



Human Rights Law Implementation Project

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Objectives of the Project



Analyze the status of implementation of certain individual communications decided by:



African Commission
on Human and Peoples'
Rights



Treaty Monitoring Bodies
**UNITED NATIONS
HUMAN RIGHTS**
OFFICE OF THE HIGH COMMISSIONER





Countries Studied

Africa:



Burkina Faso



Cameroon



Zambia

Americas:



Canada



Guatemala

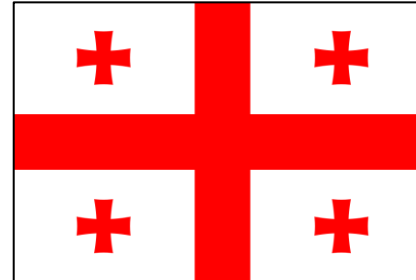


Colombia

Europe:



Czech Republic



Georgia



Belgium

Country Selection



Key considerations:

- Equal number of countries per region
- Status of ratification of regional and international human rights treaties
- Acceptance of individual complaints mechanism, if applicable
- Number of decisions issued regarding the country
- Level/status of communication of the country with the human rights bodies
- Background and political situation
- State and legal structure
- Ability of the team to work with the country



Identification of case studies

Considerations:

- Diversity of international fora regarding each country (UN and regional level)
- Themes identified in decisions of each country
- Nature of the decisions
- Date of the decisions
- Types of reparation measures involved
- Special modes of compliance
- Types of violations/victims/perpetrators
- Civil society involvement (representation / accompaniment)



Analysis of the status of implementation

- Status of implementation and perspectives (body, parties, team, etc.)
- Actors involved in the process of implementation and role played
- ¿Variations in discourse/behavior of national actors, depending on the body (regional / international)?
- Factors that influence compliance (or not) of the decisions



Final Objectives

- Contribute to a better understanding of the factors that influence compliance with decisions originating from regional and international human rights mechanisms.
- Support the information and strengthening of strategies, tools, and practices of said mechanisms, as well as those of the various actors which use them (such as litigants, state representatives and civil society organizations).



More information:

<http://bristol.ac.uk/law/research/centres-themes/hric/projects/implementationandcompliance/>





