Canada maintains what is known as a dualist approach to international law. That means that international treaty obligations, including with respect to human rights, can only be directly enforced in a Canadian courtroom if they have first been incorporated into federal, provincial or territorial law through legislation. That happens very rarely and means that in domestic courts international obligations are generally left, instead, to being a persuasive tool for interpreting the Charter and other laws, rather than a directly binding source of law.

Another key factor is the particular reticence of governments across Canada when it comes to recognizing that internationally guaranteed economic, social and cultural rights are of equal standing and require the same level of enforcement as civil and political rights. That mistaken and biased mindset has no doubt fuelled antipathy more widely towards arguments that international human rights should be taken seriously in the Canadian legal system.

Also contributing to the implementation gap is the lack of clear political responsibility and accountability for human rights, at any level of government in Canada. Many countries have a Minister of Human Rights; not in Canada — not federally, provincially or territorially. Instead, responsibility for meeting the country's international human rights obligations theoretically lies with all ministers. But when responsibility is dispersed to everyone, accountability effectively dissipates.

Without question, though, the most significant obstacle to international human rights implementation in Canada is federalism.

The matters that are covered by international human rights obligations touch on such concerns as healthcare, Indigenous peoples, education, racism, fair trials and prison conditions, refugee protection, environmental protection, the rights of persons with disabilities, housing, and gender equality, to name only a handful of topics. Under

our Constitution some of those issues are squarely in either federal or provincial/territorial jurisdiction, some fall within the jurisdiction of both orders of government, and some may not even be explicitly mentioned in the Constitution at all. All of that, of course, lays the ground for turf battles, buck passing and finger pointing, and for an endless series of excuses for inaction.

Canada is by no means unique. Federalism is a common form of governance around the world and many countries have much more complex and contested federal structures than Canada does. That said, it does undeniably make international human rights implementation more challenging. That requires political leadership and innovative solutions, and that has been lacking.

To date, government interest in strengthening regard for international human rights has been tepid. The primary responsibility for coordinating among the fourteen federal, provincial and territorial governments, lies with the federal Department of Canadian Heritage which, while well-meaning, is not an obvious choice. And while there are a growing number of committees, both within the federal government and across the federal, provincial and territorial governments, which convene regularly to discuss international human rights matters, there is a dearth of accountable decision-making bodies entrusted with the actual responsibility to make concrete decisions about compliance.

That said, in 2020, a new body, the Forum of Ministers on Human Rights, was established. Its creation means that for the first time, the federal, provincial and territorial governments will come together at ministerial level on an ongoing basis to discuss international human rights issues. The first official gathering of the Forum was held in Halifax in June 2023 and was largely a disappointment. No decisions were taken. No announcements were made about the mandate and powers of the Forum. The meeting ended with no discernible progress in the country's international human rights implementation agenda. There is clearly more work ahead.

Meanwhile, Canada has announced its candidacy to be elected to serve a three-year term on the UN Human Rights Council between 2028–2030. If successful, that would be only the second time Canada has been a member of the Council since it was established in 2006, the earlier term having been in 2006–2009. The election is slated to take place in 2026. Canada is standing for one of three seats that will be open for countries from Western Europe and North America, as well as Turkey, Australia and New Zealand. Presently only one other country, Greece, has declared its candidacy.

Canada may well be back on the UN Human Rights Council when the UDHR turns 80. While Canada's election prospects currently look promising, it is still a critical time to put our best foot forward in demonstrating firm support for the international human rights system. That needs to include the strongest possible commitment to meaningful implementation and compliance domestically. There is no better way for Canada to demonstrate that we understand what "universal" means when it comes to protecting human rights.