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AT Home AND Abroad

Amnesty International's human rights agenda for Canada



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COVER PHOTOS

Lubicon Cree child, northern Alberta, photo David Maltby

Afghan girls at an orphanage in Kabul, photo John MacDougall AFP

INTRODUCTION: TURBULENT TIMES FOR HUMAN RIGHTS

These are turbulent and challenging times for human rights. Governments have recently launched wars, enacted tough new laws, and increasingly resorted to practices such as detention without charge or trial, all in the name of security. Basic human rights are often either blatantly violated or conveniently forgotten.

While conflicts in certain world regions such as Iraq receive considerable global attention, others like those in Colombia or Liberia – far from the front lines of the “war on terrorism” – are neglected. While world leaders insist they are acting to enhance security, human rights violations abound and insecurity reigns.

Only through uncompromising commitment to fundamental human rights and freedoms will governments deliver to all peoples the promise of true and sustainable security.

Amnesty International believes the time is now for Canada to demonstrate such a commitment through action.

This must begin at home: Canada has a long way to go to shore up its own human rights record.

This must extend abroad: human rights must be at the centre of Canada’s relations with other nations and at the core of any position taken by Canada within multilateral bodies such as the United Nations, the Organization of American States, and the World Trade Organization.

Amnesty International believes the time is now for Canada to assert human rights leadership. Canada has played such a role in the past and must play it again. Amnesty International recognizes the important contribution of Canada to the creation of an international system for the protection of human rights such as in the recent establishment of the International Criminal Court. This same vision must become the hallmark of Canada’s commitment to a universal human rights order.

A recent foreign policy review indicates a clear opening for Canada to adopt a new stance on the world stage, one sharply focused on the advancement of universal human rights. Upcoming changes in the country’s political leadership offer a



A Colombian government soldier.
AFP Photo/Fernando Vergar

The Global Human Rights System at a Crossroads: Canada's Role



Banner outside the March 2003 meeting of the UN Human Rights Commission.

There has long been concern that the promises made by governments in documents such as the Universal Declaration of Human Rights are empty. International bodies that monitor those human rights obligations are poorly-resourced, have few real powers of enforcement, and all too often are swamped by politics, leaving human rights concerns at the wayside.

The UN Commission on Human Rights is a telling example: While it should be the world's most influential human rights body, the Commission seems more likely to shield governments than to act on behalf of victims of human rights violations.

Canada believes in multilateralism and is a respected participant in many international and regional multilateral bodies. There should be an international agenda of UN human rights reform and Canada should champion one.

At the same time, Canada must repair its own record of compliance with international human rights bodies. Reports to UN experts, some of which are overdue, must be submitted on time. Recommendations made by those experts, many of which are ignored, must be implemented. The ratification of international human rights treaties, some of which are discussed more fully in this document, must become Canada's norm.

chance for revitalized vision for new national policies that place human rights at the core of what Canada does itself and what it demands of other states.

Amnesty International releases this Human Rights Agenda for Canada at a key moment in Canada's history and future. We offer clear recommendations of steps to be taken to make an effective contribution to the securing of human rights worldwide.

This Agenda focuses on six important themes: justice, refugees, Indigenous peoples, women, the economy, and security. Amnesty International put forward some of these recommendations last year in *Real Security, the Human Rights Agenda for Canada* released in May 2002, while other groups and United Nations human rights experts have urged Canada to adopt many of these same recommendations.

Action is overdue.

The recommendations make the connection between human rights concerns in Canada and the credibility of Canada at the international level.

Only when Canada has itself ratified and demonstrated commitment to particular human rights treaties and UN human rights recommendations can it press other governments to do the same. Canada can champion human rights at the global level only after it has demonstrated such leadership at home.

At home and abroad: that must be Canada's approach to global human rights protection.

1. A MATTER OF JUSTICE

Impunity: one very significant and longstanding obstacle to global human rights protection. The collective failure of individual governments and the international community to ensure those responsible for committing human rights violations face justice has only encouraged more violations. Further, impunity means that survivors of human rights violations and the families of victims are denied the truth.