CANADA

Overview, selected cases
and preliminary findings



CANADA

OVERVIEW



Acceptance of individual complaints procedures at the international level



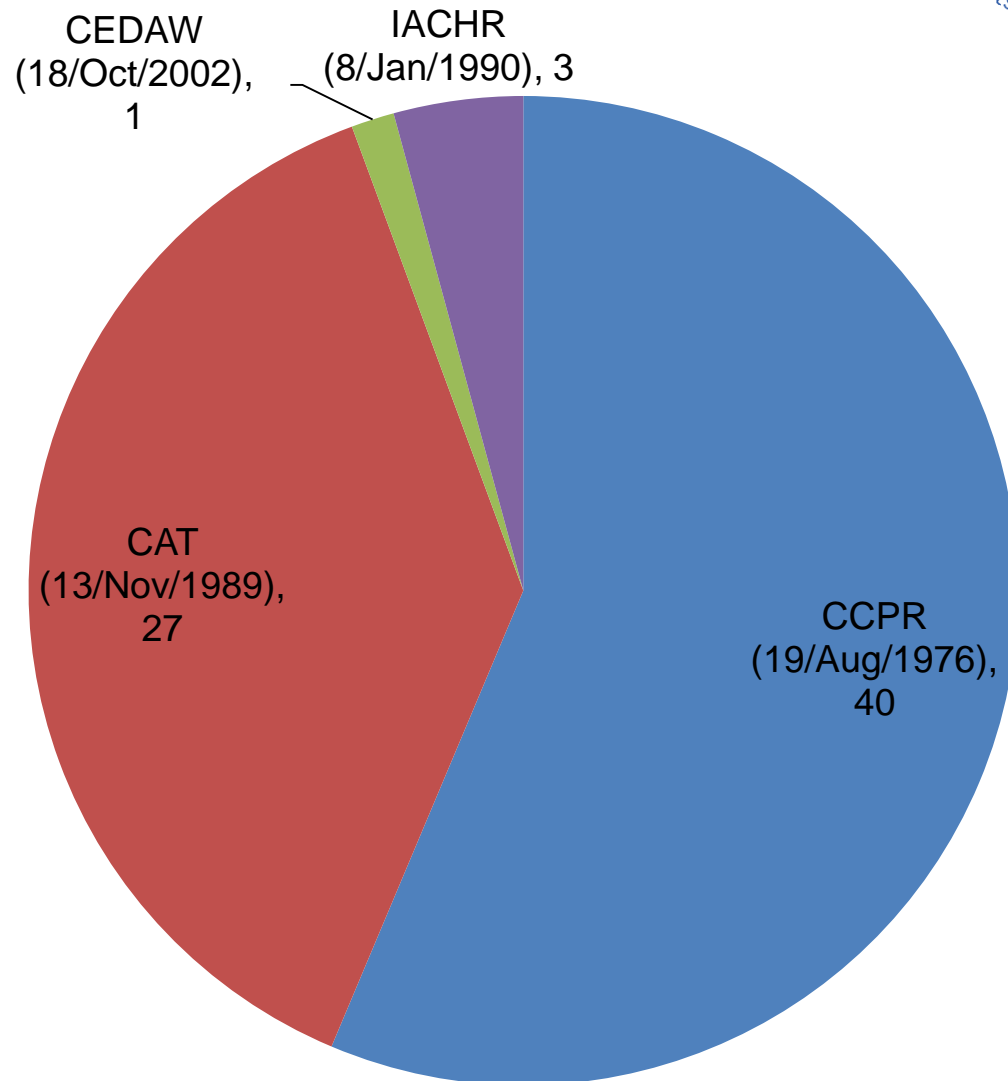
Accepted		Not Accepted / Not in Force
Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1)	19/May/1976	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	13/Nov/1989	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR)
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW)	18/Oct/2002	Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP-CRC-IC)
		International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)
		International Convention for the Protection of All Persons from Enforced Disappearance (CED)
		Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD)

Acceptance of individual complaints procedure at the regional level



Accepted		Not Ratified / Not in Force
Charter of the OAS	08/Jan/1990	American Convention on Human Rights
American Declaration of the Rights and Duties of Man	N/A	“Protocol of San Salvador”: Additional Protocol to ACHR in Area of ESC Rights
		Inter-American Convention to Prevent and Punish Torture
		“Convention of Belem do Pará”: Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
		Inter-American Convention on Forced Disappearance of Persons
		Inter-American Convention on Protecting the Human Rights of Older Persons
		Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance
		Inter-American Convention Against All Forms of Discrimination and Intolerance

