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## Introduction

1. This document has been prepared in reply to the request of the Secretary-General of the United Nations. It contains the information requested in the consolidated guidelines for the initial parts of the reports of States parties attached to his request. As proposed in the guidelines, the information is presented in four parts: land and people; general political structure; general legal framework within which human rights are protected; and information and publicity.

### I. LAND AND PEOPLE

#### A. The land

2. Canada occupies most of the northern part of North America. With its area of nearly 10 million square kilometres, Canada is the second largest country in the world, second only to the Russian Federation in total area, and slightly larger than the United States or China. Canada stretches 5,500 kilometres from east to west, encompassing 15 ecozones and 6 time zones. The country's 10 provinces and 2 territories vary widely in size. The Northwest Territories (at 3.4 million square kilometres) is the largest political unit. The provinces range in size from Québec (1.5 million square kilometres) to Prince Edward Island (5,700 square kilometres). Canada's northernmost point is only 768 kilometres from the North Pole, while its southernmost one shares roughly the same latitude as Rome. Between these two points, the north-south distance is 4,600 kilometres.

3. Canada borders three oceans (the Atlantic, Pacific and Arctic) and, due to its many islands, has the world's largest coastline - almost 244,000 kilometres. Canada has more lake area than any other country in the world: the 8 per cent of the country covered by lakes and rivers is equal to a total area of 755,000 square kilometres covered by fresh water. Canada and the United States share the Great Lakes. Not only do these include three of the five largest lakes in the world, but also, in total, these lakes contain 25 per cent of the world's fresh water in lakes. Canadians are also the trustees of almost 25 per cent of all the world's wetlands; these cover 14 per cent of the country's land area. Although the terrain is generally flat or rolling in most parts of the country, Canada also has mountain ranges as massive as the Alps or the Urals. Some of the western mountains (the Rockies) are among the youngest ranges in the world, whereas the Laurentian uplands in the east are among the oldest.

4. Size, geology and climate give Canada a huge naturel resource base. Canada is a forest nation, ranking third in the world in terms of forested land, after Russia and Brazil. About 45 per cent of the landscape - 4.5 million square kilometres - is covered by trees, and, consequently, the forest industries are a major part of the Canadian economy and export base. Mineral wealth is substantial, with the result that Canada is the world's leading producer of nickel, uranium and zinc, and is a major producer of copper, gold, iron ore and potash. Canada has always been a major exporter of mineral products. The country's fuel resources are also very large. Adjacent to its Atlantic and Pacific coasts, Canada has substantial fisheries resources. Although most of the land is unsuitable for farming (farmland represents

only 7 per cent of the territory), there are large areas that are rich in arable soil such as the prairie region, the valley of the St. Lawrence River and southern British Columbia. Canada is well known as an exporter of grains (especially wheat).

5. Few countries can match the climatic diversity of Canada, which is not surprising, given the size of its land mass and the effects of its three ocean boundaries. In general terms, Canada is a northern nation with a northern climate. In the extreme north, there is no true summer - the temperature can fall below 0° C at any time of the year. In the south, the temperature is much milder, although most inhabited areas enjoy only about four frost-free months a year and, in most areas, the soil is covered with snow from December until late March. However, areas close to the Pacific coast have very mild, almost snow-free, winters.

6. Vast regions of Canada are unsuitable for much human settlement either because of the climate or because the land is inhospitable. As a result, only about 10 per cent of Canada is settled on a permanent basis. The settled region is a relatively narrow belt stretching along Canada's entire southern edge. It is, in fact, a large area, but Canada's population is predominantly urban - three quarters live in urban centres, and more than half of the total population lives in large centres - those with a population of 100,000 or more.

#### B. The people

7. On 1 July 1991, Canada's population was estimated at 28,120,100 using 1991 census counts adjusted for net undercount. Although Canada's population has continued to increase, its rate of growth declined steadily throughout most of the last four decades. The 1986-1991 period recorded the first increase in the intercensal growth rate since 1951, and the increase is attributed to a combination of increased immigration, decreased emigration and stable natural increases (increases in both births and deaths). The most recent population estimate at July 1995 is 29,606,100, with 50.5 per cent women and 49.5 per cent men. Just over three quarters of the population lives in urban areas (76.7 per cent). If recent trends in fertility, longevity and net immigration persist, Canada's population is projected to increase to 32 million by the year 2001.

8. The country's population has been ageing over the last few decades, primarily as a result of the decline in birth rates since the 1960s and increases in life expectancy. By 1995, 12 per cent of the population were aged 65 and older (58 per cent women and 42 per cent men), 61 per cent were of working age (20-64) and 20 per cent were under age 15 (49 per cent female and 51 per cent male). The median age in Canada is projected to rise from 35.5 years in 1997 to 38.1 years in 2005.

9. Different Aboriginal groups such as North American Indians, Métis and Inuit are part of the population. Over 4 per cent of the population reported Aboriginal origins in 1991.

10. Canada is often called a land of immigrants. According to the national census, the share of the population made up of immigrants has remained stable

during the past several decades at about 16 per cent. There has been, however, a substantial change over the years in the origins of the immigrant population. Europeans still made up the largest share of immigrants living in Canada in 1991, but among those who arrived during the previous 10 years, almost half were from Asia and another 10 per cent were born in Central and South America. Immigrants are more likely than the Canadian-born population to live in large urban centres. While less than one third of Canada's total population lives in the three largest urban centres - Toronto, Montréal and Vancouver - over one half of the immigrant population lives in these centres. Just over 80 per cent of immigrants who were eligible to become Canadian citizens had done so by 1991, up from 75 per cent in 1981. Immigrants must reside in Canada for a minimum of three years before they are eligible to apply for citizenship.

11. Over the last 20 years, average family size has declined from 3.7 people to 3.1. Among children under the age of 15, most (86 per cent) live in a family with two parents present. The majority of families (65 per cent) have at least one child living at home. Lone-parent families accounted for 13 per cent of all families in 1991, and those headed by women continued to outnumber those headed by men by four to one.

12. The proportion of Canadians living in a family unit has slowly declined; more and more people in Canada live alone. In 1961, less than 10 per cent of all households were one-person households, but by 1991 this had risen to 23 per cent. Factors contributing to the growth in the number of people living alone are the ageing of the population and increases in marriage breakdown. Differences in mortality rates between men and women have continued to result in rising numbers of elderly widows living on their own. By 1991, close to 60 per cent of all people living alone were women.

13. Canada has two official languages, English and French. Sixty-three per cent of the population reported English as their mother tongue in the 1991 census (these figures include all people who reported one or more mother tongues). Twenty-five per cent reported a French mother tongue. The next largest groups were Italian, Chinese and German, which, when combined, represented less than 5 per cent of the Canadian population. Less than 1 per cent of the population reported an Aboriginal mother tongue in 1991.

#### Vital statistics

14. The birth rate has gradually declined over the past two decades to 14 births per 1,000 population in 1992. In that year, 398,642 babies were born (51 per cent female and 49 per cent male). The death rate stood at 6.8 per 1,000 population (8.9 for men and 5.2 for women) in 1992, down substantially from 9.3 in 1974. There were 196,535 deaths in 1992. With the exception of children younger than five, death rates ascend with age in Canada.

15. Marriages have dropped over the last two decades from 8.7 per 1,000 population in 1974 to 5.8 in 1992. Over a decade, divorce rates rose slightly, from 2.7 per 1,000 population in 1983 to 2.8 in 1992, when the median duration of a marriage ending in divorce was 10 years.

16. Over the past decade, there was a dramatic increase in the proportion of younger adults who remained unmarried. Among women aged 20 to 24, 61 per cent had never married in 1981 compared to 79 per cent in 1991. During the same period, the proportion of men aged 20 to 24 who had never married rose from 79 per cent to 91 per cent. Similar patterns were observed for men and women aged 25 to 34.

17. Life expectancy in Canada has increased steadily over the decades to become among the longest in the world. Female babies born in 1993 can expect to live 81 years on average, and males can expect to live 74.9 years. Aboriginal life expectancy has risen, narrowing the gap separating it from the life expectancy of non-Aboriginal Canadians. Aboriginal life expectancy at birth was about five years less than for the total Canadian population in 1991, for both males and females.

18. In 1993, the total birth rate (the number of children a Canadian woman can expect to have in her lifetime based on the age-specific birth rates of 1993) was 1.66, below the population replacement level of 2.1. Over the past decade, age-specific birth rates for women younger than 30 have generally declined, and they have increased for women older than 30. Among Aboriginal peoples, 1991 estimates for total birth rates vary significantly by Aboriginal group and place of residence, from 3.3 for North American Indians on reserves to 1.9 for non-status Indians in urban areas and 2.3 for urban Métis.

19. The infant mortality rate per 1,000 live births in 1992 was 6.1. The rate was higher for male newborns (6.8) than for females (5.4). Infant mortality rates have declined steadily for the past two decades, from 15 per 1,000 live births in 1974. The maternal mortality rate stood at 4.8 per 100,000 live births in 1992.

20. Birth weight is related to the health of a mother and is acknowledged to be a key predictor of an infant's chances of survival. The World Health Organization considers the percentage of newborns weighing at least 2,500 g to be an essential global indicator for monitoring progress in improving health. In Canada, the percentage of newborns with a weight above 2,500 g increased over the 1970s and 1980s to a rate of 94.5 per cent in 1992.