Over the past decade, the struggle against impunity has seen promising progress. In 2002, the International Criminal Court (ICC) was established with permanent jurisdiction to hear cases involving allegations of genocide, war crimes, and crimes against humanity.

Yet there is much to be done, nationally and internationally, in the campaign to eradicate impunity. Efforts must continue to encourage more governments to accept the Court's jurisdiction.¹ There are many reasons to expand the reach of the ICC: the recent war in Iraq (neither the United States nor Iraq has ratified the Rome Statute); the human rights crises in Côte d'Ivoire, Liberia, and Zimbabwe (also non-parties to the Statute).

The aggressive US led effort to undermine the reach and effectiveness of the ICC, particularly by lobbying other nations to enter into bilateral agreements guaranteeing that in no circumstances will they ever allow US nationals to be brought before the Court, requires immediate response.

To complement its leadership in the establishment of the ICC, Canada must commit to launching prosecutions in Canadian courts of individuals accused of committing human rights violations abroad. Such individuals are still more likely to face deportation than prosecution. Amnesty International has, in a number of cases, urged that deportation proceedings be discontinued and prosecutions launched instead in Canada if the evidence so warrants.

Canadian practice appears to be the use of the fundamentally flawed security certificate process in the Immigration and Refugee Protection Act instead of launching criminal prosecutions. For example, a security certificate was issued in December 2002 in the case of Mohamed Harkat. The government alleges his association with terrorist groups in an effort to deport him to Algeria, where Amnesty International believes he is at risk of torture. Under this process, Mr. Harkat is denied access to the evidence against him. Amnesty International has pressed for reforms to the Immigration and Refugee Protection Act to ensure the security certificate process meets international standards governing fair trials.



Judges of the International Criminal Court at the inauguration session of the world's first permanent court for the prosecution of war crimes and other grave human rights abuses. March 11, 2003. AFP Photo Robert Vos.

International impunity: an issue of direct consequence in Canada



Iranian journalists light candles for Zahra Kazemi during a one-day strike to condemn the unexplained killing. AFP Photo/Behrouz Mehri

The consequences of global impunity for human rights violations have direct consequences for people in Canada.

Two cases of Canadian citizens received considerable public attention this year. In August, William Sampson was released after two and a half years in a Saudi Arabian prison. Credible allegations that he was tortured while in detention and forced to confess to a crime he very likely did not commit remain uninvestigated.

In July, Zahra Kazemi was beaten to death while in custody in Iran, having been arrested for taking photographs outside a jail, notorious itself as a place where torture and other human rights abuses are routine. Calls for an independent investigation into her case, leading to those responsible being brought to justice, go unheeded.

William Sampson and Zahra Kazemi both fell victim to longstanding impunity. In Iran and Saudi Arabia, human rights violators have rarely faced justice for their crimes.

The time is now for Canada to challenge that lack of justice and it can do so by insisting that individuals responsible for abuses like those experienced by William Sampson and Zahra Kazemi will be held accountable.

In cases of individuals who suffer human rights violations abroad, Canada is not willing to allow Canadian courts to be used by those seeking to sue foreign governments for damages related to those violations. In the Bouzari case, for example, Canada has argued that the principle of universal jurisdiction, which obligates all countries to open up their courts when criminal charges are brought against torturers, does not apply to cases where victims are seeking compensation for torture. Amnesty International has intervened in the case, arguing that universal jurisdiction does apply equally to such cases.

Mr. Bouzari, a Canadian citizen, alleges he was tortured while in prison in his native Iran. With no prospect of redress in Iranian courts, but insistent that there should be accountability and compensation for what he suffered, he has turned to the Canadian court system and launched a civil suit for damages. The government of Iran has offered no defence, but Canada has intervened, arguing that the case should not be allowed to proceed. Government lawyers insist that Canada's courts should only be used to mount criminal prosecutions when torture is alleged to have occurred abroad, not to sue for damages. In May 2002, an Ontario Court judge ruled against Mr. Bouzari. The Ontario Court of Appeal is set to hear his appeal in December 2003.