Merits Decisions* = 71



* As of 01/June/2017

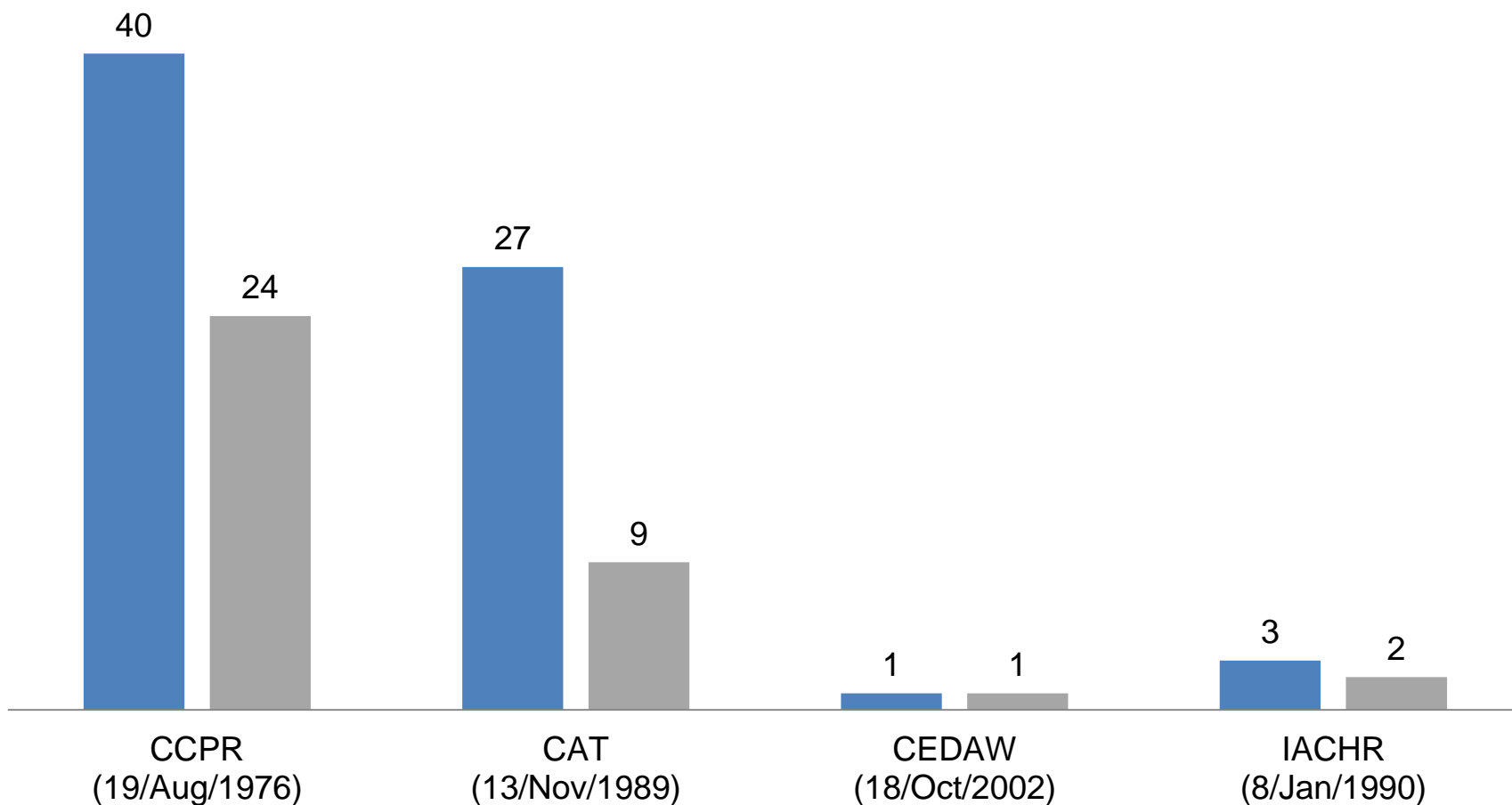
** Includes cases where no violations were found.

*** Date between parentheses is the date of entry into force of the individual complaints procedure in relation to Canada

