February 2, 2026

Joint Submission of the Social Rights Advocacy Centre (SRAC) and the International Network for Economic, Social and Cultural Rights (ESCR-Net) for the 7th Periodic Review of Canada

Access to Effective Remedies for Violations of the Rights to Life and Non-Discrimination

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Overview

These joint submissions from the International Network for Economic, Social and Cultural Rights[1] (ESCR-Net) and the Social Rights Advocacy Centre (SRAC)[2] address systemic failures in Canada's provision of effective remedies for violations of the rights to life and non-discrimination under articles 6 and 26 of the International Covenant on Civil and Political Rights ("ICCPR"), contrary to article 2(3).

The submissions focus on three interrelated issues:

1. Canada's refusal to give effect to the Committee's Views in *Toussaint v. Canada*[3], exposing irregular migrants to continuing and foreseeable risks to life and health;
2. Barriers to access to domestic remedies, including Canada's refusal to adopt interpretations of rights to life and non-discrimination in the *Canadian Charter of Rights and Freedoms* (the *Canadian Charter*) consistent with its obligations under the ICCPR, notwithstanding the presumption of conformity between the *Canadian Charter* and ratified treaties; and
3. A systemic denial of access to effective remedies resulting from an incorrect application of the interdependence and indivisibility of human rights, whereby remedies requiring positive measures are denied on the basis that the Canadian Charter does not contain "freestanding" socio-economic rights.

Taken together, these issues raise serious concerns about Canada's compliance with its obligations under articles 2(3), 6 and 26 of the ICCPR, including its duty to act in good faith (*pacta sunt servanda*) by accepting accountability for obligations under the Covenant as interpreted by the Committee, and to ensure that individuals found by the Committee to be victims of violations of rights under the ICCPR have access to full and effective hearings before courts in Canada.

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[1] ESCR-Net is the largest global network of organizations, social movements, academics and advocates devoted to the realization of human rights and social justice. ESCR-Net is made up of over 300 organizational and individual members in 80 countries, including Canada, working collectively, among other initiatives, to engage with UN human rights treaty bodies as well as regional human rights mechanisms and processes, for the purpose of advancing the enjoyment of human rights.

[2] Social Rights Advocacy Centre is a Canadian not for profit NGO supporting access to justice for social rights in Canada and around the world through an inclusive and accountable human rights practice.

[3] *Toussaint v Canada CCPR/C/123/D/2348/2014* (30 August 2018).

1. Canada's Refusal to Implement *Toussaint v. Canada*: Access to Essential Health Care for Irregular Migrants

In 2018, the Committee issued its Views in *Toussaint v. Canada*, finding that Canada violated articles 6 and 26 of the ICCPR by denying Ms. Toussaint access to essential health care under the Interim Federal Health Program (IFHP), placing her life at risk and causing long term harm to her health.[4]

The Committee held that State parties have a minimum obligation to ensure access to existing health care services where denial would expose a person to a reasonably foreseeable risk of loss of life or irreversible harm, and concluded that Canada must take steps to prevent similar violations, including by reviewing its legislation and policies to ensure access to essential health care where there is a risk to life.[5]

Canada responded that it "cannot accept the broad scope that the Committee has given to article 6 in these views" and informed the Committee that it would take no further measures to give effect to the Views.[6] As a result, irregular migrants in Canada continue to be denied access to essential health care even where their lives are at serious risk. Canada's refusal to implement the Committee's Views in the case of *Toussaint v Canada* has deprived an estimated 500,000 irregular migrants of access to health care when their lives are at risk.[7]

Canada's position reflects a broader and troubling approach to treaty-body follow-up: namely, that implementation of Views is entirely discretionary and contingent on a particular government's agreement with the Committee's interpretation of the Covenant.

By ratifying the OP-ICCPR, Canada did not agree merely to comply with Committee decisions with which it concurs. Rather, it recognized the competence of the Human Rights Committee to receive, consider, and determine individual communications, and to interpret and apply the ICCPR in doing so. The Optional Protocol presupposes that the Committee's interpretations may differ from those of Canadian governments responsible for implementing the Covenant; meaningful participation in the procedure requires good-faith engagement with the Committee's authoritative interpretation of the Covenant, not selective acceptance based on Canada's own interpretation of its obligations.

