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End of Mission Statement by the United Nations Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar, on her visit to Canada

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persons with disabilities, I conclude today my first official visit to Canada, which took place from 2 to 12 April 2019. I am an independent expert who reports to the United Nations Human Rights Council and the General Assembly, and advises on progress, opportunities and challenges encountered in the implementation of the rights of persons with disabilities worldwide.

I would like to begin by warmly thanking the Government of Canada for the invitation to visit the country and assess, in a spirit of dialogue and cooperation, the level of enjoyment of the rights of persons with disabilities, the opportunities and existing challenges; and for the transparency, openness and excellent cooperation extended to me prior and during the visit. I would like to express my particular appreciation to the focal points within the Global Affairs Canada and the Office for Disability Issues for coordinating my visit.

I would like to especially thank all the persons with disabilities and their representative organizations with whom I met, who shared with me their situation, concerns and desires for change, including self-advocates with intellectual disabilities, persons with psychosocial disabilities, women and young girls from various socio-economic backgrounds, and indigenous persons with disabilities from across the country.

During my stay, I had discussions with numerous senior officials representing different federal Government's departments, agencies, crown corporations and special operating agencies, including Global Affairs, Justice, Employment and Social Development, Treasury Board, Health, Women and Gender Equality, Indigenous Services, Statistics, Canada Mortgage and Housing Corporation, Radio-Television and Telecommunications Commission, Transportation Agency. I also had the opportunity to meet with Honorable Carla Qualtrough, Minister of Public Services and Procurement and Accessibility, and Senator Chantal



At the provincial level, I met with senior officials representing the governments of Ontario, Quebec, New Brunswick and Nova Scotia. I also had the honour to meet with the Lieutenant Governor and the Minister for Seniors Affairs and Accessibility of Ontario, l'Office des personnes handicapées du Québec, the Minister of Education and Early Childhood Development of New Brunswick and the Speaker of the House and the Minister of Justice of Nova Scotia. In addition, I had a teleconference with senior officials of the Ministry of Social Development and Poverty Reduction, Ministry of Attorney General, Ministry of Health and Ministry of Mental Health and Addictions of British Columbia. I also met with the Canadian Human Rights Commission, the Québec Commission des droits de la personne et des droits de la jeunesse, and the Nova Scotia Human Rights Commission.

I visited the Centre for Addiction and Mental Health (CAMH) in Toronto, the Integrated University Health and Social Services Center (CIUSSS) of Center-Sud-de-l'Île in Montreal, the Nashwaaksis Middle School in Fredericton, and the unit for persons with psychosocial and intellectual disabilities called "Emerald Hall" at the Nova Scotia Hospital in Halifax.

I am pleased to present some of my preliminary observations and recommendations, which I will elaborate in more detail in a report to be present at the 43rd session of the UN Human Rights Council in March 2020. These preliminary observations neither reflect all the issues presented to me, nor all the initiatives undertaken by the federal, provincial and territorial governments of Canada in the area of disability.

Legal and policy framework

At the international level, Canada has ratified the Convention on the rights of persons with disabilities (CRPD) and its Optional Protocol, the "Marrakesh Treaty to Facilitate Access to Published Works for Persons



of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. I would like to encourage the country to ratify all these international human rights instruments as well as to consider withdrawing its interpretative declaration on article 12(4) of the CRPD.

At Constitutional level, the Canadian Charter of Rights and Freedoms of 1982 guarantees in its section 15 the right to equality and non-discrimination on a non-exhaustive list of prohibited grounds, which includes disability.

Due to Canada's federal structure, competencies are divided among federal, provincial and territorial governments. Therefore, various federal, provincial and territorial laws regulate the rights of persons with disabilities.

