

Countering Policy Exclusions: Canada, disability, and international commitments

February 27, 2025

Transcript from Q&A (participants' names anonymous)

[Deborah Stienstra]: So for the final section of our conversation, we'd like to invite you as the audience to join us. We ask that if you have a question, you do one of two things. You use the raise hand function, which is on the bottom and it says raise hand. You click on that and we'll call on you. Or you post your question in the chat. This is the point you can use the chat. And if it's directed to a specific panelist, Please note that as well. Leah Levac is going to read out any questions from the chat.

So maybe I can start. [Name removed], may I invite you to be our first question asker?

Question 1

[Name removed]: Hey hello everyone. Thank you for this very edifying and informative webinar. My name is [name removed], a doctoral student in sociology at the University of Montreal. I'm from Burkina Faso, West Africa, and I have a physical disability. My research topic is on taking--is on the sexual and reproductive rights, namely how it's incorporated in the Canadian Feminist Act Policy in West Africa.

So I would like to know from all your enriching experiences what analysis you make of Canada's international commitment on the issues of women and girls with disabilities, namely in Africa. Thank you to DAWN Canada for its sustained and constant commitment since the 1980s, to Professor Stienstra for her very edifying articles. And thank you for all. Thanks.

[Deborah]: Thank you. Well, that sounds like a question initially to Bonnie and then I'll ask if any of the other panelists want to answer it. And then, Leah, I do see your hand up, too.

[Bonnie]: It's nice to meet you, [name removed]. And of course, we're here in Montreal. So DAWN Canada's office in Montreal. If you want to come visit us someday, you drop us a note and my contact information is available.

So thank you. The sexual and reproductive rights issues, like I said, one of the things I'm really pleased to confirm is that DAWN Canada is actually beginning to be working on the Government of Canada's Public Health Agency of Canada content and website to actually do some updates. We've just been awarded a grant to work on that for the next two years.

Having said that, the last conference that I was at was in Qatar in 2019 and it was called-- because it was in Qatar, I suppose, it was a sexual reproductive--instead of rights, it was just called sexual reproductive health. And I think Adolphe and all of us understand that even in the context of speaking about sexual and reproductive things in the context of a right is a real challenge for many women, girls and gender-diverse people across the world. I cannot even say how concerned I am for trans people with disabilities in some parts of Africa at this time, and you know, of course across the globe and, but in particular, like I said where, you know, we know of a really serious situation.

So if I'm understanding what you're asking me about, it's whether or not we're making progress in this area. Is that right, [name removed], or did I not understand what you were trying to ask?

Please just come back on.

[Name removed]: Yes, yes, yes. I think it's that and namely, if you have some information regarding the international--[inaudible] areas like Africa, West Africa, for example.

[Bonnie]: Well, I was going to say in terms of some specifics, what I can tell you, DAWN Canada is part of the Global Forum on the Leadership of Women with Disabilities. This is led by women with disabilities from the Global South, including women from Africa. And in terms of the work we've been working on--sort of at a high level, but I won't say it's like going to give us what we need right away--is that we've been working with UN-WOMEN, UN-DESA, and UNITAR towards the idea that there needs to be a much broader understanding across the UN systems and through state parties, of course, about the, both the application of and the accessing of policies that will increase access to sexual reproductive health and care for women in West Africa, but of course, across the African diaspora.

I don't know if you know of the African Disability Forum. The African Disability Forum is a really important cohort of organizations across the African continent. It's a bilingual--to the great credit of my colleagues in South Africa--it's a bilingual French and English, you know, again, the colonizers' language, but across the African state. And I guess what I would say is I'm holding out my hope, my friend, but I can't tell you that there's something specific that I could name. I do know that HI--that's Humanity and Inclusion--are doing some really, really wonderful work, including some of the partnerships they have with us through the EDID Project and other initiatives that DAWN is part of, which is going to see more resources, hopefully including from Global Affairs in terms of the feminist foreign assistance policy directed to sexual reproductive health in a number of countries. I know that Deborah announced just recently a project that will be supported through the EDID initiative with HI that is I think linked to, I'm trying to remember, was it Benin?

[Deborah]: Benin.