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[4] *Toussaint v Canada CCPR/C/123/D/2348/2014* (30 August 2018).
[5] Ibid at para 11.3 and para 13.
[6] Government of Canada, "Response of The Government Of Canada to the Views of the Human Rights Committee Concerning Communication No. 2348/2014 Submitted By Ms. Nell Toussaint", 1 February 2019 at paras 16 and 34.
[7] Question Period Note: Undocumented Migrants IRCC-2024-QP-00032 (Apr 24, 2024).

Questions to Raise with Canada

1. **Please provide details of Canada's follow-up to the Committee's Views in *Toussaint v Canada* including consultation with civil society organizations, medical professionals, and affected communities.**
2. **In light of its stated commitment to the international rules based order and the consensus among international human rights bodies that the right to life requires positive measures to protect and ensure the right to life as described by this Committee in General Comment 36, will Canada reconsider its rejection of the Committee's interpretation of its obligations under article 6 in General Comment 36 and of the Committee's Views in *Toussaint v Canada*?**

Key Recommendation

Canada should reconsider its previous opposition to the Committee's recognition that the right to life imposes positive obligations to address general conditions in society that pose systemic threats to the right to life as described in General Comment 36, including the obligation to ensure access to publicly funded essential health care as determined by the Committee in *Toussaint v Canada*.

Canada should recognize immigration status as a prohibited ground of discrimination under the ICCPR and promote interpretations of section 15 of the Charter consistent with this.

Canada should institute a review of federal, provincial and territorial legislation, policies, and practices to ensure that all irregular migrants have access to essential health care so as to implement in good faith the Committee's Views in *Toussaint v Canada*.

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2. Access to Effective Domestic Remedies to Rights to Life and Non-Discrimination under the Canadian Charter

Article 2(3) of the Covenant requires States parties to ensure that individuals whose rights have been violated have access to effective remedies. In Canada, ratified treaties are not directly enforceable by domestic courts unless incorporated into domestic law. Instead of direct enforcement, Canadian governments and courts have committed to ensuring effective remedies through domestic constitutional and legislative mechanisms, interpreted in conformity with international human rights obligations.

The Supreme Court of Canada has repeatedly affirmed that:

- legislation is presumed to conform to international law[8]; and
- the *Canadian Charter of Rights and Freedoms* should generally be presumed to provide protection at least as great as that afforded by comparable provisions in ratified international human rights treaties, including the ICCPR.[9]

The *Canadian Charter* has therefore been described as the primary domestic vehicle through which Canada gives effect to Covenant rights, particularly through the rights to life, liberty and security of the person in section 7 and the right to equality in section 15.[10]

In Ms. Toussaint's case, Canadian courts declined relief prior to the Committee's Views in part because, at that time, there was no treaty-body jurisprudence addressing whether denial of essential health care to irregular migrants could violate the right to life and state obligations to ensure access to health care were "contested."[11] That jurisprudential gap has now been authoritatively addressed by the Committee.

A critical issue in the good faith implementation of the Committee's Views that is highlighted in the *Toussaint* case is whether individuals whom the Committee has found to have previously exhausted domestic remedies and who have been found to be victims of Covenant violations may access domestic courts after having received a decision from the Human Rights Committee, to seek remedies under domestic law and to allow domestic courts to consider the implications of the Committee's Views. If courts are prevented—procedurally or conceptually—from considering such claims, pursuing claims under the OP-ICESCR would be largely futile and article 2(3) would be rendered ineffective.

This issue is not theoretical. Following the Committee's Views, Ms. Toussaint commenced Charter proceedings seeking a determination of whether Canada's refusal to implement the Views by reviewing legislation and policy to ensure the non-repetition of the denial of essential health care when life is at risk itself violates sections 7 and 15 of the *Canadian Charter,* interpreted in light of the Committee's Views.[12] Canada brought a motion to dismiss this claim, on the basis that the courts' previous interpretation of the right to life must stand and that the Committee's Views are not binding. Fortunately, Canada's motion was dismissed by the court, which found that the arguments advanced by Canada were prejudicial because Canada mischaracterized her claim to a right to life as a purely socio-economic rights claim to "free health care" outside the scope of the right to life in the Canadian Charter.

