

Implementing international human rights into domestic law & policy : The Canadian experience

Overview of Canada

Training for Taiwanese officials
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Presentation Outline

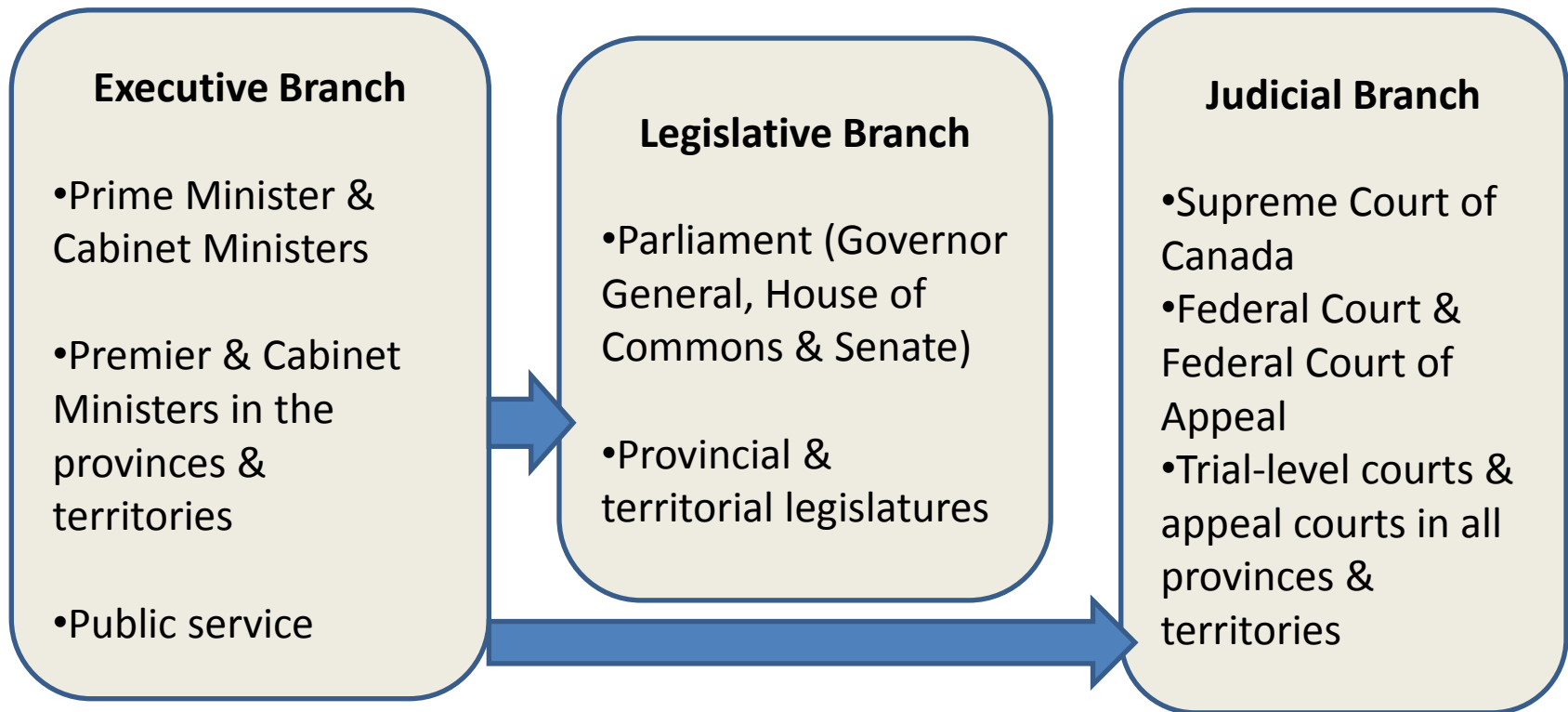
- Canada's political and legal system
- Canada's approach to implementing international human rights treaties
- Overview of Canada's human rights framework

Canada's Political System and Type of Government

Canada's Political System

- A constitutional monarchy
- A federal system of government
 - 10 provinces, 3 territories, 1 federal government
 - Canada's constitution divides legislative jurisdiction between the federal and provincial governments
 - Jurisdiction over human rights is shared
- A parliamentary system based on the British model
- A representative democracy

Three branches of government in Canada



Other government bodies in Canada



Municipalities

(cities, towns,
villages)



**Aboriginal self-
governments**

Canada's Legal System

Canada's Legal System

➤ Derived from various European systems, including:

- English **common law** (judge-made law) and **statutory law** (legislation)
- In the province of Quebec, **civil law** based on the French Napoleonic Code

How is legislation made in Canada?

- A Minister asks officials to develop a policy proposal.
- Officials develop policy in consultation with legal counsel in the Department of Justice, who review it for consistency with human rights standards, and other interested departments. External consultations with interested parties may also occur.
- The proposal is submitted to Cabinet for approval. In the document submitted for Cabinet approval, human rights issues associated with the proposal must be identified.
- Legal counsel in the Department of Justice draft the legislation (a bill), and also review it for consistency with human rights.