Canada has failed to comply with important recommendations regarding justice and impunity made by UN human rights bodies. In 2000, the UN Committee against Torture recommended that Canada establish an independent body to investigate allegations of torture and ill-treat-

ment in Canada. Such a body would ensure the delivery of impartial justice in cases which are often highly controversial and sensitive. No steps have been taken to comply with this recommendation. Many incidents warrant examination by such a body. Example: Amnesty International has called for an inquiry into allegations of police brutality, including the use of stun guns, when Ottawa police removed a group of Algerians from the office of the Minister of Citizenship and Immigration in May 2003.

Since that UN recommendation in 2000, the United Nations has adopted a new international treaty² which will eventually establish an international system for inspecting places of detention around the world as a means of preventing torture. The treaty obligates governments to set up monitoring systems at the national level to ensure that torture and ill-treatment are not taking place. By creating a new body or reforming a pre-existing one, Canada could comply with this recommendation from 2000 and ratify this new treaty.

Canada must work actively to ensure progress on international justice, an elusive promise now close to becoming a groundbreaking reality; one that requires coordinated commitment from all nations, including Canada.

Canada must:

- pro-actively support a strong and effective International Criminal Court, including by continuing to press other states to ratify the Rome Statute and publicly urging other states to refrain from entering into bilateral impunity agreements with the United States
- commit to a policy which prefers prosecution over deportation, including through use of Immigration and Refugee Protection Act security certificates, in cases involving allegations of responsibility for acts of genocide, war crimes or crimes against humanity and actively strive to launch the first such prosecution within the next six months.
- reverse its position in the Bouzari case and support efforts to open up the jurisdiction of Canadian courts in civil suits seeking damages for human rights violations suffered abroad, including by enacting legislation clearly establishing such a remedy
- take immediate steps to comply with a UN recommendation to establish an independent body that would investigate allegations of torture and ill-treatment in Canada
- promptly ratify the Optional Protocol to the Convention against Torture

To complement its leadership in the establishment of the International Criminal Court, Canada must commit to launching prosecutions in Canadian courts of individuals accused of committing human rights violations abroad. At the moment such individuals are more likely to face deportation than prosecution.

FOOTNOTES

1. At writing, 91 governments have ratified the Rome Statute.
2. Optional Protocol to the Convention against Torture.

The time is now for the Canadian government to recognize the ineffectiveness of voluntary regulation and develop a regulatory regime which will require Canadian corporations operating abroad to conduct business in ways that promote and protect human rights.

2. THE ECONOMY AND HUMAN RIGHTS

Economic actors — be they companies, international financial institutions or government officials negotiating trade agreements — have a profound impact on human rights. Trade policies, investment decisions and company operations can, directly or indirectly, contribute to human rights violations. They can also contribute to an improvement in human rights. There exist several opportunities for the Canadian government to ensure economic policy decisions contribute to increased human rights protection worldwide rather than to furthering human rights abuses.

As a member of the Organization of American States (OAS), Canada is part of the effort to create an Americas-wide free trade zone, the Free Trade Area of the Americas (FTAA), by 2005. Current expectations are that the FTAA would be adopted by governments at a Summit in Argentina that year and enter into force in 2006. Amnesty International believes there are a number of concrete steps which must be taken to ensure the human rights impact of the FTAA is not a negative one.

OAS human rights institutions must be given an explicit role in enforcing human rights within the FTAA. Canada should promote the inclusion of a provision reaffirming that in the case of conflict between human rights and economic, trade or investment rights, human rights prevail. As well, the FTAA should specify that victims of human rights abuses associated with the impact of the FTAA will be able to turn to the OAS' human rights system for redress. Consequently, the OAS' human rights system must be strengthened and well resourced. Those governments who have not yet ratified key OAS human rights treaties, including Canada, must do so.³ Canada should not consider being part of hemispheric economic integration unless it is prepared to commit to hemispheric human rights integration.