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[8] *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, paras 69–71; *Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65, para 114.
[9] *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313 at para 59; *R v Hape*, 2007 SCC 26 at para 53. *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32 at paras 31-32; *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10, at para 317.
[10] *R v Ewanchuk* 1999 711 (SCC), [1999] 1 SCR 330, at para 73
[11] *Toussaint v. Canada (Attorney General)*, 2010 FC 810 (CanLII), [2011] 4 FCR 367 at para 70.
[12] Toussaint v. Canada (Attorney General) 2022 ONSC 4747

Tragically, Ms Toussaint died shortly after the decision of the court allowing her claim to proceed, but her mother, Ann Toussaint, has been authorized by the court to continue Nell Toussaint's claim on, seeking the systemic remedy of non-repetition.[13] Ann Toussaint has asked to be recognized by the Committee and by Canada as the author for the purposes of follow-up to the Committee's Views.[14] The ongoing Toussaint case therefore provides an opportunity for Canada and for Canadian courts to clarify how access to effective remedies before domestic courts may be provided subsequent to a decision by the Committee under the OP-ICESCR.

Questions to Raise with Canada

5. **Does Canada accept that article 2(3) requires that individuals found by the Committee to be victims of Covenant violations should have access to courts to pursue effective domestic remedies and to allow courts to consider the implications of the Committee's Views for their rights under the Canadian Charter?**
6. **Does Canada support the right of the family of the author in *Toussaint v. Canada* to seek a judicial determination of Charter compliance informed by the Committee's View and to seek the implementation of the Views on that basis?**

Key Recommendation

Canada should ensure that where the Committee finds that an individual has a victim of a violation of rights under the ICCPR, the victim is afforded access to courts to pursue effective remedies and to allow courts to consider the implications of the Committee's Views for the interpretation of rights under the Canadian Charter. This principle should be applied by Canada in the case of Toussaint v Canada by ensuring that Nell Toussaint's mother, Ann Toussaint, is able to pursue the systemic remedy sought by Nell Toussaint under the *Canadian Charter*.

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3. Misapplication of Interdependence and Indivisibility of Human Rights

Canadian governments and courts have frequently adopted an incorrect application of the principles of interdependence and indivisibility of human rights. Where protection of the rights to life or non-discrimination requires positive measures—such as access to publicly funded

[13] Order of Justice Vermette Court File No. CV-20-00649404-000 (October 26, 2023)
[14] Complainant's Submissions to UN Human Rights Committee on Follow-up (March 23, 2023); AI-ESCR-Net Submissions on Follow-up to UN Human Rights Committee (March 23, 2023)

health care or housing—governments have argued that such claims are non-justiciable because the Charter contains no "freestanding" right to health care or housing.[15]

This reasoning has resulted in a systemic and discriminatory denial of protection for people living in poverty, homelessness, or irregular migration status, despite uncontested evidence that denial of health care or housing can lead to serious illness and death.

In *Toussaint*, Canada advanced this same argument before the Committee, asserting that the claim improperly conflated the right to life with the right to health. The Committee expressly rejected this position, affirming that the author alleged a failure to protect life where, in her circumstances, access to essential health care was required.

A similar pattern has emerged in other cases involving access to health care or addressing homelessness, where claims framed under the rights to life and non-discrimination have been dismissed as claims to freestanding socio-economic rights that are argued by Canada to be non-justiciable in Canadian law.

The effect is a two-tier conception of the right to life: it has been applied where wealthy claimants have been denied access to privately funded health care but denied where disadvantaged claimants require access to publicly funded health care or positive measures to address homelessness.[16]

In the *Kanyinda* case, in which ESCR-Net intervened at the Supreme Court of Canada, the Attorney General for Quebec and other provincial Attorneys General argued that immigration status is not a prohibited ground of discrimination and that governments are under no obligation to ensure that women have access to subsidized childcare to address systemic inequality in the labour force faced by women with children.[17] At the time of submission, the Court has not released its decision in this case, but it will be important for the Committee to clarify Canada's obligations under the ICCPR to take positive measures to address women's inequality in access to work, including providing access to affordable childcare, and to prohibit discrimination on the ground of immigration status.

Questions to Raise with Canada

8. **Does Canada agree that the right to life must apply equally to those who cannot afford private health care so as to ensure access to publicly funded health care when life may be at risk, including non-emergency diagnostic and preventative care?**

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[15] *Toussaint v. Canada (Attorney General)*, 2011 FCA 213, [2013] 1 FCR 374 CA 213, at paras 77 79; *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 at para 30.
[16] *Canadian Doctors For Refugee Care v. Canada (Attorney General)*, 2014 FC 651 at para 571 ; *Victoria (City) v. Adams*, 2009 BCCA 563; *Heegsma v. Hamilton (City)*, 2024 ONSC 7154 (under appeal to the ONCA).
[17] Mémoire de l'appelant SCC Dossier No 41210.