Merits Decisions with violations* = 36



■ Total Merits Decisions ■ Violation Found



* As of 01/June/2017

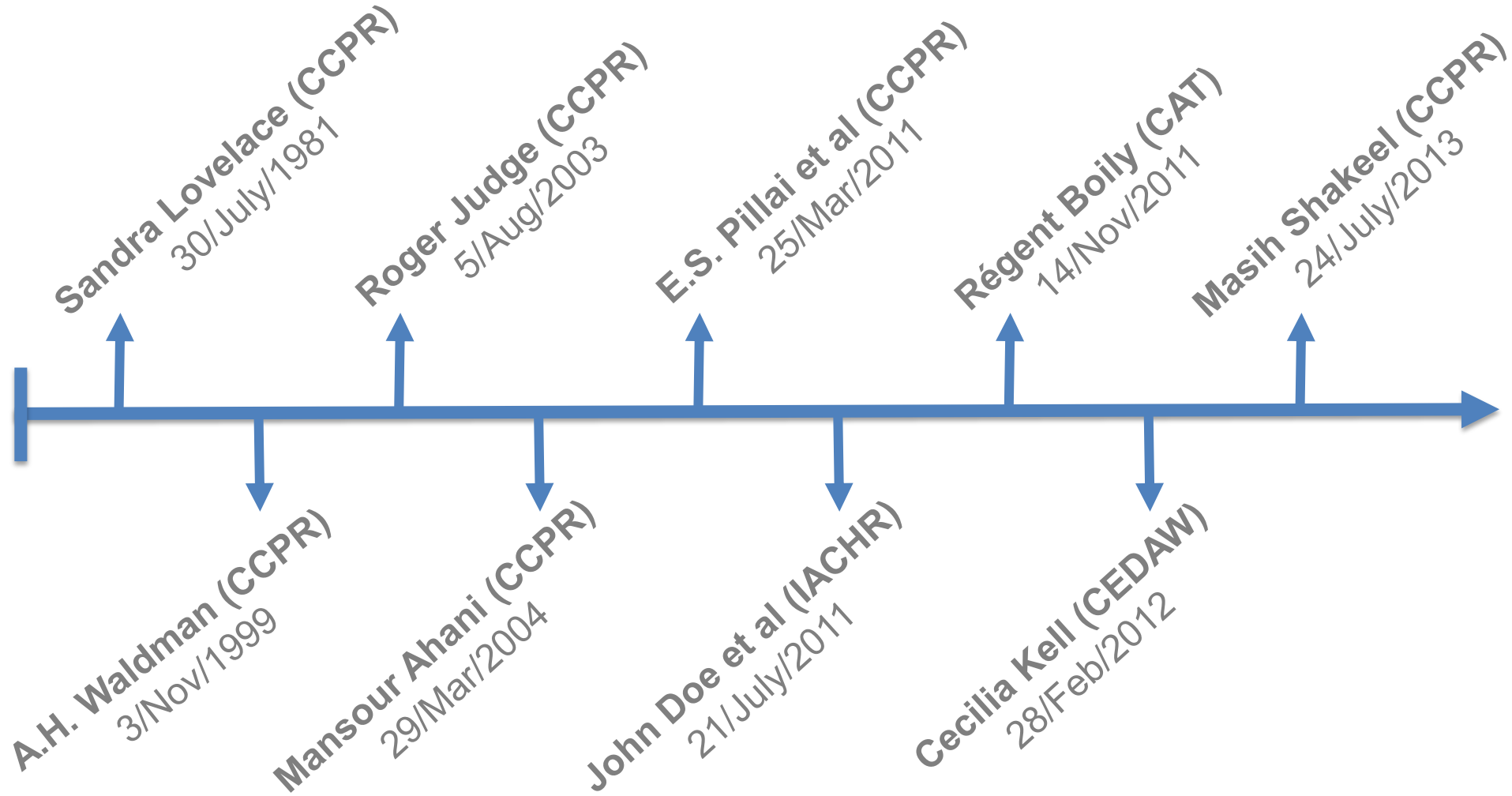


CANADA

SELECTED CASES & PRELIMINARY FINDINGS



Selected Cases Timeline



CCPR

Communication No. 24/1977

Sandra Lovelace



- **Adopted:** 30/July/1981
- **Victim(s):** Indigenous woman
- **Counsel:** Prof. Donald Fleming & Dr. Noel A. Kinsella
- **Responsible entity:** Federal Government
- **Main issue(s):** discrimination against women originating in the 'Indian Act'
- **Violation(s):** Article 27 ICCPR (rights of minorities)
- **Recommendation(s):** Not formulated
- **Implementation:**
 - 28/June/1985: Bill C-31 adopted
 - 15/Dec/2010: Bill C-3 introduced in response to *Mclvor v. Canada* (domestic)
 - Oct/2016: Bill S-3 introduced in response to *Descheneaux v. Canada* (domestic)
- **Compliance status:** satisfactory response (2009)

CCPR

Communication No. 694/1999

Arieh Hollis Waldman



- **Adopted:** 3/Nov/1999
- **Victim(s):** Canadian citizen member of the Jewish faith
- **Counsel:** Raj Anand (until 1998) & Prof. Anne Bayefsky
- **Responsible entity:** Provincial Government (Ontario)
- **Main issue(s):** discrimination in provision of public funding for Catholic schools
- **Violation(s):** Article 26 ICCPR (right to equal protection of the law without discrimination)
- **Recommendation(s):**
 - Provide an effective remedy that will eliminate this discrimination
 - Publish Views
 - Present information within 90 days

CCPR

Communication No. 694/1999

Arieh Hollis Waldman

(cont.)