The federal legislative framework considers the rights of persons with disabilities under various laws, including the Criminal Code and Canada Evidence Act, the Canada Elections Act, the Employment Equity Act, the Health Act, the Pension Plan Act, the Income Tax Act, the Disability Savings Act, the Student Loans and Student Financial Assistance Acts, the Air Transportation Regulations, and the Broadcasting Act. However, up to today there is no specific legislation at federal level on the rights of persons with disabilities and the existing legislation does not cover the entire spectrum of rights contained in the CRPD, nor it is fully compliant with it.

At the provincial level, only Ontario, Manitoba, Nova Scotia and Quebec have enacted disability specific legislation, none of which is comprehensive nor fully in line with the CRPD. In addition, other pieces of



In general, Canada has yet to undertake a comprehensive review process to harmonize all its legislation with the CRPD. I would like to remind that governments at all levels are responsible for the implementation of the CRPD. Article 4 (5) provides that obligations undertaken by States Parties to the CRPD shall extend to all parts of federal States without any limitations or exceptions. I strongly encourage the relevant legislative authorities at the federal, provincial and territorial levels to undertake a comprehensive legislative review and complete the process of incorporation of the treaty, including the legal harmonization, in accordance with article 4 of the CRPD.

I welcome the introduction of Bill C-81 known as “Accessible Canada Act”, which aims at achieving a barrier-free Canada, currently under consideration in the Senate. I was informed of the ongoing consultations and engagement with First Nations governments to clarify how the Bill might apply within its jurisdictions. I would like to encourage all authorities involved to guarantee the enjoyment of all indigenous persons with disabilities of their rights without the risk of assimilation and in the shortest possible timeframe. Sufficient resources should be allocated to secure the success of this process.

I also noted that there is no national policy in Canada to coordinate and guide the implementation of the CRPD at the national, federal, provincial or territory levels. The implementation of the Sustainable Development Goals (SDG) at domestic level provides an opportunity to include the rights of persons with disabilities in national development policies and plans. In that context, I welcome Canada’s commitment to support the implementation of the 2030 Agenda on Sustainable Development domestically and internationally. I would like to highlight that efforts to achieve the SDGs should always consider the rights of persons with



The Office for Disability Issues (ODI) is the federal focal point on disability, as provided for by article 33(1) of the Convention. This Office works to build capacity, knowledge and foster coherent disability-related programmes across the government of Canada. Each province and territorial government have a similar office responsible for policy advice and expertise on disability issues within their jurisdiction.

However, Canada lacks a mechanism to coordinate and harmonize the initiatives carried out at the federal, provincial and territorial levels by these different focal points. Nor are there sufficient efforts to coordinate the responses at provincial/territorial levels. This lack of coordination mechanisms is one critical element that limits the mainstreaming and implementation of the CRPD across Canada.

Canada is also yet to appoint an independent monitoring mechanism as required by article 33 (2) of the Convention to promote, protect and monitor its implementation. In this regard, I noticed with appreciation that Bill C-81 proposes the designation of the Canadian Human Rights Commission as the independent body responsible for monitoring the Government of Canada's implementation of the CRPD. I urge the Government to provide the appropriate financial and human resources required to the Canadian Human Rights Commission to implement this mandate at the federal, provincial and territorial levels.

In addition, I would like to encourage each province and territory to also designate independent monitoring mechanisms in line with article 33(2) of the Convention in their respective areas of jurisdiction.

Data collection

One in five Canadians (i.e. some 6.2 million people) is a person with disabilities. Statistics Canada has strong socio-demographic data and



situation of indigenous persons with disabilities living on reserves.

I welcome Canada's ability to disaggregate data on disability from existing surveys, such as household income and health surveys, through the use of the Canadian Disability Screening Questions (DSQ) and the short set of questions on disability formulated by the Washington Group on Disability Statistics. These are important steps to monitor the implementation of the CRPD and the SDGs in an international comparable manner.

However, I have noted with concern that the statistical and administrative information available is not being used to inform the design, implementation and monitoring of policies and programmes.