#### Socio-economic characteristics

21. The Census of Canada allows for reporting of one (single) or more (multiple) ethnic origins. In 1991, 71 per cent of the population reported single ethnic origins and 29 per cent reported multiple origins. Although people with British or French backgrounds still made up the largest ethnic groups, neither group accounted for a majority of the population. Over 30 per cent of the population reported an ethnic background that did not include British or French origins. There is considerable regional variation in the 10 most frequently reported ethnic origins, reflecting, in large measure, where immigrants have settled over time. Over 1 million Canadians, or 4 per cent of the population, had Aboriginal origins (North American Indian, Métis or Inuit) in 1991.

22. Historically, Canada's population has been predominantly Christian. In 1991, nearly 84 per cent of the population was Christian, with 46 per cent

Catholic and 36 per cent Protestant and over 1 per cent Eastern Orthodox. The proportion of people reporting another religion rose to about 4 per cent, with just over 1 per cent reporting Jewish religion. The proportion of people who reported no religion also rose to over 12 per cent.

23. Literacy measures, including reading, numeracy and writing skills, were developed and measured in Canada in 1989. About 62 per cent of Canadians aged 16 to 69 have sufficient reading skills to deal with most everyday reading requirements. A further 22 per cent can use reading materials to carry out simple reading tasks within familiar contexts. The reading skills of 16 per cent are too limited to allow them to deal with most written material encountered in everyday life. Similarly, 62 per cent have numeracy skills enabling them to deal with printed material requiring a simple sequence of numerical operations, 24 per cent do not possess the skill necessary to meet most everyday requirements, an additional 14 per cent can at most locate and recognize numbers. In terms of writing skills, 88 per cent can write a simple message and 62 per cent can write a letter such as a letter requesting the repair of an appliance. Overall, the literacy distributions are quite similar for the adult female and male populations who undertook English or French literacy tests.

24. People with some post-secondary education (university, college or training institute) reached a historical high in 1991 at 43 per cent of all people aged 15 and older. Almost half (45 per cent) of the people with university degrees were women, a proportion that has steadily increased. The proportion of Canada's youth and young adult population who were attending school full-time grew from 66 per cent in 1981 to 80 per cent in 1991. Among those in school and aged 20 to 24, close to one third combined employment with full-time studies.

Population aged 15 and older, per cent distribution by highest level of schooling completed - 1991				
	Elementary	Secondary	Some post-secondary	University degree
Total	14.3	42.6	31.7	11.4
Men	14.3	41.8	31.0	12.8
Women	14.3	43.3	32.4	10.0

25. In addition to a formal education system, both governments and businesses sponsor employee training in Canada. Almost one third of all full-time workers aged 20 to 69 took employer-supported education or training in 1991, but rates varied greatly depending on the worker's occupation. Almost half of all workers in white-collar occupations received such training, but just over one quarter of service workers and one fifth of blue-collar workers received employer-supported training.

26. The majority of people aged 15 to 54 are in the labour force; however, participation rates vary by age and sex. One of the most significant trends



in the Canadian labour market over the past 20 years was the continuing increase in the proportion of women aged 15 and older who were in the labour force (from 40 per cent in 1971 to 60 per cent in 1991).

27. In 1995, women were much more likely than men to work part-time. Among women who worked, 24 per cent worked part-time compared to 6 per cent of men. In 1995, the employment rate (employment to population ratio) was 58.6 per cent, about four points below its pre-recession level in 1989. The unemployment rate declined to 9.5 per cent in 1995 from its peak of 11.3 per cent in 1992.

28. Per capita average income was \$22,128 in 1994. In 1994, for the population aged 15 and older with income, the average was \$24,394, of which \$18,688 for women and \$29,927 for men. The earnings ratio of women to men for full-year, full-time workers was 72 per cent in 1993. Most income information in Canada is produced for families, or the economic units in which people live. In 1993, average family income was \$53,459, down for the fourth consecutive year after adjustment for inflation - the longest and deepest decline in family income in four decades.

Labour force annual averages - 1995						
	Labour force	Employment	Unemployment	Unemployment rate	Participation rate	Employment rate
	000s			%		
Total	14,927.6	13,505.5	1,422.1	9.5	64.8	58.6
Men	8,197.6	7,396.5	801.1	9.8	72.5	65.4
Women	6,730.1	6,109.0	621.0	9.2	57.4	52.1

29. In 1993, 5.1 million people (18 per cent of the Canadian population) lived below Statistics Canada's Low Income Cut-offs. Families with incomes below cut-offs spent 55 per cent or more of their income on food, shelter and clothing in 1992. These cut-offs vary by geographical residence and family size. About one in five children younger than 18 (1.5 million children) lived in low-income families in 1993, surpassing the previous high seen in 1984. More than one half of people aged 65 and older who lived alone had low incomes in 1993, although rates have declined over the last two decades. Among family types, female lone-parent families have historically had the highest rates of low incomes; in 1993 this rate stood at 59 per cent.

30. The consumer price index (used to measure inflation of consumer prices) was about 34 per cent higher in 1995 than in 1986. Inflation in Canada has been relatively stable over the last decade, measuring annual increases of less than 6 per cent, and less than 2 per cent from 1992 to 1994.

31. Gross domestic product (value of production within the boundaries of Canada, regardless of ownership) posted a real growth of 4.6 per cent in 1994 bringing it to \$748,606 million. Gross national product (the value of production by Canadian-owned domestic and international factors) stood at \$720,066 million for 1994. Canada's external debt stood at \$341,700 million.

## II. GENERAL POLITICAL STRUCTURE

32. Federalism, constitutional monarchy, a parliamentary system on the British model and representative democracy are essential characteristics of the Canadian political system. Geographical, economic and social factors have endowed Canadian political life with an original style. Although the political structures are the same today as they were when the federation came into being in 1867, the framework, the process and the spirit of Canadian political life have evolved tremendously.

### A. Political history

33. Canada's political development began long before the arrival of the first European settlers. Over a long period of time, the Aboriginal peoples of Canada had developed a variety of languages, cultures and systems of government, and entered into alliances and treaties with each other.

34. Jacques Cartier arrived in Canada in 1534 and claimed it as a French possession in the name of the King of France. In 1608, Samuel de Champlain settled in Québec to establish a colony named New France. Meanwhile, Great Britain also established colonies in North America. New France settlers lived under French rule until the end of the Seven Years War, which was marked by the capitulation of Québec in 1759 and Montréal in 1760. By the Treaty of Paris of 1763, France gave up what was then Canada to Great Britain.

35. Canada continued to develop under British rule. The Royal Proclamation of 1763 allowed the colony of "Québec" to have its own government. On the eve of American independence, the British Parliament passed the Québec Act of 1774, which re-established the use of French civil law. Following the American Revolution and the arrival in Canada of many loyalists, the Constitutional Act of 1791 divided the colony into two provinces, Upper and Lower Canada, and created elected legislative assemblies.

36. In 1837/38, there were revolts in Upper and Lower Canada, and the government was suspended. The British Parliament passed the Union Act in 1840 by which Upper and Lower Canada were joined in a single province: the Province of Canada. Some years later, the system of responsible government was introduced: laws had to be passed by Parliament, and the executive needed the support of the majority of the legislative assembly to stay in power.

37. Between 1864 and 1867, the political leaders of three colonies, the Provinces of Canada, Nova Scotia and New Brunswick, met to examine the possibility of creating a new federal union. In 1867, at their request, the British Parliament enacted the British North America Act (now called the Constitution Act, 1867), by which four provinces - Ontario (formerly Upper Canada), Québec (formerly Lower Canada), Nova Scotia and New Brunswick - united to form the new Canadian federation.

38. Manitoba joined the federation in 1870, followed by British Columbia in 1871, Prince Edward Island in 1873, Alberta and Saskatchewan in 1905 and Newfoundland in 1949. At present, the federation is composed of 10 provinces and 2 territories, the Yukon and the Northwest Territories. A third territory, Nunavut, will be created in 1999 from a part of the Northwest Territories.

39. Although the Constitution Act, 1867 was the product of multilateral negotiations, it has also been viewed by some, particularly with regard to certain of its provisions, as an agreement between English-Canadians and French-Canadians. This characteristic is particularly evident in the provisions that established, for both the central Government and the province of Québec, a form of official bilingualism in parliamentary, legislative and judicial matters.

40. The Constitution Act, 1867 did not make Canada an independent country. Canada achieved international sovereignty through a process of devolution of powers by the United Kingdom, which lasted nearly 60 years; the completion of this process was marked in 1931 by the Statute of Westminster, which formally established the federal Government's jurisdiction over foreign affairs.

41. Although Canada then had full sovereignty in political terms, the cooperation of the British Parliament was still needed to amend major portions of the Canadian Constitution. This situation lasted until 1982, when an amending formula was adopted bringing the power to change the Constitution within the sole control of Canada.

#### B. The Constitution

42. The Constitution of Canada includes two main documents (the Constitution Acts of 1867 and 1982) and a set of unwritten conventions inherited from the British tradition. The focus of the main documents is the division of powers between the Parliament of Canada and the provincial legislatures, and the protection of individual rights and freedoms in the Canadian Charter of Rights and Freedoms, which is part of the Constitution Act, 1982. However, the Constitution is silent as to certain essential rules concerning the relationship among the organs of the State. This may be explained by the fact that the Constitution of Canada is based on the same principles as the Constitution of the United Kingdom, where the manner in which political institutions function is governed largely by domestic unwritten rules that are called "constitutional conventions".