- **Implementation:**
 - Canada informed that matters of education fall under exclusive jurisdiction of the provinces
 - Government of Ontario communicated that it had no plans to extend funding to private religious schools and that it intends to adhere fully to its constitutional obligation to fund Roman Catholic schools.
- **Compliance status:**
 - Unsatisfactory response; follow-up dialogue ongoing (2013)
 - Follow-up dialogue ongoing (2016)

CCPR

Communication No. 829/1998

Roger Judge



- **Adopted:** 5/Aug/2003
- **Victim(s):** U.S. citizen sentenced to death penalty
- **Counsel:** Eric Sutton
- **Responsible entity:** Federal Government
- **Main issue(s):** deportation to face the death penalty
- **Interim measures:** N/A
- **Violation(s):** Article 6 ICCPR (right to life)
- **Recommendation(s):**
 - Provide an appropriate remedy which will include making such representations as are possible to the receiving state to prevent the carrying out of the death penalty on the author
 - Publish Views
 - Present information within 90 days

CCPR

Communication No. 829/1998

Roger Judge (cont.)



- **Implementation:**
 - 24/Oct/2003: Canadian Consul in Buffalo contacted the Governor of Pennsylvania and raised case with him.
 - 7/Nov/2003: Canada delivered a diplomatic note to US Government requesting it not to carry out the death penalty.
 - 18/Jan/2006: Canada sent a diplomatic note to the U.S. reiterating its previous note and requesting an update on the status of Mr. Judge. It was acknowledged, but not responded (as of May 2006) by the U.S. government.
- **Compliance status:**
 - Satisfactory response; follow-up dialogue ongoing (2013)

CCPR

Communication No. 1051/2002

Mansour Ahani



- **Adopted:** 29/Mar/2004
- **Victim(s):** refugee from Iran believed to be engaged in terrorism
- **Counsel:** Barbara L. Jackman
- **Responsible entity:** Federal Government
- **Main issue(s):** due process in security certificate cases
- **Interim measures:** requested, but disregarded
- **Violation(s):** Articles 9.4 (review of lawfulness of detention) and 13 (guarantees for expelling an alien lawfully in territory), in conjunction with article 7 (prohibition of torture or CIDTP) ICCPR

CCPR

Communication No. 1051/2002

Mansour Ahani

(cont.)



- **Recommendation(s):**
 - Provide an effective remedy, including compensation
 - Make reparation if it comes to light that torture was in fact suffered subsequent to deportation
 - Take appropriate steps to ensure that the author is not, in the future, subjected to torture as a result of the events of his presence in, and removal from, Canada
 - Avoid similar violations in the future, including by taking appropriate steps to ensure that the Committee's requests for interim measures of protection will be respected
 - Publish Views
 - Present information within 90 days

CCPR

Communication No. 1051/2002

Mansour Ahani

(cont.)



■ Implementation:

- 8/May/2002: Ontario Court of Appeal held that CCPR's interim measures are not binding on Canada; Supreme Court dismissed application for leave to appeal, without providing reasons
- 10/June/2002: author was deported to Iran, despite interim measures being in force
- 2002-2003: Canadian authorities reached out and visited the author and his mother; both of whom would have referred that the author was well. Since then, Canada has made no further contact.
- **29/Mar/2004:** CCPR adopts Views
- 3/Sept/2004: Canada disagrees that it should make any reparation to the author or that it has any obligations to take further steps in this case. Decisions on interim measures will be made on a case-by-case basis.
- 7/Feb/2006: Canada considers that Iran would be in a better position to respond to any further requests from CCPR on the author's status; there are special procedures, such as the Special Rapporteur on Torture, that may be of assistance if need be; requests that this case be removed from the agenda of the CCPR's follow-up procedure.