[Bonnie]: So I think that's a great example of something that we know is starting to happen. And of course that's our hope is to see through the Making It Work initiative that HI have led for a number of years, more of that happening at the community level working directly with women with disabilities in different West African countries.

[Deborah]: Great, thank you.

[Name removed]: Thank you.

[Deborah]: I'm going to ask Leah to read the questions from--the first question from the--the chat. Leah?

Question 2

[Leah]: Yeah. Thanks, Deborah. And thanks to all of the, excuse me, panelists for your--those great comments. So this question comes from [Name removed]. And [name removed], if I get it wrong, I'm going to paraphrase a tiny bit. So if I get it wrong, please feel free to jump in. [Name removed] writes the courts have been reluctant to use international treaties, partly because they haven't--they're seen as a pure act of the government and not necessarily as having been introduced through local legislation but--or in the country. But now there's a policy for tabling treaties in Parliament and [name removed] is asking whether or not--what your thoughts are about whether or not the government's decision to table a treaty or not in the legislature should signal to a court whether or not to try and apply the treaty in cases before it. [Name removed] is that--I've got the question right?

And if so, I'm going to suggest that Stephanie, we pass it to Stephanie first.

[Deborah]: That's where I was going to go, we're in sync on that one. That sounds like a good Stephanie question.

[Stephanie]: OK, great. [clears throat] Excuse me. Yeah. So, you know, your question makes me immediately think of some cases out of Nova Scotia where a trial court was hearing the case about parents who've had their child removed from their care because the parents themselves had disabilities and the children in one of the cases also had a disability. And so the court in Nova Scotia was addressing the balancing of both the parents with disabilities--their right to have--to care for their children and not discriminate against them just because they're disabled such that they can't be parents--but balancing also with the best interests of the child. And the court in that case, the trial judge--that's like the lowest level of judge--used the UN Convention on the Rights of Persons with Disabilities, specifically the article dealing with the right to have children and create a family to justify

not removing the children from the parents' care. And what happened is that the Court of Appeal was very, very--it wasn't overly angry, but you could tell that there was like some significant pushback from the Court of Appeal in their decision to uphold the original removal of the children. And they said you cannot balance the rights of the parents by using the UN Convention on the Rights of Persons with Disabilities with the best interests of the children. And it was a quite a unique case because usually the judge that hears the case first should be able to make decisions on the parents' competence and ability to be parents because they're actually seeing those parents and hearing the evidence directly from them. But the Court of Appeal said no, we're removing the kids. And you know, I wasn't there, I wasn't the judge. So I don't know the situation. But it was definitely an attempt by a lower court to start to implement the UN Convention on the Rights of Persons with Disabilities in the context of child protection and child welfare.

And so I think that that case would probably be a really instructive case for courts across the country: "Don't get involved in trying to implement treaties at your level. You'll get your hand slapped by the Court of Appeal." So I think it'll take like the Supreme Court's leadership on these issues to say, like--to interpret our domestic laws in accordance with international treaties.

As for the policy on tabling treaties, that I think will be--I haven't, you know--I quickly clicked the link you sent, but it won't, that's not relevant for the treaties we've already signed, like it'll be a going forward. So the issue is like the convention, specifically the Convention on the Rights of Persons with Disabilities and other treaties that we've signed that haven't necessarily been specifically implemented or referred to. What will happen with those in the past, and I think if you look at the number of times courts have cited the Convention on the Rights of Persons with Disabilities, it's very few. And, like I said, the courts that are not like, you know, those top--either the Supreme Court or Courts of Appeal--if they've tried to do it, they've been told don't, don't do that. And it's the international obligations if they conflict with our domestic law, we're not going to accept international treaties as actual law in Canada. So I don't know if that answers it completely, but that's the best I've got for today in terms of my understanding of what--how courts should interpret the adoption of a treaty or the ratification of a treaty at the federal level.

[Deborah]: Great.

[Bonnie]: I just want to add a small comment, Deborah, if you don't mind. Which is really I think because of the example you gave, Stephanie, the example I'll share with everybody is before Canada tabled the--or once Canada tabled Track 2 MAID legislation, two UN special rapporteurs contacted Canada to point out that they were in direct contravention of the UN CRPD in terms of what MAID Track 2 represented. So it's really just again to make the point

that the tension will continue to be there. And the question of what are our treaties worth, I think, comes up when these kind of situations come forward. Because of course, what does the treaty and the Convention on the Rights of People with Disabilities mean if it doesn't fundamentally mean that people with disabilities have the same right to life as other people in this country, when Track 2 MAID says we don't. Thanks.