These concerns are by no means limited to the Americas. The increasingly globalized economy often denies the rights of people to control their own resources and means of livelihood by transferring decision-making power to corporations and international financial institutions. Amnesty International is particularly concerned when the exploitation of, or trade in natural resources, minerals, and timber, lead to human rights abuses. Canadian companies are prominent around the world in a number of natural resource industries. Their operations are often situated in zones of conflict or regions experiencing human rights violations. This is the case, for instance, in the Democratic Republic of Congo, Myanmar, and Colombia.

The time is now for the Canadian government to recognize the ineffectiveness of voluntary regulation and develop a regulatory regime which will require Canadian corporations operating abroad to conduct business in ways that promote and protect human rights.

Countless Canadians want to protect human rights through investment decisions. The time is now for the Canadian government to empower investors who want their commitment to human rights reflected in their investment decisions. This starts with

FOOTNOTES

3. The Senate Standing Committee on Human Rights made that same recommendation in a report released in May 2003 after extensive hearings.

the provision of reliable and accurate information.

Canada must work actively to ensure the global economy does not undermine or violate basic human rights.

Canada must:

- ratify the American Convention of Human Rights and other OAS human rights treaties, including the San Salvador Protocol, before January 1, 2006
- press for provisions to be included in the FTAA reaffirming the primacy of human rights, and accept a role for the Inter-American Court of Human Rights in providing regular advisory opinions on the compatibility of the FTAA agreement with fundamental human rights principles
- work for the establishment of regular independent monitoring as part of the Kimberley Process conflict diamonds agreement
- develop a comprehensive framework for corporate social responsibility and enact legislation to complement voluntary guidelines
- amend federal pension legislation to require all pension plans to disclose their policy (if any) in relation to the exercise of the rights (including voting rights) attached to investments, the extent to which they consider social, environmental, human rights and labour standards in their investment decision-making and monitoring, and that records of proxy votes be made available to plan members

Blood diamonds: an unacceptable commodity



Millions have died in Sierra Leone, Liberia, the Democratic Republic of Congo, and Angola in part as the result of wars motivated and funded by diamond smuggling. Human rights defenders across the globe have been demanding the identification and ban of these so-called blood diamonds.

An international diamond certification system known as the Kimberley Process Certification Scheme came into effect in January 2003. The Kimberley Process bans the trade in diamonds from conflict zones and sets up a paper trail to certify the origin of all diamonds before they can be exported or imported. The Kimberley Process relies on participating countries to make truthful reports.

Amnesty International, along with others working to stop the trade in blood diamonds, has called for regular, independent monitoring to prevent blood diamonds from being passed off as clean and to restore consumer confidence.

The question of regular, independent monitoring will be on the agenda when the countries participating in the Kimberley Process meet again in October 2003. Canada must take the lead in securing a credible and transparent international system of monitoring and compliance for the diamond trade.

Canada has played a significant role in the creation of international instruments and structures that protect the rights of women and as such, should be encouraging other countries to ratify and implement the international standards which it has advocated.

3. PROTECTING WOMEN'S HUMAN RIGHTS

Women continue to experience grave and alarming violations of their basic rights, in Canada and around the world. While Canada has, at times, played a leadership role in the advancement of women's equality, real progress is desperately needed. The time is now for Canada to make concrete contributions to the promotion and safeguarding of women's human rights.

In recent years, the trafficking of women across borders and related human rights violations has received increased attention. A growing number of international standards call on states to prioritize the protection of women who have been trafficked, even when they have knowingly and willingly broken the law. Such protections include legal assistance, safe houses and shelters, as well as measures to encourage and protect women in bringing complaints against their employers. Critically, the justice system, including immigration enforcement, must take into account the vulnerability and abuse experienced by these women.

Around the world, one of the places where women are most likely to face violence and human rights abuses is at home. Domestic violence continues to be a pressing concern in Canada. While Canadian and provincial/territorial governments have undertaken some policy initiatives in this area, the problem is not decreasing. Various policies resulting in cutbacks to social programs and services have likely contributed to the continuing vulnerability of women.