CCPR

Communication No. 1051/2002

Mansour Ahani

(cont.)



■ Compliance status:

- 2006:
 - Unsatisfactory response; follow-up dialogue ongoing.
 - Note: The State party went some way to implementing the Views: the Committee has not specifically said implementation is satisfactory.
 - CCPR decided that it did not intend to consider this matter any further under the follow-up procedure, but would examine it at a later stage if the situation changed.
- 2013:
 - Unsatisfactory response; follow-up dialogue ongoing.
 - Note: The State party went some way to implementing the Views: the Committee has not specifically said implementation is satisfactory.
- 2016
 - Follow-up dialogue ongoing.
 - Note: The State party went some way to implementing the Views: the Committee has not specifically said implementation is satisfactory.

CCPR

Communication No. 1763/2008

Pillai et al.



- **Adopted:** 25/Mar/2011
- **Victim(s):** Sri Lankan couple and their three children (one Sri Lankan national and two Canadian nationals)
- **Counsel:** Richard Goldman
- **Responsible entity:** Federal Government
- **Main issue(s):** refugee determination system, application for leave for judicial review, PRRA and H&C applications
- **Violation(s):** if implemented, removal would violate Article 7 ICCPR (prohibition of torture or CIDTP)
- **Recommendation(s):**
 - Provide an effective remedy, including a full reconsideration of their claim regarding risk of torture, should they be returned to Sri Lanka, taking into account Canada's obligations under the Covenant.
 - Publish Views
 - Present information within 180 days

CCPR

Communication No. 1763/2008

Pillai et al.

(cont.)



- **Implementation:**
 - 29/July/2011: H&C application was, in principle, approved due, mainly, to considerations of the best interest of the child; removal was stayed.
- **Compliance status:**
 - Follow-up dialogue closed, with a note of a satisfactory implementation of the recommendation (2012)

IACHR

Case 12.586, Report No. 78/11 John Doe et al.



- **Adopted:** 21/July/2011
- **Victim(s):** Three unnamed persons, nationals of Malaysia, Pakistan and Albania
- **Counsel:**
 - Canadian Council for Refugees
 - Vermont Refugee Assistance
 - Amnesty International Canada
 - Freedom House (Detroit, MI)
 - Global Justice Center
 - Harvard Immigration and Refugee Clinic
 - Harvard Law School Advocates for Human Rights
- **Responsible entity:** Federal Government
- **Main issue(s):** “direct-back policy”, under which refugee claimants arriving through USA/Canada border points are directed back to the USA without any immediate consideration of their claims



IACHR

Case 12.586, Report No. 78/11

John Doe et al.

(cont.)

- **Violation(s):**
 - Article XXVII ADRDM (right to seek asylum)
 - Additional violation of Article XXVII ADRDM for failing to conduct an individualized risk assessment before returning the John Does to the US where they faced the possible risk of chain refoulement to their countries of origin
 - Article XVIII ADRDM (right to seek recourse before a competent court)
- **Recommendation(s):**
 - Adopt measures to identify the John Does and verify their situation and status, in order to process any outstanding claim for asylum they may wish to present.
 - Make full reparation to the John Does for the established violations, including, but not confined to material damages.
 - Adopt the necessary legislative or administrative changes to ensure that refugee claimants are afforded due process in presenting their asylum claims.
 - Adopt the necessary legislative or other measures to ensure refugee claimants have access to adequate and effective domestic remedies to challenge direct-backs before they occur.



IACHR

Case 12.586, Report No. 78/11

John Doe et al.

(cont.)

- **Implementation (2010-2012):**
 - IACHR's decisions are not binding, as distinct from the human rights obligations themselves
 - Despite the IACHR's conclusions, Canada considers that it is in full compliance with its international obligations in this case
 - Identification of John Does 1 and 2 is impossible because they remain anonymous. As regards John Doe 3, Canada still is not certain who he is. In any case, the facts fail to support a finding that his rights to claim asylum and to due process have been violated or that any reparations are owing to him.
 - While the direct back policy remains in effect, it has not been used with respect to refugee claimants since 2007. Revised direct back policy, as contained in the instructions issued to border services officers, specifies that direct back can be used for refugee claimants in only "exceptional" circumstances, with senior-level approval, and with assurances from U.S. Customs and Border Protection. No further modifications are required.
 - Existing remedies are adequate and effective.