[Deborah]: Wonderful, Thank you. Ok, we have I think 3 or 4 questions. So I'm going to go to [name removed] next, and then back to the chat, and then I'll go to [name removed] and if we have one--and then to [name removed] after that. Ok. And that will probably be as many as we can get through. So I'm going to ask our panelists to be succinct. [Name removed].

Question 3

[Name removed]: Thank you. I have a question for Lynn and my question is how are spiritual traditions important for the wellness of people?

[Lynn]: OK, So miigwech for that question. I just want to first say--offer something about what the AFN had to say. They wrote a report, they submitted it to the special Rapporteur on the rights of Indigenous people regarding Indigenous people with disabilities. I also put out a submission for that. And so what the AFN said in 2003 is that there's a \$350 billion dollar--billion dollar gap, it exists between the infrastructure, between Indigenous First Nations, between First Nations and the general public. So that's really important. That's a big gap, \$350 billion.

And what does that mean? Well, it results in overcrowding, poorly insulated or substandard housing, health issues, respiratory issues, asthma, and also--which leads to more disability. So it's really important that we think about that infrastructure gap and the resources that are coming out of Indigenous territory. So in the reports, many of the reports you read about Indigenous people and the inadequacies of Canada's policies and healthcare system, a lot of them talk about a lack of Indigenous modalities to health and wellness. And that's really important. They also, of course, talk about racism and sexism in the hospital settings where, you know, we're being harmed and raped, for example. But this issue of spiritual modalities are--it's really important to understand that not only in the situation with First Nation or Indigenous people, but all people, we all have spiritual/cultural overlays. And that's actually where healers can harness our own ability to live better lives and to reach [speaking Anishinaabemowin] meet the good life, for example. And so spiritual traditions and the--it's really, really important. It's not a trivial thing. We can't reduce health and wellness just to physical being, a corporeal being. We all--a lot of Indigenous people, because of issues with intergenerational trauma, such as the residential school and actually the ongoing genocide--we do live with trauma and it's psychological, emotional, and spiritual trauma. It's not "just" physical trauma. And I put

"just" in quotes. So it's really, really important that the medical profession and psychology--that professional psychology--come to understand the importance of Indigenous spiritual positions in Indigenous people's ability to live the good life. Miigwech.

[Deborah]: Thank you. Leah, may I turn over to you for the next question in the chat?

Question 4

[Leah]: Sure, thanks Deborah. Lynn, this question is also directed to you. It comes from someone named [name removed] who is asking if you are able to explain some more about some of the practices that Canada relies on to skirt around its United Nations treaty obligations, recognizing that you have a long history of experience trying to address the issue of unknown and unstated paternity.

[Lynn]: Yeah, So [speaking Anishinaabemowin] Miigwech for that question. And I want to say thank you to Bonnie for for acknowledging women of colour, Indigenous people. I really appreciate that, Bonnie. And I'm also thinking about this--these issues of Charter challenges and going to the United Nations, how difficult it is for us to get there when Canada has all the resources and we don't have any. So, you know, for example, my situation--you know, I grew up in the slums of Toronto with food insecurity and I had to deal with forced relocation. A lot of poor people went through that. And so when, I didn't really quite understand who I was as an Algonquin person because I was essentially scavenging for survival. But eventually, I learned how to read and write and I went to university at the age of 30, and I first applied for Indian status registration in 1994. I was--and they denied me. What happened was, in 1985, I was really struck by how the Indian Act became silent on the issue of unknown and unstated paternity. They just amended the Indian Act in '85 and became silent on it. And I was like, what the heck is that about, that doesn't meet the Charter needs! And so we went for--I went forward with a court case and in that process what--a lot of things happen. So for example, they were arguing that they didn't have a policy on unstated and unknown paternity because the Indian Act was silent on it. But in actual fact they did. They had a standing operating procedure at the level of department, but they refused to say that they had a policy and they refused to disclose that policy through the power of all that funds that they're pulling out of the--out of the land and through the Department of Justice, you know, all their staffers. So that was a really bizarre situation to go silent on in the legislation and to then discriminate against children of unknown and unstated paternity at the place of legislation, and then when--I mean at the place of policy and departmental policy--and then when we were moving toward the court, the judge was really inadequate. She implied and reasoned that because my brother's application was treated the same as my application, I wasn't being discriminated against. Meanwhile, it was--I was being discriminated because of my grandmother's situation. So