The low-income population is disproportionately comprised of women, people with disabilities, recent immigrants, cultural communities and Indigenous peoples. Safety for women in Canada means access to crisis services, interval and transition housing, emergency legal advice, financial assistance, and childcare support. In all cases, services for women who are victims of domestic violence must be women-centred in approach.

Women in prison are often overlooked or forgotten, eliciting little sympathy from the public or politicians because of criminal convictions. Yet, over the last twenty years, various sources, including complaints to the Canadian Human Rights Commission, have raised serious concerns about a pattern of discrimination faced by federally sentenced women, particularly Aboriginal women or women with disabilities. Repeated calls for fundamental change to the corrections system for women have gone unheeded. Recommendations for addressing discrimination of federally sentenced women must be implemented immediately.

Canada has played a significant role in the creation of international instruments and structures that protect the rights of women and as such, should be encouraging other countries to ratify and implement the international standards which it has advocated. For example, Canada actively supported the adoption by the UN Security Council in 2000 of Resolution 1325 which deals with Women and Peace and Security. This landmark initiative obliges the international community to ensure women play

a greater role in conflict resolution and reminds governments of their obligations to protect the rights of women and girls during armed conflict. Recent conflicts and post-conflict efforts to resolve and rebuild, such as those in Afghanistan, Iraq and the Democratic Republic of Congo, are stark reminders that Resolution 1325 is not being observed.

After Amnesty International called on Canada to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Canada did so in October 2002, a step which Amnesty International commends. That document makes it possible for women to make complaints at the international level when they believe that their rights under the Convention have been violated. Canada can now credibly and confidently call on other governments to follow suit.

Canada must work actively to promote and protect women's human rights.

Canada must:

- encourage other countries to ratify and implement the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol
- work at various governmental levels to create special investigative units with expertise in assisting women who have been trafficked; the criminal justice and immigration systems must actively avoid the re-victimization of women who have been trafficked into Canada
- provide adequate and consistent funding to women-centered service and advocacy organizations and to social housing programs that support women who have experienced domestic violence
- sufficiently resource law enforcement and justice systems to continuously examine and improve support to women who experience violence and provide adequate protection to women who have experienced violence in order to prevent the re-victimization of women in the criminal justice system
- create an independent oversight body for federally sentenced women and implement adequate mechanisms of redress for prisoners whose Charter and human rights are violated
- actively promote the implementation of Security Council Resolution 1325 to protect women and girls from human rights abuses associated with armed conflict and to ensure the broad participation of women in post-conflict rehabilitation and reconstruction



In the last ten years in Chihuahua, Mexico, approximately 370 women have been murdered, at least 137 of whom were sexually assaulted prior to death. Seventy five bodies have still not been identified. Numerous missing or murdered women were students or were employed in maquilas, as food service workers, or women working in the informal economy. They were, in short, marginalized women whose deaths have no political cost for the local authorities.

Despite its admission that the situation of Indigenous peoples in Canada is “the most pressing human rights issue facing Canadians,” the Canadian government has failed to implement key recommendations made by the UN Human Rights Committee concerning the protection of Indigenous peoples’ rights.

4. THE HUMAN RIGHTS OF INDIGENOUS PEOPLES

Despite the great diversity of cultures and histories among the estimated 300 million Indigenous people worldwide, there are similarities in the patterns of human rights abuses perpetrated against Indigenous peoples, violations against which they have organized to resist. Struggles over land and resources are at the heart of many of these abuses.

Indigenous peoples have been “deprived of their human rights and fundamental freedoms resulting in their colonization and dispossession of their lands, territories, and resources,” according to the Draft UN Declaration on the Rights of Indigenous Peoples. Amnesty International believes the time is now for Canada to move forward in several key areas to deliver justice and address human rights violations suffered by Indigenous peoples at home and abroad.

In 1999, the Canadian government told the UN Nations Human Rights Committee that the situation of Indigenous peoples in Canada is “the most pressing human rights issue facing Canadians.” Despite this admission, the Canadian government has failed to implement key recommendations made by the UN Human Rights Committee concerning the protection of Indigenous peoples’ rights.