43. The oldest conventions relate to responsible government. These conventions ensure that the powers of the State are exercised in accordance with the wishes of the electorate; they relate to ministerial responsibility, the selection of the Cabinet and prime minister, the dissolution of Parliament and the giving of royal assent to bills. A second category consists of conventions such as the legislative autonomy of the Dominions, which arose during the gradual transformation of the British colonial empire into the Commonwealth, in which Canada, and other former colonies, have achieved independent status.

44. In addition, legislation concerning the organization and functioning of public authorities such as the legislation relating to federal and provincial elections, the Parliament of Canada, the provincial legislative assemblies, the courts or the public service, are also part of the Constitution in broad terms. Finally, the courts play an important role in applying and adapting the Constitution to new circumstances and ideas.

C. Political framework and type of government

45. Generally speaking, the Canadian political system embodies the four following characteristics: it is a constitutional monarchy; it is a federal system; it is a parliamentary system on the British model; and it is a representative democracy.

46. As a constitutional monarchy, the head of State is a monarch, the Queen of Canada, who is the Queen of England. Since the Queen of Canada could not be present on a permanent basis in Canada, her representative, the Governor General, was appointed by Her Majesty on recommendation of the prime minister, to exercise her powers on her behalf. Acting only on the advice of the Prime Minister and Cabinet, the Governor General convenes, prorogues and dissolves Parliament, assents to federal legislation, and performs certain executive, ceremonial and military duties.

47. Canada has a federal system in which the Constitution confers legislative and executive powers on two levels of government, which are each sovereign in their respective spheres. There is a central Government for all Canada, and a government for each province and territory. At the federal level, the executive power is exercised by a Governor General and, at the provincial level, by a Lieutenant Governor, both representing the Queen, and acting on the advice of the federal and provincial Cabinets, respectively.

48. The federal legislative power resides in the Parliament of Canada, which consists of the Governor General, the Senate and the House of Commons. In the provinces, the legislative power resides in a legislature made up of the Lieutenant Governor and a legislative assembly. As in all federations, the division of legislative powers is a very important aspect of the system of government. As a general rule, the Constitution gives the Parliament of Canada control over matters that are national in character, and gives the provincial legislatures jurisdiction in matters of a local nature.

49. Canada has a parliamentary system. The people of Canada elect their representatives at both levels of government, federal and provincial or territorial. The party that obtains the majority of seats is called to form the government. For both the federal and provincial governments, the members of the Cabinet are therefore chosen from the members of the majority party of the House of Commons (federal level), or of the provincial or territorial legislative assembly, respectively. At the federal level, the leader of the party (which is determined by elections by members of that party) that obtains the majority of seats becomes Prime Minister of Canada, and chooses his or her ministers. Similarly, in each province and territory, the premier (the equivalent of prime minister) of the province or territory chooses his or her ministers. Proposed legislation prepared by the federal or provincial Cabinet cannot become law without the approval of the Parliament or the provincial legislature.

50. Canada is a democracy, which means that power is vested in all its people and exercised by them through a system of representation determined by free elections. The executive branch is responsible to the people's representatives for all of its actions and decisions. The government may be defeated in the House of Commons or the legislative assembly by a vote

of non-confidence, and, in that case, the Governor General or the Lieutenant-Governor is required to order that a new general election be held. The democratic character of the political system is also assured by the separation of the judicial branch and the executive branch. The independence of the courts is one of the fundamental guarantees of democracy.

D. The legislative branches of the federal and provincial governments

51. Federal legislative power resides in Parliament, which consists of the Governor General, the Senate and the House of Commons. They must all agree to the enactment of a statute, the two Houses by voting for the bill and the Governor General by giving royal assent on behalf of the Queen. In reality, the Governor General's role in the legislative process is purely a formality (albeit an essential one), since he (or she) may not in practice refuse to give royal assent to a bill enacted by the two Houses.

52. The composition of the House of Commons is based on the principle of proportional representation by population: the people of each province elect a number of members of Parliament that is more or less proportional to the population of the province. All members are chosen by being elected in single-member constituencies on the basis of receiving the largest vote in the constituency. To be entitled to vote in a federal election, a person must be a Canadian citizen and have reached the age of 18. The total number of members and the distribution of seats among the provinces are revised following every decennial census. At present, based on the 1991 census, there are 301 members of the House of Commons: 1 representative for each electoral district. Ontario has 103, Québec 75, British Columbia 34, Alberta 26, Saskatchewan 14, Manitoba 14, Nova Scotia 11, New Brunswick 10, Newfoundland 7, Prince Edward Island 4, the Northwest Territories 2 and the Yukon 1.

53. The Senate is a body whose members are appointed by the Prime Minister of Canada. The Senate has 104 members: 24 representatives from the Maritime Provinces (10 from Nova Scotia, 10 from New Brunswick and 4 from Prince Edward Island), 24 from Québec, 24 from Ontario, 24 from the western provinces (6 each from Manitoba, Saskatchewan, Alberta and British Columbia), 6 from Newfoundland, 1 from Yukon and 1 from the Northwest Territories. Senators hold office until they reach the age of 75. In legal terms, the Senate may seek amendments to any bill presented by the government; if it is not satisfied, it may refuse to consent to the bill.

54. Parliament must sit at least once every 12 months. The term of a Parliament, which is a maximum of five years, may consist of several sessions. Each session begins with the election of the Speaker of the House of Commons, followed by the Speech from the Throne, in which the government outlines its most important policies. A session is normally prorogued or adjourned after eight to nine months of sittings (a sitting is a one-day meeting). When a session is prorogued, all bills that have not yet been adopted or given royal assent die, and the legislative process must be commenced again at the next session. Increasingly, sessions are adjourned rather than prorogued to ensure continuity and flexibility.

55. A minister who intends to present a bill in the Commons asks, by motion, to introduce the bill for first reading and printing. Normally, the bill passes this stage automatically. At a later sitting, the bill's sponsor moves second reading, which leads to debate on the basic principles of the bill only. If the vote at the end of the debate is favourable, the bill is sent to a legislative committee of the House to be debated clause by clause. At that stage, experts and persons or groups with an interest in the bill may be invited to address the committee. Once the committee has completed its work, it reports to the House and submits the bill to it with the amendments passed, if any. At this stage, any member has the right to present further amendments, which are discussed and put to a vote. The bill's sponsor then moves third reading and passage of the bill. If the vote is favourable, the bill is sent to the Senate, where it follows the same steps, broadly speaking. Once it has been passed by both Houses, the bill is submitted to the Governor General for royal assent. Federal statutes normally come into force at the time they receive royal assent. However, Parliament can fix another date in the statute or delegate to the government the power to fix the date by proclamation.

56. In the provinces, legislative power resides in a legislature composed of the Lieutenant Governor and the legislative assembly. There is no upper chamber. The legislative assembly bears a substantial resemblance to the House of Commons, and operates in a very similar manner. The members are elected in ridings that are delineated by the legislature more or less in proportion to the population. The candidate who receives the most votes is elected. All bills must go through the various stages of the process for passage by the legislative assembly and must receive royal assent from the Lieutenant Governor before they can become law.

57. Before 1982, the principle of legislative supremacy applied in Canada, with certain adjustments made necessary by the division of legislative powers between Parliament and the provinces. The power of the courts to review the constitutionality of legislation gave the courts authority only to determine whether a statute had in fact been enacted by the legislative body having the necessary jurisdiction. With the enactment of the Canadian Charter of Rights and Freedoms, a limit has been placed on the sovereignty of Canada's legislatures, both federal and provincial. Federal and provincial statutes must comply with the provisions of the Charter as interpreted and applied by the courts.

E. The division of legislative powers between federal Parliament and the provinces

58. The Constitution Act, 1867, defines the federal and provincial responsibilities. The present division of powers results, in part, from the application and the interpretation of the wording of the Constitution by the courts.

59. Federal Parliament has the power to levy taxes by any mode of taxation, and the federal Government has the authority to allocate its financial resources as it deems appropriate. The federal Government can, for example, make grants to individuals with a view to promoting research and development. The federal Government also uses its spending power to initiate shared-cost

programmes in areas of health, education and welfare services in the provinces. Finally, the federal Government initiated a programme of equalization payments to provinces whose revenues were below the national average. These unconditional payments were designed to help these provinces provide an appropriate range of public services.

60. Monetary policy is controlled by the federal Government. This includes responsibility for issuing currency and for the national economic stability to manage unemployment and inflation, control of the banking system and regulation of interest rates. Monetary policy includes responsibility for the value of Canadian currency on international markets. The task of setting and applying monetary policy is assigned by the federal Government to the central bank, the Bank of Canada.

61. Parliament has jurisdiction over international and interprovincial trade. It also has exclusive jurisdiction over customs duties. Standardization of products intended for international or interprovincial trade and export quotas are within Parliament's jurisdiction. General foreign investment policy is also under its authority.

62. The federal Government has jurisdiction over defence and relations with other States and has authority to enter into international treaties. However, either or both the federal Parliament and the provincial legislatures may have jurisdiction to implement treaties, depending on whether the subject matter of the treaty comes under federal or provincial responsibility as defined in the Constitution. This system operates through federal-provincial cooperation: before entering into a treaty relating to fields that do not fall solely within the jurisdiction of Parliament, the federal Government ensures that it has the consent of the provinces to cooperate in implementing the treaty (see also paragraph 138).