that was a really poor reasoning. And then we ended up going to the Court of Appeal. We got permission to go there, and the Department of Justice refused to disclose their policy. They just outright refused. And they did eventually disclose it at the 9th hour and--or, 9th hour, the 11th hour. So these are some of the tactics that Canada uses from all these resources that they have. They're quite manipulative. And then again, as I said, in the situation of--I won at the Court of Appeal, but Sharon McIvor didn't--wasn't happy with the remedy. And she had to go to the United Nations. It took her ten years to go through that process. And so--there's one other thing I just want to say, which is a little bit different than the question. There's some really problematic discourse in the Indian Act called "mentally incompetent" Indian and they're proposing to get rid of that terminology. And also when I was reading the concluding results of the CEDAW, they used the word "cripple." And I just was like, if we can't use the right discourse, where are we? You know, rhetoric shapes how we think--how we think and how we move through the world. So I hope I answered the question and I know I took a tangent at the end.

[Deborah]: Thank you, Lynn. I think we have only time for one more question. So I'm going to invite those--[Name removed] to give her question. [Name removed], may I invite you to put your question in the chat and we'll share it with the panelists, the questions in the chat and invite them to reply to you. I think we have contact information for everyone. So if that's ok with people. [Name removed] may I invite you to be our final--introduce yourself and be our final question asker.

Question 5

[Name removed]: Yeah, I won't take too much [inaudible]. I want to thank you all for your amazing presentation because as someone who comes from the global south we have this misconception that Canada is very developed. So things should be much more better. But now I understand that problem is global wide. So my question is for Stephanie. You mentioned that the government, regarding the statistic, the government clearly admits that they--the data doesn't include those persons with disabilities in the institution. And does the government give any justification for that? Like what could be the reason? Cause without like the exact numbers, how can they develop policy or make any kind of decision? And does this also--could impact the number of women disabilities that the government is like giving us a statistics. So thank you.

[Stephanie]: Hi. Thanks for that question. Yeah, I really do think that it's the government's responsibility to get information on the most vulnerable, the most isolated people with disabilities. And they justify not collecting this data by just saying, you know, this--these settings, I think they--the people maybe aren't able to fill out the census form on their own potentially. So they just gather the information from the administrators of these collective

dwellings and there's been no justification for it. And I think in order to get the data collected on these marginalized people that live in collective dwellings, there would have to be potentially--you could bring a Charter challenge and--on behalf of people in those situations. But I think it's just ultimately based on this idea of people who live in institutions, not respecting them and respecting their lives. And I think, you know, we haven't mentioned this, but I do believe that Canada and the US and Europe often tend to dominate at the UN in terms of like what our cultural values are. And I think the institutionalization issue is one of our biggest shames. And I know in lots of countries in the world, they do not institutionalize elderly people--elderly people are taken care of in homes. And so I just really think that that's something we need to examine is like the direction of who's defining human rights norms. And so Canada, we have so many people who are elderly with disabilities, living in institutional settings, who are erased and we consider that to be OK. And I just--that's not what I want when I grow older. I don't want to live in an institution. I want to live in a home. And so I think, you know, we have to question the who's defining these--these norms and, Canada's, I don't know, shame, I think, of, like, continually institutionalizing people of all ages, but in particularly elderly people. So I would love to be part of a challenge to this, to this way of collecting information. But no, there's been no response or explanation. I'm only assuming that they just consider people living in institutions as incapable of filling out survey questions about their lives.

[Deborah]: I think there's an appointment for you on the Statistics Canada Data Engagement Committee in your future, or at least I'll make sure to pass your name along. Thank you, [Name removed], for that question, and Stephanie for your answer.