Over the last quarter century, the Lubicon Cree of Northern Alberta have seen the land on which they depend transformed by logging and large-scale oil and gas extraction to which they’ve never consented. Meanwhile, repeated promises by the federal government to recognize their land rights have gone unfulfilled. In 1990, the UN Human Rights Committee ruled that the failure to resolve this dispute is leading to an ongoing violation of the human rights of the Lubicon Cree. While in opposition, Prime Minister Chrétien publicly recognized the need for a resolution to the ongoing justice faced by the Lubicon Cree: he must now ensure that justice is done before he leaves office.

In April 1999, the UN Human Rights Committee called for “a thorough public inquiry...into all aspects” of the September 6, 1995 police killing of Indigenous land rights protestor Dudley George at Ipperwash Provincial Park in Ontario “including the role and responsibility of public officials.” Since that time, both the Canadian and Ontario governments have shirked responsibility: eight years after his death, the circumstances that led to Dudley George’s killing remain unexamined.

The Draft UN Declaration on the Rights of Indigenous Peoples — which describes Indigenous peoples’ human rights and outlines protections needed to safeguard those rights — was the result of seven years of negotiations between Indigenous representatives and national governments. There is, however, growing concern that the Declaration will not be adopted before the International Decade of Indigenous Peoples draws to a close in 2004. Indigenous peoples across the globe have waited far too long for such an instrument which might affirm and safeguard their fundamental rights.

Canada must work actively at the international level and here at home to ensure the human rights of Indigenous peoples are entrenched and respected.

Canada must:

- fulfill its obligation to ensure a full public inquiry into the 1995 police killing of Dudley George is carried out, whether by the provincial government or by the federal government
- commit itself to the fair and timely resolution of outstanding Indigenous land and treaty disputes, including the urgent resolution of the long-standing dispute over the traditional territory of the Lubicon Cree, as called for in the 1990 ruling by the UN Human Rights Committee
- make the requirement of meaningful participation and informed consent of Indigenous peoples a cornerstone of laws and policies introduced at home and a criteria for development assistance and other investment abroad
- demonstrate visible public leadership in ensuring that the United Nations adopts the draft Declaration on the Rights of Indigenous Peoples before the end of the International Decade of Indigenous Peoples in 2004

The police killing of Dudley George



Upperwash Provincial Park. Photo by Monica Virtue

On September 6, 1995 more than 30 Ontario Provincial Police officers charged a group of Indigenous rights protestors occupying Upperwash Provincial Park in Ontario. The riot squad was backed by snipers armed with submachine guns. One man was badly beaten, a sixteen-year-old youth was wounded and 38-year-old Dudley George was killed.

The protest had begun two years earlier when Indigenous people from Stoney Point, Ontario occupied part of a military base that had been built on land appropriated from them in World War II. On September 4, 1995 a small group of protestors, including elders and children, moved into the neighbouring park which contained an unprotected burial ground. Although there was little apparent threat to public safety, the police responded with violent force.

Kenneth Deane, the sniper who fired the fatal shot, was later convicted of criminal negligence causing death for knowingly shooting an unarmed man. Despite the trial and conviction, however, important questions remain unanswered about the events leading up to the shooting.

Why did the police attack rather than negotiate? Why were snipers deployed against unarmed protestors? Did public officials influence these decisions? Amnesty International believes that a thorough public inquiry is the best way to ensure that these questions are answered.

Addendum: *On October 4, Ontario Premier-designate Dalton McGuinty told reporters that he intends to launch a public inquiry into the events surrounding the 1995 police killing of Dudley George. Amnesty International welcomes this statement and urges the Premier-designate to ensure that this inquiry is thorough and impartial and has the power both to subpoena witnesses and to recommend criminal prosecution where evidence warrants. Noting that eight years have passed since the fatal incident, and that the outgoing Conservative government repeatedly refused to hold an inquiry, Amnesty International is also renewing its call for creation of independent bodies throughout Canada able to initiate and conduct thorough and impartial investigations of any allegations of grave human rights abuses by police or other state agents.*

Governments must recognize refugees as victims of human rights abuses. Refugees have the right to make their claim in a fair and impartial process. Most refugees are fleeing horror of one kind or another. For many, that horror is torture.