63. Other matters within Parliament's jurisdiction include navigation and shipping, fisheries, bankruptcy, Indians and lands reserved for Indians, naturalization, citizenship, criminal law, patents and copyrights. The postal service and employment insurance are within federal jurisdiction.

64. Any matter that is not within the jurisdiction of the provincial legislatures is automatically assigned to the federal Parliament. In interpreting federal and provincial powers, the courts have held that certain new subject matters, such as air transportation, are under the jurisdiction of the federal Parliament by virtue of its general power to make laws for the peace, order and good government of Canada in relation to all matters not assigned exclusively to the legislatures of the provinces. The courts view the general federal power as including a power to legislate in emergencies such as war.

65. The provinces have numerous legislative powers, including authority over property and civil rights (primarily proprietary, contractual or tortious rights), natural resources, works and undertakings of a local nature, and, generally, all matters of a merely local and private nature. The courts have interpreted the provincial powers, especially "property and civil rights", as covering a very wide field. The Constitution does not mention labour

relations specifically, but the courts have placed that subject under provincial jurisdiction, except for certain industries that are under federal jurisdiction for other purposes, such as navigation and shipping industries.

66. Services and institutions that fall within provincial jurisdiction include health and social services, municipal institutions and land development, the administration of justice, the development and organization of provincial courts of both civil and criminal jurisdiction, and education.

67. The provincial legislatures have the power to levy direct taxes (e.g. income taxes) within the province, to raise revenue for provincial purposes. In addition, the provinces are given the power to levy direct and indirect taxes in relation to natural resources. The provinces also have the power to issue licences to raise revenue for provincial or municipal purposes.

68. The Constitution assigns concurrent jurisdiction over agriculture and immigration to the provincial legislatures and Parliament. Federal legislation will prevail in the event that it is inconsistent with provincial legislation. The provinces also share jurisdiction with the federal Government in relation to old age pensions.

69. The powers of the provincial legislatures are limited to those given to them by the Constitution. This means that no provincial legislature can take over powers that belong exclusively to Parliament. Similarly, Parliament cannot take over powers that belong exclusively to the provinces. Although Parliament and the provincial legislatures cannot interdelegate legislative powers, Parliament can delegate powers to provincial agencies and a provincial legislature can likewise delegate powers to a federal agency. Parliament and a provincial legislature can adopt as its own legislation of the other level of government, as long as they both act in their area of jurisdiction.

F. The executive branches of the federal and provincial governments

70. At the federal level, in principle, the executive power is exercised by the Governor General, representing the Queen and acting on the advice of the Cabinet, that is, the federal ministers. In reality, executive power lies with the Cabinet, because the Governor General acts on its advice as described in paragraph 46.

71. The Governor General must appoint a person to be prime minister who is able to secure the support of a majority of the members of the House of Commons; that is, in practice, the leader of the political party that has an absolute majority of the seats in the House, except in the case of the establishment of a minority government. The prime minister is nearly always a member of the House of Commons; otherwise, he or she must be elected to the House as soon as possible.

72. After being appointed, the prime minister normally chooses the other members of the Cabinet from among the members of the House of Commons. A minister who is appointed to the Cabinet and who is not a member of Parliament normally becomes a member within a reasonable time, usually by getting elected to the House of Commons in a by-election. The federal Cabinet is composed of



about 25 ministers. Most ministers have a "portfolio", that is they are responsible for particular government fields and departments such as Finance, Treasury Board, Health, Justice, Environment, and so on.

73. The Cabinet is collectively responsible to the House of Commons for its policies. This means that it may continue to govern only so long as it enjoys the confidence of a majority of the members of the House. The consequence of this principle of collective responsibility is Cabinet solidarity: each member of Cabinet must support the decisions made by the Cabinet, even if he or she personally disapproves of them, or must resign. Each minister with a portfolio is also responsible, again to the House of Commons, for the operations of his or her department.

74. Nowadays, it is rare to find a situation in which the Cabinet does not have the support of a majority of the members of the House, given that governments in Canada are normally elected with a parliamentary majority and the prime minister exercises strict party discipline over his or her members. In each party, there is a whip who is either appointed or elected by leaders of the party to ensure respect of party discipline, through different means at his or her disposal including deciding who will participate in the debate. The government whip ensures that a sufficient number of members are present when there is a vote, so that the government does not lose its majority.

75. If the government is defeated in the House of Commons on a lack of confidence motion, the prime minister, in most cases, must ask the Governor General to dissolve the House of Commons and thus trigger an election. However, if no political party holds an absolute majority of the seats in the House of Commons, it is possible for the Governor General to ask the leader of the party that appears to be able to govern with the support of a majority of the members of the House to form a minority government.

76. As is the case for the federal Government, the executive power in each province is exercised by the Cabinet, which governs as long as it has the confidence of a majority of the members of the legislative assembly. Within the Cabinet, the provincial premier occupies the same predominant position as the federal prime minister. Cabinet is accountable for its policies to the legislative assembly, and, if it loses the support of a majority of the members, the premier must ask the Lieutenant Governor to dissolve the assembly to call an election.

77. In Canada, following the British tradition, the executive branch is subject to the legislative and judicial branches; accordingly, the administrative arm of the federal and provincial governments is subordinate to the legislative bodies and to the courts. These facts may be explained by the principle of the rule of law, which holds that any action taken by the government and its administrative organs in relation to the individual must be founded on a pre-established legal rule that authorizes such action. The rule of law also means that everyone is subject to the legislation, regulation and common law, which is applied by the courts; this means that the courts determine the legality of the actions of the administrative arm of the government.

G. The judicial branch

78. The Canadian judicial system consists of superior courts and lower courts. The first, as courts of original general jurisdiction, have inherent jurisdiction, which makes it possible for them to hear anything that is not within the limited exclusive jurisdiction of a lower court, and to have superintending and reforming power over the lower courts. On the other hand, the lower courts have only the jurisdiction expressly conferred on them by the competent legislative body. Lower and superior courts have jurisdiction regarding the constitutionality of legislation.

79. Each province has a superior trial court and a court of appeal. These superior courts are constituted by the provincial legislature, but their members are appointed and paid by the federal Government. As well, in each province, there are lower courts - provincial or municipal courts - which the legislatures create and whose members are appointed by provincial governments.

80. The Supreme Court of Canada, which was established in 1875 by the Parliament of Canada, is the general appellate court of last resort for all of Canada. As the final interpreter of the Constitution, its decisions may influence the direction of federalism, in terms of the division of powers, or may question the constitutionality of government policies, in terms of human rights and fundamental freedoms.

81. Parliament has also established the Federal Court, which has particular jurisdiction to hear cases involving the federal Government and to review the decisions of federal boards, commissions and tribunals. In addition, both federal and provincial legislation assign functions to administrative tribunals that are essentially judicial. These specialized tribunals have specific responsibilities such as immigration, international trade, competition, radio-television and telecommunications, securities and residential tenancies, etc.

82. Although powers with respect to the judiciary are distributed between the federal Government and the provinces, integration is a primary characteristic of the Canadian judicial system. The provincial courts can determine matters of both federal and provincial law, and there is no distinction between constitutional, administrative, criminal and civil jurisdiction. The integration is further reflected in the fact that all cases, whether arising under federal or provincial law, are capable of ending up in the same final appeal court, the Supreme Court of Canada.

83. The Canadian courts operate independently of the federal and provincial legislative bodies and governments. The Constitution Act, 1867, adopted the judicial independence features that had been introduced in Canada in the earlier decades. The Canadian Charter of Rights and Freedoms also protects judicial independence.

84. Financial security and security of tenure are crucial aspects of judicial independence. Judges' salaries are established by law and are not

subject to arbitrary interference by the executive. According to the Constitution, judges of the superior courts have security of tenure until the age of 75 years. Retirement age for provincial court judges varies across the country.

85. The only procedure for removing a superior court judge in Canada today is on address to the Governor General by the Senate and House of Commons. The Acts establishing the Supreme Court of Canada and the Federal Court are to the same effect. No judge of any Canadian superior court has ever been so removed. Provincially appointed judges can, in most provinces, be removed by the Cabinet following recommendations by provincially created judicial councils.

86. Immunity from lawsuits protects the judge from possible intimidation and harassment. This is widely accepted in all jurisdictions. Judges of the superior courts enjoy immunity from suit, or harassment, for acts and omissions in their official capacity. Immunity also applies to judges of the lower courts and of administrative tribunals because specific legislation grants them immunity in most cases.

#### H. Territories

87. The Yukon and the Northwest Territories have legislative, executive and judicial powers that are becoming similar to those exercised by the provinces. The constitutions of the two territories are set out in the Yukon Act and the Northwest Territories Act, which, reflecting the special status with the Confederation, are federal statutes.

#### I. Municipalities

88. Municipal governments (cities, towns, villages and metropolitan regions) are created by the provincial legislatures and have such powers as the legislatures see fit to give them. Mayors and municipal councillors are elected in accordance with the requirements laid down by the legislature. Throughout Canada, there are some 5,000 municipal governments. These governments provide Canadians with such services as water supply, sewage and garbage disposal, roads, sidewalks, street lighting, building codes, parks, playgrounds, libraries and so on. Schools are generally administered by school boards elected according to provincial legislation.