General considerations on the current disability framework and response

The federal government expressed its vision to make Canada accessible and inclusive of persons with disabilities. Over the last years, the government has promoted or enhanced various disability-related initiatives, including Bill C-81, a new Strategy for an Accessible Government, improvements to the Canadian Disability Saving Program, and the Enabling Accessibility Fund, amongst others.

Nevertheless, during my visit I have noticed that discussions about the rights of persons with disabilities are still framed in terms of social assistance, rather than from a human rights-based approach. While the Canadian Charter of Rights and Freedoms enshrines the right to non-discrimination, and federal, provincial and territorial human rights laws recognise a duty to accommodate, which allows for individual remedies, this is insufficient to ensure a systemic transformation of society.

I would like to remind the authorities that the CRPD embraces a substantive model of equality, which goes beyond non-discriminatory



recognition and enjoyment of their rights.

I have also noted significant disparities in the areas of accessibility and access to education, health, administration of justice, and social protection depending on where a person with disabilities lives in Canada. As the availability and quality of services varies considerably from one place to another, this restricts the freedom of movement of persons with disabilities in the country. The situation of indigenous persons with disabilities is particularly worrisome, as they are far behind in the enjoyment of their rights, and they do not have access to the same services and opportunities, many of which are only provided outside the reserves and in non-cultural sensitive ways.

There is an urgent need for high-level leadership at the federal, provincial and territorial levels to guide and guarantee an effective and coordinated implementation of the rights of persons with disabilities across Canada.

Accessibility to the physical environment, information and communications

During my visit, I have observed that public and private infrastructures, as well as the public transport systems, are still not fully accessible to persons with disabilities, with some variations between provinces. While some provinces and territories have passed legislation in this regard, implementation and enforcement remain insufficient.

The introduction of Bill C-81, known as the Accessible Canada Act, is an important step to foster accessibility within areas under federal jurisdiction, including the use of public procurement as a tool to ensure that goods and services federally purchased are accessible for persons with disabilities. However, I note with concern the absence of



to learn about efforts made by the Canadian Radio-television and Telecommunications Commission with regard to making broadcasting services accessible through closed captioning and audio description in English and French. I also welcome the decision of this Commission to establish an obligation for carriers to provide relay service. On the use of sign language, I am concerned that both the American and Quebec Sign Languages are not officially recognized in Canada, and that the provision of sign language interpretation services remains very limited, including to access basic services.

Education

Education in Canada falls under the jurisdiction of the provinces and territories. Significant differences in practice are seen across the country. I was extremely pleased to learn about the fully inclusive education system implemented in New Brunswick, which is one of the best in the world and a role model, where all children with disabilities attend regular schools and receive individualized support, irrespective of the level of their support needs, under a framework of universal design for learning. The New Brunswick government has also implemented a child and youth-centered Integrated Services Delivery framework, which involves a multidisciplinary and coordinated response across agencies to support children and youth with disabilities.

However, I am concerned that most provincial and territorial policies are yet to implement fully inclusive education systems and that students with disabilities in other parts of Canada may receive considerably different levels of support. I was informed that many children with disabilities are still being taught in segregated classrooms or in special education schools, and I received worrisome reports that children with disabilities can be put on partial school days or temporarily removed from school, for periods of up to six months without access to education.



and financial pressure. I was also informed that children with disabilities in segregated classes or those that have followed some kind of individualized education plan may receive a different certification or diploma than other children, which limits their opportunities for enrolling in education at higher levels.

Legal capacity

In Canada, persons with intellectual and psychosocial disabilities are systematically denied their legal capacity through substitute decision-making regimes, such as guardianship and curatorship, reportedly for their own protection. For example, in Ontario there are approximately 20,800 adults under different forms of guardianship, whereas in Quebec there are about 34,000 adults under guardianship or curatorship. In reality, far from being protected, persons with disabilities placed under these measures are deprived of their equal recognition before the law and other rights, and are at a higher risk of abuse and institutionalization.