How is legislation made in Canada?

- A Minister introduces the bill in the House of Commons, where it is debated and examined by a committee. The committee may invite experts and interested stakeholders, including civil society organizations, to address it. Amendments may be made to the bill. Members vote on the bill.
- The bill follows a similar process in the Senate.
- After the bill is passed by the House of Commons and Senate, it is submitted to the Governor General for Royal Assent (final approval).

Canada's Approach to Implementing International Human Rights Treaties

United Nations human rights treaties to which Canada is a party

International Covenant on Civil and Political Rights (ICCPR)(1976)

- 1st Optional Protocol (individual complaint mechanism) (1976)
- 2nd Optional Protocol (abolition of death penalty) (2005)

International Covenant on Economic, Social and Cultural Rights (ICESCR) (1976)

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1970)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1981)

- Optional Protocol (individual complaint mechanism)(2002)

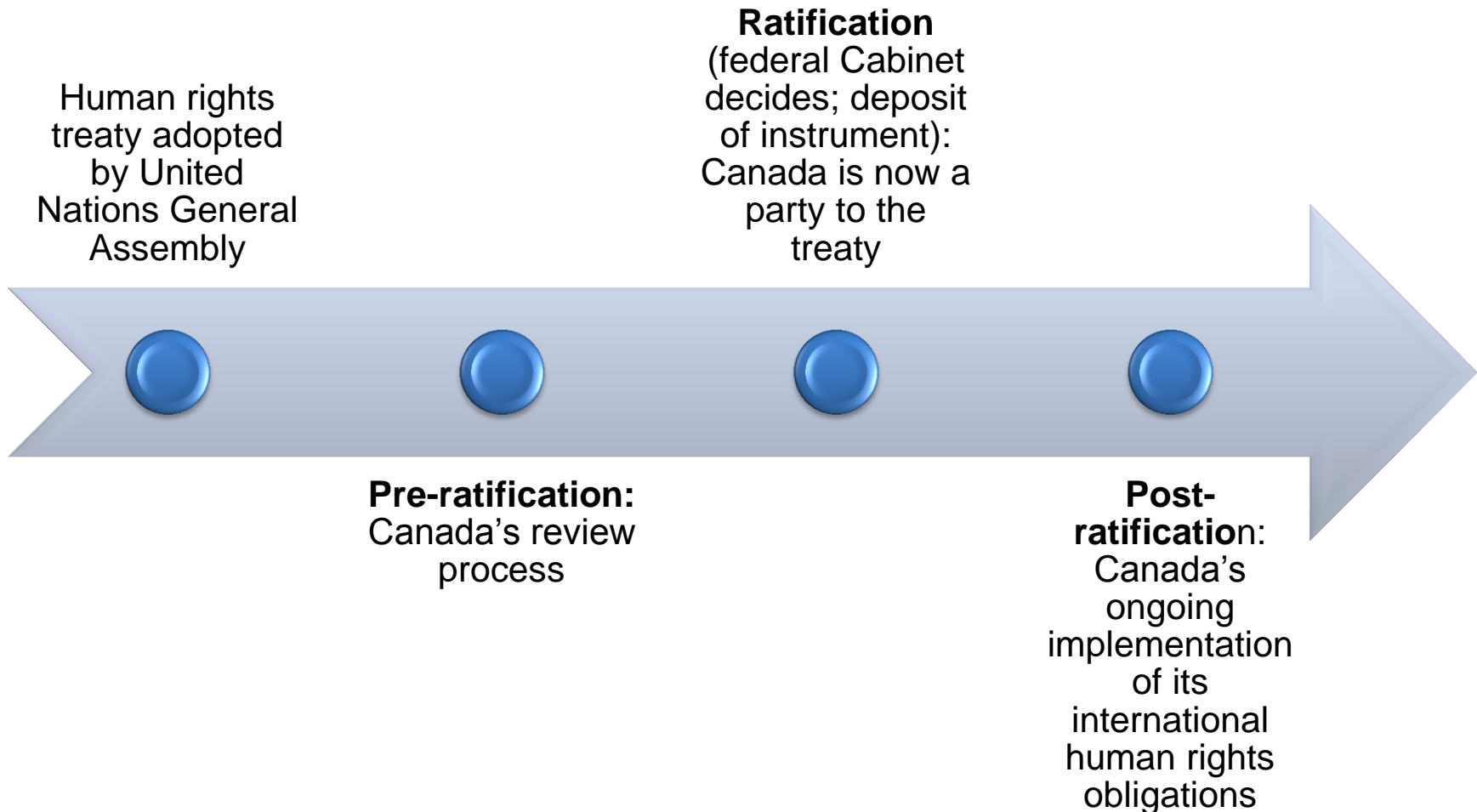
Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1987)

Convention on the Rights of the Child (CRC) (1991)

- Optional Protocol (children in armed conflict) (2000)
- Optional Protocol (sale of children, child prostitution and child pornography) (2005)

Convention on the Rights of Persons with Disabilities (CRPD) (2010)

From becoming a State Party to implementing obligations ...