#### J. Self-government arrangements

89. The federal Government, in cooperation with some provinces, participates in negotiations for self-government with the Aboriginal peoples of Canada. These self-government arrangements can take a variety of forms, and are designed to meet the objectives of the specific Aboriginal community or group. They range from increased authority under existing legislation to more complex arrangements set out in legislation specific to individual communities or provided for in the context of comprehensive land claims agreements.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH  
HUMAN RIGHTS ARE PROTECTED

A. Judicial, administrative or other competent authorities  
having jurisdiction affecting human rights

General

90. The legislative, executive and judicial branches of government share responsibility for the protection of human rights in Canada. Relevant legislation is enacted by Parliament, and the provincial and territorial legislatures. Numerous departments and agencies formulate policies and programmes in accordance with their respective mandates.

91. Within each government, there is usually a minister who carries the main responsibility for human rights. In the provinces and territories, this is normally the minister responsible for human rights legislation. At the federal level, the Minister of Canadian Heritage is responsible for promoting a greater awareness of human rights, and for federal-provincial-territorial coordination regarding implementation of international human rights treaties that Canada has ratified. The Minister of Justice examines all federal bills to ensure their conformity with the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights, and has legislative responsibility for the Canadian Human Rights Act. The Minister of Justice also provides advice on consistency of domestic law, or proposed law, with Canada's international human rights obligations. The Minister of Foreign Affairs and International Trade has responsibility at the international level for human rights issues.

92. The primary role of the judicial branch of government in the human rights area is providing redress to individuals for violations of their human rights. More generally, as an integral part of the adjudication of disputes, the courts interpret the Canadian Charter of Rights and Freedoms and human rights codes or legislation, as well as other relevant legislation, and are responsible for the development of the common law ("judge-made law"). The Supreme Court of Canada has stated that the common law must be interpreted, developed and, if necessary, amended to reflect the values of the Canadian Charter of Rights and Freedoms.

Authorities with jurisdiction to provide redress for human rights violations

93. In Canada various modes of redress for human rights violations are available, depending on the nature of the right infringed and the form of remedy sought. Relevant authorities include the courts, statutory bodies created to administer particular legislation (variously known as commissions, boards, committees or tribunals) and ombudsmen.

94. The courts in Canada have jurisdiction to determine whether there have been violations of the Canadian Charter of Rights and Freedoms. Violations of the Charter are frequently brought to the attention of the courts in the course of criminal trials, where they may lead to acquittal if established. Many statutes relevant to the implementation of human rights involve recourse to the courts, e.g. child-protection legislation, and, in Québec, the Civil Code and the Québec Charter of Human Rights and Freedoms. The courts also

decide actions based on the common law, and have an inherent jurisdiction over children and other persons unable to protect themselves, known as the parens patriae jurisdiction, of particular relevance in the context of the Convention on the Rights of the Child. Decisions of boards and tribunals are subject to judicial review.

95. The primary means of enforcing the human rights codes (dealing mainly with discrimination) which have been enacted everywhere in Canada is through the human rights commissions established under them. Individuals who claim to be victims of discrimination may file complaints with the appropriate commission. These complaints are investigated, and there may be a conciliation process. If necessary, a board of inquiry or human rights tribunal determines the legal merits of the complaint.

96. Other legislation, particularly in the social and economic area, may establish statutory bodies to consider complaints relating to its administration. For example, at the federal level, the Veterans Review and Appeal Board hears complaints from veterans regarding determinations of entitlement to pensions, and, at the provincial level, in Manitoba, the Social Services Advisory Committee considers complaints regarding entitlement to social assistance under the Social Allowances Act.

97. In most provincial jurisdictions, police commissions or similar bodies have been established to review complaints against the police. Increasingly, these bodies operate independently of the police. The RCMP Public Complaints Commission deals with complaints against the Royal Canadian Mounted Police, and the Correctional Investigator reviews complaints from detainees in federal penitentiaries.

98. Most provinces have created the position of ombudsman. Although the duties of an ombudsman vary, generally the ombudsman has the duty and power to investigate complaints against departments or agencies of the provincial government. The decisions of the ombudsman are passed on to the government in the form of recommendations and are made public. Independence is an important attribute of this officer, who reports annually to the legislature.

99. The Government of Canada has established positions of a similar nature in certain areas within its jurisdiction. There is a commissioner to review complaints under each of the following acts: the Official Languages Act, the Privacy Act and the Access to Information Act. In Québec, the Commission d'accès à l'information has a similar role in applying the Loi sur l'accès aux documents publics et sur la protection des renseignements personnels.

B. Remedies available to individuals who claim that their rights have been violated, and compensation and rehabilitation for victims

100. Having reviewed the authorities with jurisdiction in Canada in the field of human rights, the present section outlines the nature of the remedies available, pursuant to the principal sources of legal protection of human rights in Canada - the Canadian Charter of Rights and Freedoms, human rights codes, penal and other legislation, the common law and the Civil Code in Québec.

Canadian Charter of Rights and Freedoms

101. Section 52 of the Constitution Act, 1982, provides that the Constitution of Canada is the supreme law of Canada, and that any law inconsistent with it is of no force and effect. Thus, if a challenge based on the Canadian Charter of Rights and Freedoms is successful, the courts may declare a law of no force and effect. The Supreme Court of Canada has stated that in certain circumstances, a declaration of invalidity may be temporarily suspended to permit the legislature to amend the law, or the court may reformulate the provision, so as to render it consistent with the Charter. It is not necessary for an individual to establish that his or her Charter rights have been violated to seek a declaration that a law is invalid pursuant to section 52, so long as a real and practical interest in the matter is established. Regarding administrative boards and tribunals, depending on the proper interpretation of their empowering statutes they may have jurisdiction under section 52 to declare a law inoperative for purposes of the case at hand.

102. Section 24 of the Canadian Charter of Rights and Freedoms permits anyone whose Charter rights have been infringed or denied to apply to a court of competent jurisdiction for an appropriate and just remedy. This section has been interpreted liberally to include remedies for future Charter violations, such as injunctions, and further to include the full panoply of remedies available in the court where the action is brought - for example, the granting of an order or declaration, damages (including compensation), costs, the quashing or staying of proceedings or the return of illegally seized goods. With respect to the question of whether administrative boards and tribunals, as well as the courts, have jurisdiction to grant Charter remedies, a Charter remedy will generally be available if the tribunal has jurisdiction over the parties, the subject matter of the dispute and the type of remedy sought.

103. The Court Challenges Programme funds court challenges of federal and provincial legislation based on the official-language rights guaranteed by the Canadian Charter of Rights and Freedoms, and of federal legislation based on the equality rights in the Charter. The programme is funded by the Government of Canada and administered by an independent Court Challenges Programme Corporation, which is composed of representatives from the private bar, non-governmental organizations and academics.

Anti-discrimination legislation (human rights codes and legislation)

104. The process for making a complaint under a human rights code is informal and accessible - a simple form is filled out by the complainants who are usually assisted in initiating the process. With some variations, the general model for processing complaints is as follows: the human rights commission inquires into the complaint and tries to obtain a settlement between the parties; if a settlement cannot be reached, the commission dismisses the complaint or refers it to a human rights tribunal or board of inquiry, which holds a public hearing. Human rights commissions carry the complaint before a tribunal or board of inquiry at no cost to the complainant.

105. If the tribunal or board of inquiry concludes that a person has engaged in a discriminatory practice, it may make an order, which is enforceable through the court. The person who has engaged in the discriminatory practice may be ordered to cease such practice, to take measures to reverse the effects of discrimination, such as rehiring the victim, to pay compensation or to adopt an affirmative action programme. Decisions of boards of inquiry or tribunals are subject to judicial review.

#### Penal justice

106. In the penal area there is increasing emphasis in Canada on victims' rights, and dispositions involving the payment by offenders of reparation to victims of crime. Under the Young Offenders Act, young persons may be ordered to pay compensation for loss or damage, or to make restitution of property. Amendments to the Criminal Code on sentencing reform were enacted in 1995 to assist victims of crime by strengthening the existing process for awarding and enforcing restitution to victims.

#### Other remedies

107. As indicated above, other legislation relevant to the implementation of international human rights instruments, including in the economic and social area, may contain specific complaint mechanisms. Furthermore, some statutory bodies have been created that provide compensation, for example, to victims of crime or for injuries in the workplace. On occasion, Parliament or the legislatures of the provinces and territories enact legislation to provide financial or other assistance to specific individuals or groups who allege that they have been subject to a miscarriage of justice or other violations of human rights.

108. The common law also contains remedies for violations of some human rights - for example, damages (including compensation) may be sought for wrongful dismissal from employment or defamation of character. The parens patriae jurisdiction of the courts may be invoked to provide relief on such matters as custody, protection of property, health problems, religious upbringing and protection from harmful associations (in circumstances where there is no legislation in place governing these issues).

109. Non-litigious dispute resolution is a multidisciplinary field which is rapidly evolving in Canada, and involves both lawyers and non-lawyers practising in a variety of subject areas. Non-litigious dispute-resolution processes, such as negotiation, mediation and arbitration, may be used either independently or as complements to litigation. The range of remedies is broad and diversified, including compensation (financial or other), apologies, reinstatement and compliance agreements. The use of alternative dispute resolution varies from one province to another, and also within the federal sphere. There is a growing demand in Canada for these alternative approaches to conflict resolution, and governments increasingly rely upon them for the resolution of disputes to which they are a party.