There are successful experiences of supported decision-making in Canada, such as those in British Columbia, geared to enable persons with disabilities to exercise choice and control over their own lives. While some of these practices have existed for many years, the lack of an enabling legal framework limits their impact and their possibility to scale them up.

Against this background, I would like to urge all provinces and territories to initiate comprehensive legal review processes of their legal systems to enable the full implementation of the right to legal capacity of persons with disabilities, on equal basis with others. It is also important to provide financial and technical assistance to civil society organizations that can support the implementation of supported decision-making initiatives.



recommendation to withdraw Canada's reservation to article 12(4) of the CRPD and speed up the process to eliminate all forms of substitute decision-making across the country.

Access to justice

There is a duty to accommodate persons with disabilities' needs in all proceedings before federal courts and tribunals based on the Canadian Human Rights Act and the Criminal Code. Different provinces and territories also recognize this obligation in their respective legislations. Moreover, I was informed of the efforts of the Canadian Judicial Council to develop training courses and guidelines on access to justice of persons with disabilities.

I would like to remind the federal, provincial and territorial governments that the obligation to provide procedural accommodation to persons with disabilities in all legal proceeding, as established in article 13 of the CRPD, is distinct from the obligation to provide reasonable accommodation, as the first is not subjected to the test of undue hardship.

In addition, I am very concerned about the overrepresentation of persons with disabilities, particularly those belonging to indigenous or other minority communities, in both prisons and the juvenile justice system. I have also received alarming information that persons with psychosocial disabilities are diverted to mental health courts for minor offences where they are subjected to higher penalties and stricter regimes.

Deprivation of liberty and involuntary treatment

Provincial and territorial legislation across Canada provides for the involuntary hospitalization and treatment of persons with psychosocial disabilities, in contradiction to article 14 and 25 of the CRPD. For example,



In addition, most jurisdictions have passed legislation permitting clinician-initiated community treatment orders, which compels persons with psychosocial disabilities to comply with a treatment plan that generally includes medication and counselling. I have received several complaints regarding the implementation of these orders, including the absence of procedural guarantees, the lack of alternative treatment options and threats of forced hospitalization.

I have been informed that the rates of involuntary admissions and community treatment orders are increasing across Canada. Similarly, the number of inpatient beds in psychiatric hospitals, particularly in forensic units, is also increasing. In addition, different interlocutors told me that there is a significant number of persons with psychosocial disabilities who no longer need to be in the hospital but cannot leave due to the lack of community-based alternatives.

I urge the provincial and territorial governments to transform their mental health systems to ensure a rights-based approach and well-funded community-based responses, ensuring that all health care interventions are provided on the basis of free and informed consent.

I have also noticed that there is a lack of independent monitoring of mental health facilities and institutions. I would like to recommend the provincial and territorial governments to establish independent monitoring mechanisms for centers of deprivation of liberty, including hospitals and institutions.

Living independently in the community

I am extremely concerned about the lack of comprehensive responses to guarantee the access of persons with disabilities to the support they need to live independently in their communities. Whereas legislation, services



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Moreover, many support services and programmes are run by non-profit organizations, with limited funding and guidance from the provincial and territorial governments. Consequently, persons with disabilities have limited access to different forms of support (including income support, home support, and respite centers), experiencing long waiting time up to several years. While some pilot projects have shown their potential to transform service provision (e.g., the initiatives to provide personalized direct funding), the overall identification, systematization and scaling-up of such initiatives remain a challenge.

According to Statistics Canada, around 509,000 persons with a health-related condition reside in hospitals, nursing homes, group homes and other long-term facilities. While the majority of larger disability-specific institutions have been closed, the absence of community-based options gives no other alternatives to persons with disabilities than living in institutions and other residential settings where they end up being segregated and isolated from their communities, thus denying their choice of and control over living and support arrangements, and significantly restricting their day-to-day decisions.

Furthermore, I have been informed that persons with disabilities, particularly those with intellectual and psychosocial disabilities, are significantly overrepresented among the homeless population. This rate keeps increasing due to poverty and the lack of community-based services, including adequate and supported housing.