IACHR

Case 12.586, Report No. 78/11

John Doe et al.

(cont.)

- **Compliance status (2016):**
 - IACHR reminds Canada that it is its duty to adopt all measures to locate the John Does and invites the State to provide all the information regarding the actions undertaken to identify and locate them.
 - State has partially complied with the recommendations.
 - IACHR will continue to monitor compliance with remaining recommendations.

CAT

Communication No. 327/2007

Régent Boily



- **Adopted:** 14/Nov/2011
- **Victim(s):** Canadian citizen
- **Counsel:** Christian DesLauriers & Philippe Larochelle
- **Responsible entity:** Federal Government
- **Main issue(s):** risk of torture or CIDTP upon extradition to Mexico
- **Violation(s):** Articles 3 (non-refoulement) and 22 (presentation of individual communications before CAT) CAT
- **Recommendation(s):**
 - Compensate the complainant for violation of his rights under article 3
 - Provide as full rehabilitation as possible by providing, inter alia, medical and psychological care, social services, and legal assistance, including reimbursement for past expenditures, future services, and legal expenses
 - Review its system of diplomatic assurances with a view to avoiding similar violations in the future
 - CAT wishes to be informed, within 90 days, of the steps Canada has taken in response to the views expressed above, including measures of compensation for the breach of article 3 CAT and determination, in consultation with Mexico, of his current whereabouts and state of well-being

CAT

Communication No. 327/2007

Régent Boily (cont.)



- **Implementation (2012):**
 - Complainant is pursuing the Government of Canada for monetary compensation for the violation of his rights that allegedly occurred in the first week after his extradition to Mexico. Canada is contesting the claims made by the complainant under domestic law and “it has no intention of paying compensation or rehabilitating Mr. Boily”.
 - Given that there is an ongoing domestic litigation before the Federal Court with regard to the complainant’s claims –including a claim alleging a failure of the Canadian authorities to properly monitor the diplomatic assurances received from Mexico– Canada believes it inappropriate to provide observations on the matter at this time.
 - Canada continues to provide consular services to him; he was made aware of his right to seek transfer to Canada.
- **Compliance status:** follow-up dialogue ongoing (2013)

CEDAW

Communication No. 19/2008

Cecilia Kell



- **Adopted:** 28/Feb/2012
- **Victim(s):** Indigenous woman
- **Counsel:** N/A
- **Responsible entity:** Northwest Territories
- **Main issue(s):** discrimination against women in relation to matrimonial property; access to legal aid for women victims of domestic violence
- **Violation(s):** Articles 2.d (refrain from discrimination), 2.e (measures to eliminate discrimination), and 16.1.h (equality of spouses regarding property) CEDAW

CEDAW

Communication No. 19/2008

Cecilia Kell

(cont.)



- **Recommendation(s):**
 - Concerning the author of the communication
 - Provide housing commensurate in quality, location and size to the one that she was deprived of
 - Provide appropriate monetary compensation for material and moral damages commensurate with the gravity of the violations of her rights
 - General
 - Recruit and train more aboriginal women to provide legal aid to women from their communities, including on domestic violence and property rights
 - Review its legal aid system to ensure that aboriginal women who are victims of domestic violence have effective access to justice
 - Give due consideration to CEDAW's views and recommendations, and submit, within six months, a written response, including any information on any action taken in the light of CEDAW's views and recommendations.
 - Canada is also requested to publish CEDAW's views and recommendations and to have them widely disseminated in order to reach all relevant sectors of society.

CEDAW

Communication No. 19/2008

Cecilia Kell

(cont.)