110. In the consolidated guidelines for the initial part of the reports of States parties, which provides the framework for core documents, information

is specifically requested on what systems of rehabilitation exist for the victims of human rights violations. Generally, the Canada Health Act, which establishes the criteria and conditions that must be met for provincial health systems to be eligible for federal funding, states in section 3 that the "primary objective of Canadian health care policy is to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers".

111. Provincial health care systems provide services and facilities which may be of assistance in restoring the physical and mental well-being of individuals whose human rights have been violated. For example, in Ontario, the Schedule of Benefits - Physician Services, under the Health Insurance Act, provides coverage for psychotherapy and counselling. There are also federal assistance measures for individuals within the jurisdiction of the Government of Canada, for example, members of the armed forces, veterans and Aboriginal peoples. Individuals whose human rights have been violated may avail themselves of these various services and facilities. In regard to the cost of rehabilitation measures not covered by the health care system, recovery may be sought as part of a compensation award in a civil action.

112. Federal, provincial and municipal governments have undertaken extensive and wide-ranging initiatives to assist victims of violence, particularly women and children, whether such violence is encountered in the streets, the workplace or the home. Initiatives include supporting social programmes and services for women subjected to violence, such as counselling, non-profit housing and emergency shelters, and implementing criminal justice reform measures, so that police and other front-line workers can better protect and assist victims.

113. In the private sector, in some cases with funding from government, centres for the recovery and reintegration of victims of torture have been established. At the federal level, assistance is provided to survivors of torture from other countries who have immigrated to Canada.

#### Legal aid

114. Legal aid services, that is criminal and civil legal aid, are funded through provincial and territorial governments, which determine what types of services are offered by their legal aid agencies. As part of its direct responsibilities in the area of criminal law, the federal Department of Justice provides financial assistance to the provinces and territories towards the delivery of criminal legal aid services. The Supreme Court of Canada has stated that section 10 (b) of the Canadian Charter of Rights and Freedoms requires that a detained individual be told of the availability of any legal aid plan which is in place. Regarding civil legal aid, under the Canada Health and Social Transfer, the federal Government provides financial support to the provinces and territories for the delivery of social programmes (including legal aid).



C. Rights referred to in the various international human rights instruments that are protected either in the Constitution or by a separate bill of rights and provisions in the Constitution or bill of rights for derogation

1. Constitutional protection

Canadian Charter of Rights and Freedoms

115. The Canadian Charter of Rights and Freedoms, which is Part I of the Constitution Act, 1982, guarantees the following rights and freedoms:

Fundamental freedoms of conscience and religion, of thought, belief, opinion and expression (including freedom of the press and other media), of peaceful assembly and of association (sect. 2);

Democratic rights (right to vote and to qualify for election to the federal House of Commons or provincial legislative assembly; there must be elections to the House of Commons and provincial legislatures at least every five years, and Parliament and the legislatures must sit each year) (sects. 3-5);

Mobility rights (right to enter, remain in and leave Canada (sect. 6 (1)), and to take up residence and earn a living in any province (sect. 6 (2) and (3)));

Right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice (sect. 7);

Various rights relating to the legal process, including the right to be secure against unreasonable search and seizure, rights on arrest or on being charged with an offence, the right not to be subjected to cruel and unusual treatment or punishment, the right against self-incrimination and the right to an interpreter (sects. 7-14);

The right to equality before and under the law, and the right to the equal benefit and protection of the law without discrimination, and in particular without discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability (the courts have interpreted this section to include other analogous grounds) (sect. 15);

Recognition of French and English as the two official languages of Canada (sects. 16-22); and

Minority-language educational rights (sect. 23).

Interpreting the Canadian Charter of Rights and Freedoms

116. As well as conferring rights and freedoms, the Canadian Charter of Rights and Freedoms contains the following interpretive provisions, which have come to play a significant role in Charter decisions:

The guarantee of Charter rights and freedoms should not be construed so as to abrogate or derogate from any Aboriginal treaty or other rights or freedoms pertaining to the Aboriginal peoples of Canada (sect. 25);

The guarantee in the Charter of certain rights and freedoms shall not be construed as denying the existence of other rights and freedoms existing in Canada (sect. 26);

The Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians (sect. 27);

Charter rights and freedoms are guaranteed equally to male and female persons (sect. 28); and

The Charter does not abrogate or derogate from constitutional rights or privileges pertaining to denominational, separate or dissentient schools (sect. 29).

117. Furthermore, the Supreme Court of Canada has, in its reasons for judgement in cases involving the Canadian Charter of Rights and Freedoms, developed rules of interpretation that have shaped the development of Charter jurisprudence. According to the purposive approach, the courts consider the purpose of guaranteeing a right or freedom in determining its ambit. According to the contextual approach, they consider the particular context in which a Charter question arises in deciding whether and how the Charter applies in those circumstances. The Supreme Court of Canada has also emphasized the importance of taking international human rights standards into account in interpreting and applying the Charter, particularly those contained in treaties that Canada has ratified.

Scope of application of the Canadian Charter of Rights and Freedoms

118. Some rights guaranteed in the Canadian Charter of Rights and Freedoms (electoral rights in sect. 3, mobility rights in sect. 6 (1) and minority-language educational rights in sect. 23) are guaranteed only to Canadian citizens (to citizens and permanent residents, in regard to the mobility rights in sect. 6 (2) and (3)). For the most part, however, rights are guaranteed to "everyone", "every individual" or "anyone", so that they pertain to all persons within Canada, including aliens.

119. According to section 32 of the Canadian Charter of Rights and Freedoms, it applies to federal, provincial and territorial legislatures and governments. Thus, the Charter protects individuals from violations of their human rights and fundamental freedoms by government. Under section 32, the Charter has been interpreted to apply to the full range of governmental activities, including administrative practices of officials and the acts of

the executive branch of government, as well as to enactments of Parliament or the legislatures. The Charter also applies to the exercise of delegated legislative authority (for example, by municipalities) and to non-governmental actors where, in view of factors such as the degree of governmental control, they may be regarded as engaged in government action.

Limitations on and derogations from rights

120. Section 1 of the Canadian Charter of Rights and Freedoms defines the circumstances in which Charter rights and freedoms may be limited. It states that they are subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. The Supreme Court of Canada has indicated that, for a limit to meet the requirements of section 1, it must serve an objective of sufficient importance and employ proportionate means to attain it. In particular, the means must be rationally connected with the objective, impair the Charter right or freedom as little as possible, and have an impact that is proportional to the objective in question. The Supreme Court of Canada has also stated that the onus is on the government defending a limit on Charter rights to establish that section 1 is complied with.

121. Some provisions of the Canadian Charter of Rights and Freedoms also contain their own express or implied limitations. For example, section 8 protects every one from "unreasonable" search and seizure, and the guarantee of freedom of expression in section 2 (b) has been interpreted not to extend to violent expression. Only principles of fundamental justice could restrain the rights to life, liberty and security of the person guaranteed by section 7.

122. Section 33 of the Canadian Charter of Rights and Freedoms permits the Parliament of Canada or a provincial or territorial legislature to declare that a statute, or a provision of it, shall operate notwithstanding section 2 (fundamental freedoms), sections 7-14 (legal rights) or section 15 (equality rights) of the Charter. Such a declaration automatically ceases to have effect after five years, but it may be re-enacted. Section 33 has no application to the Charter's democratic rights, mobility rights, official-language rights and minority-language educational rights.

123. The federal Emergencies Act, which enables the Governor-in-Council to adopt extraordinary measures in emergency situations, does not authorize derogations from rights set forth in the Canadian Charter of Rights and Freedoms. The Preamble to the Act states that, in adopting such measures, the Governor-in-Council is subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights, and must have regard to the International Covenant on Civil and Political Rights, "particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency". Furthermore, section 4 (b) of the Act provides that it confers no authority to make orders or regulations for the detention, imprisonment or internment of Canadian citizens or permanent residents on the basis of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

### Rights of the Aboriginal peoples of Canada

124. The Aboriginal peoples of Canada (that is, the Indian, Inuit and Métis people of Canada) have the same rights as other Canadians. As well, section 35 of Part III of the Constitution Act, 1982, entitled Rights of the Aboriginal Peoples of Canada, recognizes and affirms the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada. "Treaty rights" are defined in section 35 to include rights that now exist by way of land claims agreements or may be so acquired. Aboriginal and treaty rights are guaranteed equally to male and female persons.

125. The Government of Canada has stated that it will act on the premise that the inherent right of self-government of the Aboriginal peoples of Canada is an existing Aboriginal right within section 35, and that it will implement this right by means of negotiated agreements among all the parties concerned. These negotiated arrangements will differ depending on the diverse circumstances of Aboriginal peoples in the various parts of Canada.

126. No provision is made in the Constitution Act, 1982, for derogations from existing Aboriginal and treaty rights. The Supreme Court of Canada, in interpreting section 35, has indicated that these rights may be limited where the limitation is justified.

### Equalization and regional disparities

127. Section 36 of Part III of the Constitution Act, 1982, entitled Equalization and Regional Disparities, commits federal and provincial governments to promoting equal opportunities for the well-being of Canadians, furthering economic development to reduce disparity in opportunities and providing essential public services of reasonable quality to all Canadians. Furthermore, it commits the federal Government to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation. These provisions are particularly relevant in regard to Canada's international obligations for the protection of economic, social and cultural rights.