In this regard, I urge the federal, provincial and territorial governments to adopt concrete action plans to prevent the re-institutionalization of persons with disabilities and to ensure the provision of community-based services, including adequate housing. The provision of support to persons with disabilities is not only a human rights obligation of Canada, but also



I am extremely concerned about the implementation of the legislation on medical assistance in dying from a disability perspective. I have been informed that there is no protocol in place to demonstrate that persons with disabilities have been provided with viable alternatives when eligible for assistive dying. I have further received worrisome claims about persons with disabilities in institutions being pressured to seek medical assistance in dying, and practitioners not formally reporting cases involving persons with disabilities. I urge the federal government to investigate these complaints and put into place adequate safeguards to ensure that persons with disabilities do not request assistive dying simply because of the absence of community-based alternatives and palliative care.

Employment and social protection

According to official data from Statistics Canada, 41 per cent of persons with disabilities are unemployed or out of the labor market. This rate is 20 per cent higher than for persons without disabilities, and those actually employed earn less than Canadians without disabilities. Within the federal government, persons with disabilities represent only 5.6 percent of all public servants, occupy less managerial positions, and experience lower rates of promotion.

I welcome the initiative of the federal government, as Canada's largest employer, to improve the recruitment, retention and promotion of persons with disabilities. Similar efforts are necessary at the provincial and territorial levels to increase the employment of persons with disabilities in the public sector.

In relation to social protection, I am deeply concerned by the high rate of poverty among persons with disabilities. While the federal, provincial and territorial governments offer a variety of benefits, including income



Moreover, the existence of different overlapping benefits and programmes makes it difficult for some people with disabilities to navigate the system. Canada needs to review its social protection system to ensure rights-based responses that promote the active citizenship, social inclusion and community participation of persons with disabilities.

Participation of persons with disabilities

In relation to participation in decision-making processes, I was pleased to learn that, in general, the authorities consult with persons with disabilities and their representative organizations. For instance, I have learned about extensive consultations on Bill C-81. However, organizations of persons with disabilities express the need to transition from simply consulting with them towards actively involving them in all decisions that affect them directly or indirectly. Similarly, the authorities are encouraged to make additional efforts to ensure the participation of the diversity of persons with disabilities in decision-making processes, including women and children with disabilities, as well as those belonging to indigenous and racial communities.

I was also informed that the federal government supports organizations of persons with disabilities through the Social Development Partnerships Program, which provides 11 million Canadian dollars annually in project funding and core funding to national disability organizations.. This financial support has not increased over the years and is provided throughout a competitive process that forces national organizations of persons with disabilities to compete among themselves.

I would like to encourage the federal government to review this funding mechanism in order to create an enabling environment for the establishment and functioning of representative organizations of persons with disabilities.



encourage the federal government to ensure that disability inclusion is considered in all Canada's international assistance efforts as a cross-cutting conditionality.

Closing

As a highly-developed nation, Canada still lags behind in the implementation of its obligations under the Convention on the Rights of Persons with Disabilities. There are significant shortcomings in the way the federal, provincial and territorial governments of Canada respect, protect and fulfill the rights of persons with disabilities. Notwithstanding, the country has the potential to undertake a major transformation and fully embrace the human rights based approach to disability introduced by the Convention. The various pilot initiatives and good practices in place could, if adequately scaled up, promote systemic change for persons with disabilities in Canada.

The commitment of Canada to the implementation of the SDGs represents a great opportunity for the implementation of the rights of persons with disabilities, provided that all policy responses at federal, provincial and territorial level are framed in light of the high standards of the CRPD.

Let me conclude by reiterating that I am very grateful to the Government of Canada for inviting me to visit the country. Acknowledging the principles and values of equality, respect of diversity, and fairness – for which Canada is well known internationally – it is my hope that those value also guide all the State's responses vis-à-vis the rights of persons with disabilities.



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