- **Implementation:**
 - Publically available information does not reflect that Canada has provided information on follow-up with CEDAW's views and recommendations
- **Compliance status:** follow-up dialogue would continue (2016)

CCPR

Communication No. 1881/2009

Masih Shakeel



- **Adopted:** 24/July/2013
- **Victim(s):** Christian Pastor from Pakistan
- **Counsel:** Stewart Istvanffy
- **Responsible entity:** Federal Government
- **Main issue(s):** refugee determination system, application for leave for judicial review, PRRA and H&C applications
- **Violation(s):** removal would violate Articles 6.1 (right to life) and 7 (prohibition of torture or CIDTP) ICCPR
- **Recommendation(s):**
 - Provide effective remedy, including full reconsideration of claim regarding the risk of treatment contrary to articles 6.1 and 7 ICCPR should he be returned to Pakistan, taking into account Canada's obligations under the Covenant.
 - Prevent similar violations in the future
 - Publish Views and disseminate them broadly in Canada's official languages
 - Present information within 180 days

CCPR

Communication No. 1881/2009

Masih Shakeel

(cont.)



■ Implementation:

- “The Views are the latest in a troubling trend of views where the Committee has substituted its own evaluation of the facts and evidence for those of domestic organs.”
- 13/Dec/2013: H&C application was, in principle, approved; he is undergoing the requisite background checks before his application for permanent residence can be determined; his removal is stayed in the meantime; and, provided that he is granted permanent resident status, he will not be subject to removal from Canada, unless he violates any of the conditions of his status.

■ Compliance status:

- 2014: Follow-up dialogue ongoing, pending receipt of the confirmation that the H&C application was approved.
- 2016: Follow-up dialogue ongoing



CANADA

PRELIMINARY FINDINGS ON STRUCTURAL ASPECTS



Legal and constitutional aspects relevant to implementation



Three aspects of the Canadian legal and constitutional framework relevant to the implementation of human rights treaties:

1. Treaty adherence is an Executive Act
2. Canadian Federalism
3. Dualist System

“These three features of the Canada system render it unique and from a structural perspective, one of the most difficult places in the world for the purposes of implementing international human rights treaties.”

(Elisabeth Eid, Senior Counsel, Human Rights Law Section Department of Justice Canada, [“Interaction between international and domestic human rights law: a Canadian perspective”](#),

October 2001, pp. 1-3)

Continuing Committee of Officials on Human Rights (CCOHR)



Criticisms:

- Meets behind closed doors
- Lack of policy-making and/or decision-making authorities
- Methodology of civil society consultations (formal lectures and presentation of recommendations)
- Current FPT cooperation mechanisms fall into the political rather than the legal realm

Recognitions:

- Greater efforts to ensure more active participation from civil society, despite budgetary constraints

Recommendations:

- Revision of the mandate and procedures
- Transfer of operations from Canadian Heritage to Justice Canada, without this resulting “in additional barriers being imposed through solicitor-client privilege with Department of Justice lawyers in their dealings with other departments.”

Sources:

- Dec. 2001: “[Promises to Keep: Implementing Canada’s Human Rights Obligations](#)”, Standing Senate Committee on Human Rights
- April 2007: “[Children: The Silenced Citizens – Effective implementation of Canada’s international obligations with respect to the rights of children](#)”, Standing Senate Committee on Human Rights, Recommendation 22
- June 2010: “[Canada and the United Nations Human Rights Council: Charting a new course](#)”, Standing Senate Committee on Human Rights, Recommendations 18 and 19
- March 2015: [Canadian Heritage – Evaluation of the Human Rights Program](#) (covering fiscal years 2009-2014), Evaluation Services Directorate

Questions for Discussion



1. What do you think of Canada's mechanisms and processes to follow-up on implementation of international recommendations?
 - A. Are there particularities in relation to the Federal / Provincial-Territorial levels?
 - B. Are there distinctions between recommendations originating in individual communications and those stemming from periodic treaty reviews?

2. What changes would you instigate to help Canada deal with implementation more effectively?
 - A. Which institutions/bodies could help implementation?
 - B. Can you relate to any personal experiences?