## 2. Protection in bills of rights and human rights codes

### Bills of rights

128. In 1960, before the enactment in 1982 of the Canadian Charter of Rights and Freedoms as part of the Constitution of Canada, the Canadian Bill of Rights was enacted at the federal level. It applies to legislation and policies within federal jurisdiction, and guarantees rights and freedoms similar to those found in the Canadian Charter of Rights and Freedoms and the International Covenant on Civil and Political Rights. Federal laws that infringe the Canadian Bill of Rights are to that extent inoperative, unless the law in question states that it operates notwithstanding the Canadian Bill of Rights. There are very few cases of laws having been declared inoperative because of inconsistency with the Canadian Bill of Rights, unlike the many successful actions brought on the basis of the Canadian Charter of Rights and Freedoms.

129. There is also an Alberta Bill of Rights, enacted in 1972 to ensure that the rights and freedoms protected at the federal level in the Canadian Bill of Rights received similar protection in matters within Alberta jurisdiction. The Alberta Bill of Rights guarantees due process rights, equality rights and the fundamental freedoms (religion, speech, assembly and association, and freedom of the press). In 1975, Québec adopted a Charter of Human Rights and Freedoms to protect fundamental rights and freedoms within its jurisdiction.

#### Human rights codes and legislation

130. Many of the international human rights instruments that Canada has ratified are directed against discrimination, or, where they are more general in nature, require that the rights guaranteed in them be respected without discrimination. An important means of implementing this feature of international obligations is through human rights legislation (or human rights codes). All governments in Canada - federal, provincial and territorial - have adopted legislation prohibiting discrimination on various grounds in regard to employment matters, the provision of goods, services and facilities customarily available to the public, and accommodation. This legislation differs in its application from section 15 on equality rights of the Canadian Charter of Rights and Freedoms in that it provides protection against discrimination by individuals in the private sector, as well as by governments.

131. Generally, human rights codes prohibit discrimination on the following grounds: race or colour; religion or creed; age; sex; sexual orientation; family or marital status; physical or mental handicap or disability; national or ethnic origin and ancestry or place of origin. Some codes include the following prohibited grounds of discrimination: political belief; association; pardoned conviction; record of criminal conviction; source of income; place of residence; garniture of wages; social condition or origin and language.

132. The Supreme Court of Canada has stated that anti-discrimination legislation is to be interpreted by Canadian courts and tribunals in a manner that will advance its broad purpose of ensuring equality of opportunity for individuals. On the basis of this interpretive approach, the Supreme Court has reached a number of progressive conclusions about the ambit of human rights codes.

133. Thus, the Supreme Court has indicated that human rights codes take precedence over other legislation. In other words, discriminatory practices may be subject to challenge under such codes, even if they are apparently authorized by other legislation. Furthermore, the Supreme Court has held that human rights legislation precludes adverse-effect discrimination, as well as direct discrimination. Thus, if policies or practices have an adverse impact on groups protected by human rights codes, they may be discriminatory, even if they do not involve intentional discrimination or expressly draw distinctions on the basis of prohibited grounds. In regard to adverse-effect discrimination, employers have a duty to make reasonable accommodation to the needs of those protected by the law. The duty of reasonable accommodation requires that employers make a genuine effort, except where it would cause undue hardship, to accommodate the special needs of members of protected

groups, and this may involve minor inconvenience to other employees. Some human rights codes expressly require reasonable accommodation regarding direct, as well as indirect, discrimination.

134. Human rights codes permit distinctions on the basis of prohibited grounds of discrimination in the employment area if they are based on bona fide and reasonable occupational qualifications or requirements, and in the provision of services, facilities and accommodation if the distinctions have a bona fide and reasonable justification. The Supreme Court of Canada has defined the bona fide occupational requirement as one imposed in good faith, and related in an objective sense to the performance of the work involved.

135. Some provincial human rights codes and legislation contain guarantees of various rights established by international human rights instruments, in addition to prohibiting discrimination. The Saskatchewan Human Rights Code guarantees the freedoms of conscience, expression and association, freedom from arbitrary imprisonment and the right to take part in elections. The Human Rights Act of the Yukon Territories guarantees the freedoms of religion and conscience, expression, assembly and association, and the right to enjoyment and disposition of property, in accordance with the law. In Québec, the Charter of Human Rights and Freedoms guarantees fundamental freedoms and rights such as freedom of religion, the right to life and the right to respect of privacy. The Québec Charter recognizes also the right to equality in the recognition and application of political, judicial, economic and social rights and freedoms. Section 9 (1) of the Québec Charter states that, in exercising fundamental rights and freedoms, a person shall maintain a proper regard for democratic values, public order and the general well-being of the citizens of Québec, and that in this respect, the scope of the rights and freedoms, and limits on their exercise, may be set by law.

D. How international human rights instruments are made part of the national legal system

136. The Government of Canada - that is the federal Government - has authority to ratify international conventions on behalf of Canada. It is the practice for the Government of Canada to consult with provinces and territories before ratifying human rights conventions or other treaties involving matters within their jurisdiction and seek to their support. International human rights conventions that Canada has ratified apply throughout Canada in all jurisdictions.

137. International conventions that Canada has ratified do not automatically become part of the law of Canada. Rather, treaties that affect the rights and obligations of individuals are implemented by domestic law. To some extent, human rights treaties are implemented by constitutional law, including the Canadian Charter of Rights and Freedoms, which applies to all governments in Canada. To a considerable extent, they are implemented by legislative and administrative measures.

138. Some human rights matters fall under federal jurisdiction, others under provincial and territorial jurisdiction. Therefore, human rights treaties are implemented by legislative and administrative measures adopted by all

jurisdictions in Canada It is not the practice in any jurisdiction in Canada for one single piece of legislation to be enacted incorporating a particular international human rights convention into domestic law (except, in some cases, regarding treaties dealing with specific human right issues, such as the 1949 Geneva Conventions for the protection of war victims). Rather, many laws and policies, adopted by federal, provincial and territorial governments, assist in the implementation of Canada's international human rights obligations.

139. All jurisdictions review their legislation for consistency with the human rights convention in question before ratification. To ensure compliance, existing legislation may be amended or new laws enacted. After ratification, Canada's international human rights obligations are taken into account in drafting new legislation.

140. In a federal State such as Canada, there may sometimes be differences in the manner of implementing rights in the various jurisdictions. These differences may reflect differences in local conditions. The following features of the Canadian legal system help to ensure that there are no significant discrepancies between jurisdictions in human rights protection:

(a) Measures adopted by all governments in Canada are subject to review under the Canadian Charter of Rights and Freedoms. This ensures uniformity of protection across Canada regarding the civil and political rights guaranteed by the Charter, and further that economic and social measures in all jurisdictions, and those relating to children or other subject matters covered by human rights conventions, satisfy the same criteria set forth in the Charter regarding such matters as non-discrimination and due process;

(b) The Supreme Court of Canada interprets and applies legislation enacted throughout Canada, thus contributing to consistency of approach. For example, the basic doctrines that the Supreme Court has developed regarding the ambit of human rights legislation - paramountcy, adverse-effect discrimination and reasonable accommodation - apply to human rights codes in all jurisdictions;

(c) Federal funding of provincial-territorial programmes may be conditional on certain national standards being met. For example, under the Canada Health and Social Transfer, eligibility for full federal contributions is conditional upon the provinces and territories maintaining the national criteria and conditions in the Canada Health Act, including those respecting public administration, comprehensiveness, universality, portability and accessibility;

(d) Federal funding of provincial-territorial programmes is particularly helpful to the less prosperous provinces and territories and assists in preventing regional disparities in the implementation of rights;

(e) Mechanisms exist to ensure that the various jurisdictions are aware of the approaches taken throughout Canada on human rights issues, and to promote coordination in this regard (see below).

141. The federal nature of Canada makes a positive contribution to the protection of human rights in Canada because of the variety of perspectives brought to bear on human rights issues and the ability of governments to take into account the particular conditions within their jurisdiction in determining appropriate modes of implementation. Furthermore, the interplay between the various forms of human rights protection - constitutional, statutory and administrative - has enhanced such protection in Canada. For example, the courts have tended to interpret section 15 (equality rights) of the Canadian Charter of Rights and Freedoms in the same progressive manner that they have adopted for human rights codes, and the grounds of discrimination covered by these codes have been extended by means of court challenges based on section 15 of the Charter.

142. In the manner outlined above, Canada fulfils its obligation (to use the language of article 2 (2) of the International Covenant on Civil and Political Rights) "to take the necessary steps, in accordance with its constitutional processes ... to adopt such legislative or other measures as may be necessary to give effect to the rights" recognized in a particular human rights covenant or convention.

- E. Whether the provisions of the various international human rights instruments can be invoked before, or directly enforced by the courts, other tribunals or administrative authorities or must be transformed into internal laws or administrative regulations to be enforced by the authorities concerned

143. As discussed above, international human rights treaties are not automatically part of the law of Canada and, therefore, may not be directly enforced in Canadian courts. Rather, it is necessary to rely on the various domestic remedies available for breaches of relevant domestic law.