9. **Does Canada accept that the absence of freestanding constitutional rights to health care or housing does not absolve the State of its obligation to protect the right to life by addressing homelessness and ensuring access to essential health care?**

10. **Does Canada agree that the right to equality and non-discrimination requires positive measures to address systemic inequality in access to work faced by women, including ensuring access to affordable childcare?**

Key Recommendations

Canada must ensure that the rights to life and non-discrimination are interpreted and applied in a manner consistent with the interdependence and indivisibility of human rights, and that individuals are not denied protection under articles 6 and 26 because the measures required to protect life or substantive equality require access to publicly funded health care, housing or other services.

Canada should clarify in its submissions to courts that obligations to ensure the right to life and equality may intersect with rights protected in the ICESCR and that access to justice and effective remedies for these rights should not be denied on the basis that Canada's Charter does not contain freestanding socio-economic rights.

IV. Good Faith, Pacta Sunt Servanda as an Enforceable Standard Within Domestic Courts

After concerted efforts to convince Canada to implement the Committee's Views in her case, Nell Toussaint commenced an action in the Ontario Superior Court of Justice seeking remedies under sections 7 and 15 of the *Canadian Charter*, including a determination of whether Canada's refusal to take measures necessary to ensure access to essential health care for irregular migrants where life is at risk violates the Charter. In its motion to strike the claim Canada argued that Ms Toussaint improperly sought to treat the Committee's views as binding and directly enforceable by domestic courts and sought to constitutionalize a freestanding right to health care.[18] In dismissing the motion, Justice Perell rejected Canada's mischaracterization of the claim and emphasized that the claim concerned state conduct that foreseeably endangered life, engaging the core protections of the right to life under the ICCPR and under section 7 of the *Canadian Charter*.[19] Justice Perell held that while "the Human Rights Committee as to whether there has

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[18] Ontario Superior Court of Justice, *Factum of the Attorney General of Canada on the Motion to Strike*, Court File No. CV-20-00649404-0000

[19] *Toussaint v. Canada (Attorney General)*, 2022 ONSC 4747 at para 134. Justice Perell described Canada's argument as follows:

> In a dog whistle argument that reeks of the prejudicial stereotype that immigrants come to Canada to milk the welfare system, Canada mischaracterizes Ms. Toussaint's *Charter* claim as a right to receive free health

been a human rights violation are not binding under international law; however, they are highly persuasive." He cited the finding of the International Court of Justice that "great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty."[20]

Of particular significance, Justice Perell recognized that good faith and the principle of *pacta sunt servanda* are universally recognized principles of international law, noting that it is a principle of customary international law and may also be understood as peremptory norms (*jus cogens*).[21] While courts in Canada do not consider obligations under international human rights law to be directly enforceable without domestic statutory incorporation, Justice Perell noted that decisions regarding the implementation of decisions and recommendations are certainly subject to review for Charter compliance and for compliance with good faith obligations under international law.

This recognition is directly relevant to article 2(3) of the Covenant. If Canada may simply disregard Committee Views whenever it disagrees with them, the individual communications procedure is rendered ineffective, and the obligation of good-faith performance of treaties is undermined.

Justice Perell's decision affirms that Canadian courts are capable of scrutinizing whether Canada's response to treaty-body findings meets domestic and international standards of good faith.

Questions to Raise with Canada

10. **Does Canada recognize the principle of *pacta sunt servanda* as a universally accepted principle of international law that may be applied by courts in reviewing Canada's response to the Committee's Views in cases such as *Toussaint v Canada*?**

Key Recommendation

The Committee should recommend that Canada affirms, in law and practice, that ratification of the Optional Protocol entails a binding obligation to engage with Committee Views in good faith, consistent with the principle of *pacta sunt servanda*, and that domestic courts have an important role to play in ensuring that access to effective remedies by reviewing whether responses to the Committee's Views are consistent with the good faith obligations recognized in the Vienna Convention on the Law of Treaties.

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care anywhere in the world, regardless of one's lack of status" or as a right to receive "an optimum level of health insurance and as a claim for a purely socio-economic right which is outside the guarantees of the *Canadian Charter of Rights and Freedoms*.

[20] Ibid, at para 37. Citing *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo),* (2011) 50 ILM 37 at para. 66.

[21] Ibid at para 28.

All of which is respectfully submitted this 2nd day of February 2026, by:

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