Pre-ratification Process in Canada

- Canada's practice is to become a State Party to a human rights treaty only once it is satisfied that it complies with its provisions.
- Treaties generally leave room for states to choose how to implement their obligations; legislation is usually not the only option.
- Canada's pre-ratification process includes:
 - **Examining existing laws, policies, programs and practices** for consistency with the obligations under the treaty;
 - **Identifying gaps** where there is no existing measure that implements the obligation in question;
 - **If there are gaps or inconsistencies, consider changes to laws or policies.** Or, consider whether **reservations and interpretive declarations** may be required, where permitted by the treaty.
- This exercise involves all affected federal government departments, provinces and territories. It may also include Aboriginal self-governments.
- Civil society, Aboriginal organizations and other interested parties may be consulted to seek the views of Canadians before ratifying a treaty. The views of Parliamentary committees are also considered.

Implementation in Canada – Ratification

- Once the consultation and review process is completed, the federal Cabinet decides whether Canada should ratify.
- The formal support of provinces and territories will usually be sought, since federal, provincial and territorial governments share responsibility for implementing human rights treaty obligations.
- Treaties are also tabled in Parliament before Canada becomes a party.

Implementation in Canada – Post-ratification

- Canada implements its human rights treaty obligations through a variety of means, including one or more of the following:
 - *Canadian Charter of Rights and Freedoms*
 - New, amended or existing legislation
 - Policies and programs
 - Other actions

Implementation in Canada is an ongoing process

- Treaties are not self-executing in Canada, nor are they directly enforceable in Canadian courts (only domestic laws are).
- Government officials support implementation through legislative and policy development that takes into account Canada's international human rights obligations.
- Canadian courts also look to Canada's international human rights obligations to interpret Canadian laws, including the *Charter*, because Canadian legislators are presumed to have intended to enact laws consistent with Canada's international obligations.

Overview of Canada's Human Rights Framework

General framework

- The executive, legislative and judicial branches of government at the federal, provincial and territorial levels share responsibility for protecting human rights in Canada.
- Civil society, non-governmental and Aboriginal organizations also play a role in promoting and protecting human rights.

Constitutional and legal protections

- Human rights are constitutionally entrenched in the *Canadian Charter of Rights and Freedoms*.
- Canada's *Constitution Act, 1982* contains unique protections for the rights of Aboriginal peoples of Canada.
- Human rights are protected through many types of legislation at the federal, provincial and territorial levels. For example, legislation on:
 - Anti-discrimination (called “human rights legislation” in Canada), prohibiting discrimination on grounds including race, national or ethnic origin, religion, sex, sexual orientation, marital or family status, age, and disability, by public and private sector employers and service-providers
 - Access to information and privacy
 - Labour and employment standards
 - Social security
 - Official languages
 - Youth criminal justice
 - Immigration and refugee protection
- The common law (judge-made law) also contains human rights protections, such as procedural fairness, property rights and protection of one's reputation.

Programs, policies and other actions

- Human rights are also protected in Canada by a large number of programs, policies and other actions at the federal, provincial and territorial levels.
- Programs, such as:
 - National Child Benefit
 - First Nations and Inuit health program
 - Labour Market Agreements for persons with disabilities
 - Canada Student Grants Program
- Policies, such as:
 - Gender Based Analysis in policy development
- Other actions, such as:
 - Federal-provincial-territorial working groups on particular issues
 - Human rights training, public education and awareness campaigns

Redress for human rights violations

- Various modes of redress are available in Canada, depending on the right infringed and the remedy sought.
- Authorities with jurisdiction to provide redress include the courts, bodies created to administer particular legislation (commissions, boards, tribunals – for example, the Canadian Human Rights Commission, and the Canadian Human Rights Tribunal) and ombudspersons.
- Police commissions exist at federal, provincial and territorial levels to review complaints against the police.
- There are a wide range of remedies that may be available, from striking down legislation (under the *Charter*) to declarations, injunctions, compensation, damages, costs, etc.

Implementing human rights in a federal system

- Mechanisms exist to ensure the federal government, provinces and territories are aware of the approaches taken throughout Canada on human rights issues, and to promote coordination.

- An example is the Continuing Committee of Officials on Human Rights:
 - Composed of federal, provincial and territorial officials who meet regularly by conference call and in person
 - Ensures consultation and coordination among governments with respect to signature, ratification and implementation of international human rights treaties
 - Encourages information exchange among governments on human rights issues and facilitates preparation of human rights reports to the UN

Resources

- Canada's human rights reports to the United Nations: <http://www.pch.gc.ca/pgm/pdp-hrp/docs/publications/index-eng.cfm>, including Canada's Core Document: <http://www.pch.gc.ca/pgm/pdp-hrp/docs/core-eng.cfm>
- *Canadian Charter of Rights and Freedoms*: <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>
- *Canadian Human Rights Act*: <http://laws-lois.justice.gc.ca/eng/acts/h-6/>
- Canadian court cases: <http://www.canlii.ca/en/index.php>