144. International human rights treaties that Canada has ratified are relevant to the interpretation of domestic law. This doctrine is of particular relevance in the context of the Canadian Charter of Rights and Freedoms, in two ways. First, human rights treaties are relevant in determining the ambit of rights protected by the Charter. Thus, the Supreme Court has stated that the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents that Canada has ratified. For example, in determining the ambit of the right to retain counsel in section 10 of the Charter, the Supreme Court has referred to article 14 (3) (d) of the International Covenant on Civil and Political Rights. Moreover, in the event of ambiguities in domestic legislation, Canadian courts have held that Parliament must have intended the relevant provisions to be consistent with Canada's international legal obligations.

145. Second, international human rights instruments are relevant in determining whether the requirements of section 1 (reasonable limits) of the Canadian Charter of Rights and Freedoms have been satisfied. As indicated above, one requirement under section 1 is that the challenged legislation serve an objective of sufficient importance. The Supreme Court of Canada has stated that, if the legislative objective corresponds to a right recognized in an international human rights instrument - for example, to the right to work



guaranteed by the International Covenant on Economic, Social and Cultural Rights, or to the right to be protected against hate propaganda guaranteed by the International Covenant on Civil and Political Rights - then it will be an objective of sufficient importance for purposes of justifying a limit on a Charter right or freedom within the terms of section 1.

146. In addition, the courts have on occasion stated that where the objective of challenged legislation corresponds to one of the objectives set out in the limitation clauses of articles of international human rights covenants - for example, the objective of public health set out in several articles of the International Covenant on Civil and Political Rights - then this indicates it is an objective of sufficient importance for section 1 purposes.

147. In this manner, through their relevance to the interpretation of the Canadian Charter of Rights and Freedoms, international human rights treaties have a role to play in determining whether legislation is valid or invalid under the Constitution of Canada.

148. Canadian courts are also increasingly referring to relevant provisions of international human rights conventions in cases not involving the Canadian Charter of Rights and Freedoms, particularly in immigration and family law areas.

F. Institutions or national machinery responsible for overseeing the implementation of human rights

Federal-provincial-territorial forums

149. In 1975, the first Federal-Provincial Ministerial Conference on Human Rights was held to establish a process for the ratification and implementation of international human rights conventions. Subsequently, in 1976, Canada acceded to the two Covenants. Since then, ministerial conferences have been held on a periodic basis.

150. At the 1975 Ministerial Conference, it was agreed that there should be a Federal-Provincial-Territorial Continuing Committee of Officials on Human Rights. The mandate of the Continuing Committee is to maintain consultation and collaboration among governments with respect to the domestic implementation of human rights instruments. It also serves as a consultation mechanism among governments in Canada on other domestic or international human rights questions related to international human rights instruments.

151. Specific functions of the Continuing Committee include serving as a consultation mechanism on the ratification of international human rights conventions; encouraging information exchange among governments in Canada with respect to the interpretation and implementation of international human rights instruments and related matters; facilitating the preparation of reports on conventions that have been ratified, as well as other reports on human rights requested by the United Nations or other organizations; encouraging information exchanges and research on human rights matters of common interest to all jurisdictions; providing views with respect to the development of Canada's positions on international human rights issues; and organizing and providing follow-up to ministerial conferences on human rights.

152. There are also many other federal-provincial-territorial committees with a mandate relating to human rights matters. As an example, the Canadian Association of Statutory Human Rights Agencies brings together human rights commissions and facilitates consultation and collaboration among them. Also, ministers responsible for the status of women meet each year to discuss matters of common interest to them, and the Federal-Provincial-Territorial Senior Status of Women Officials Forum usually meets three times a year. There is a Family Law Committee of federal-provincial-territorial officials that meets regularly to develop and coordinate family-law policy of national interest and advise deputy ministers.

#### Other mechanisms

153. Within each government, there are mechanisms in place to coordinate matters related to human rights. For example, at the federal level, there is an Interdepartmental Committee on the Convention on the Rights of the Child, which guides the preparation of reports on the Convention and follow-up to the concluding observations of the Committee on the Rights of the Child on Canada's reports.

154. At the federal parliamentary level, there is a Standing Committee of the House of Commons on Human Rights and the Status of Disabled Persons, which considers issues in these areas. The Standing Committee on Foreign Affairs and International Trade and the Subcommittee on Sustainable Human Development also consider international human rights issues. These committees may call witnesses, including officials and non-governmental organizations, and ministers sometimes appear before them. They submit reports to the House of Commons.

155. Human rights commissions have a role to play in identifying human rights issues and concerns in Canada. Many of them have been given various degrees of responsibility for overseeing implementation of the human rights covered in their respective human rights legislation. For example:

The Canadian Human Rights Commission may receive and consider recommendations regarding human rights and freedoms and, where appropriate, include them in its annual report;

In Newfoundland and Nova Scotia, the provincial human rights commission has as one of its functions to advise and help government departments and agencies, and to coordinate their activities where they concern human rights;

The Ontario Human Rights Commission may examine and review any statute, regulation, programme or policy and make a recommendation regarding any measure that, in its opinion, is inconsistent with the intent of the Human Rights Act;

The Québec Human Rights and Youth Commission may make an analysis of any Québec statute that may be inconsistent with the Québec Charter of Human Rights and Freedoms and make appropriate recommendations to the government; it may also receive suggestions, recommendations and requests regarding human rights and freedoms, study them, and make the appropriate recommendation to the government;

In British Columbia, the Chief Commissioner may submit a special report to the minister concerning any matter respecting human rights in British Columbia that the Chief Commissioner considers to be of such urgency or importance that it cannot be deferred until the next annual report.

Non-governmental organizations and Aboriginal organizations

156. Canadian non-governmental organizations play an important role in the protection and promotion of human rights in Canada. They monitor governmental activities, help individuals obtain redress in cases of violations of human rights and carry out educational programmes. Non-governmental organizations operate freely in Canada and sometimes receive governmental financial support. The Government of Canada holds annual consultations with non-governmental organizations, and national and other Aboriginal organizations, before the sessions of the United Nations Commission on Human Rights. The Government of Canada consults with non-governmental organizations in the course of ratifying international human rights conventions and preparing reports on Canada's compliance with them.

IV. INFORMATION AND PUBLICITY

A. Special efforts to promote awareness of the rights contained in the various human rights instruments

157. All governments in Canada carry out public education programmes in the area of human rights. Within the federal Government, the main agencies involved are the Departments of Canadian Heritage and Justice, and the Canadian Human Rights Commission.

158. The Department of Canadian Heritage is mandated under the law to promote a greater understanding of human rights, fundamental freedoms and related values. To discharge this mandate, it provides grants and technical advice to human rights organizations and other community groups; it publishes human rights material for free distribution, including the Canadian Charter of Rights and Freedoms, Canada's reports under various international instruments, and United Nations documents such as the Covenants and other major human rights conventions and fact sheets published by the Office of the United Nations High Commissioner for Human Rights.

159. The Department of Justice supports projects of non-governmental organizations and individuals that focus on human rights and the law. The Department provides grants and contributions for projects that promote a greater understanding of human rights issues, laws and institutions, both domestically and internationally, in the justice system and the community at large.

160. The Canadian Human Rights Commission is mandated under the law to develop and conduct information programmes to foster public understanding of the Canadian Human Rights Act and of the role and activities of the Commission, and to foster public recognition of the principle of equal opportunity set forth in section 2 of the Act.

161. All provincial and territorial human rights commissions have similar responsibilities under their respective legislation. Often, the legislation explicitly refers to the Universal Declaration of Human Rights and other United Nations instruments.

162. Non-governmental organizations are also involved in promoting awareness of human rights and international instruments.

163. Promotional campaigns usually culminate on such occasions as Human Rights Day, the International Day for the Elimination of Racial Discrimination, Women's Day and National Child Day, or at the commemoration of United Nations decade activities. Government agencies, human rights commissions, non-governmental organizations and the media usually join forces on these occasions.

B. Process for the preparation of reports

164. Canada's reports to the United Nations under multilateral treaties are prepared by the federal Government in collaboration with the provincial and territorial governments. Under the federal-provincial agreement of 1975, the provincial and territorial governments have the right to prepare reports on their own activities, and they usually exercise this right. Their reports become part of the report submitted by Canada.

165. The federal Department of Canadian Heritage assumes the general responsibility for the preparation of the reports, including the consultations with the provincial and territorial governments. It is assisted in this task by many other departments and agencies, in particular the Department of Justice, Status of Women Canada, the Department of Human Resources Development and Statistics Canada. The Canadian Human Rights Commission is invited to provide input for all reports and to comment on the drafts.

166. The Department of Foreign Affairs and International Trade is responsible for presenting the reports to the United Nations, and it leads the delegations that attend the meetings at which the reports are reviewed. Those delegations include representatives from the departments with the main responsibility for the subject matters covered, as well as representatives from provincial and/or territorial governments.

167. The process of preparing reports always generates wide consultation within each government. It is a dynamic process, which is believed to stimulate self-criticism of performance and to generate initiatives for change.

168. Consultations with sources outside governments are held where necessary. In recent years, the federal government has consulted non-governmental organizations in the preparation of its own section of most major reports. Comments from outside sources are taken into consideration in the preparation of the reports. The reports are made widely available free of charge to the public, including libraries, educational institutions and non-governmental organizations, associations and individuals. The matters that are discussed in the reports are the subject of constant public debate.