5. PROTECTING REFUGEES

Amnesty International is concerned about the growing tendency to cut off refugee protection: the demanding of visas, the indiscriminate jailing of refugees at border points, the withholding of legal aid or social assistance, the provision of sub-standard legal proceedings for deciding refugee claims, the negotiation of international agreements that block refugee access to whole areas of the world. There appears to be little regard for UN conventions and the safety of refugees.

Governments must recognize refugees as victims of human rights abuses. Refugees have the right to make their claim in a fair and impartial process. Most refugees are fleeing horror of one kind or another. For many, that horror is torture.

A meaningful appeal

Lives are at stake in the decisions rendered in refugee claims. A meaningful appeals process for rejected refugee claimants is a vital safeguard against mistakes that could have devastating consequences. The absence of an appeal on the merits has been recognized as a fundamental flaw in the Canadian refugee determination system by both the Inter-American Commission on Human Rights and the UN High Commissioner for Refugees.

The Canadian Immigration and Refugee Protection Act, passed by Parliament in 2002, included a long overdue improvement to Canada's refugee determination system. The Act introduced an appeal on the merits for refugee claimants whose claims were denied. However, two months before the new Act was to enter into force, the Minister of Citizenship and Immigration announced a delay in the implementation of the Refugee Appeal Division. The Minister initially indicated that the appeal would be implemented within a year, but subsequently announced that he is now considering a complete overhaul of the Canadian refugee protection system.

This failure to implement the new appeal is a disappointing one. The time is now for Canada to ensure its refugee protection system is improved. The consequences of the failure are all the more serious because under the new Act only one member of the Immigration and Refugee Board, instead of the previous two, conducts refugee hearings. Amnesty International has longstanding concerns that the process for appointing members to the Immigration and Refugee Board does not assure their independence and expertise.

A matter of torture

In January 2002, the Supreme Court of Canada, in the Suresh case, ruled that the Minister of Immigration "should generally decline to deport refugees where on the evidence there is a substantial risk of torture." The decision leaves open the possi-

bility that deportation could go ahead, in “exceptional circumstances.” In November 2000, the UN Committee against Torture had reminded Canada that the Convention against Torture, ratified by Canada, includes absolute protection against deportation or extradition to a country where an individual faces a serious risk of torture.

Since the ruling, Amnesty International has continued to underscore that there can be no exceptions when it comes to torture. Security and criminality concerns must be addressed through national and international justice systems, not through the deportation of individuals to situations where further human rights violations will occur. Pending cases such as those of Mahjoub, Jaballah, and Harkat demonstrate that the Government of Canada is still prepared to overlook issues of torture when security concerns are raised.

Amnesty International cites that from 1997 to mid-2000, there were reports of torture or ill-treatment from state officials in more than 150 countries. In more than 70, they were widespread or persistent. In more than 80 countries, people reportedly died as a result,

Cooperation with the United States

If done properly, in accordance with international standards, cooperation with the United States and other countries could lead to more equitable refugee protection worldwide, particularly with respect to developing countries. If done improperly the results will be disastrous for refugees.

The Government of Canada has entered into a safe third country agreement with the United States, one that could be implemented in late 2003 after the United States has finalized its regulations. An agreement of this nature with the United States would mean that close to 40% of refugees who currently reach Canada would no longer be able to enter, instead being forced to make claims in the United States.

Amnesty International is concerned that in the United States, many of those denied access to Canada would face serious violations of their human rights. For example: arbitrary and lengthy imprisonment, often in isolated detention centres alongside criminal detainees; claim rejection for women refugee claimants who fear gender-specific forms of persecution such as domestic violence and honour killings; and refusal to individuals who lack proper identity documents, a frequent reality for refugees, leading to a summary process without access to legal counsel or advice from non-governmental organizations.

Since the agreement was concluded, there have been significant changes to US asylum practices. This continues to lower the standard of protection offered to asylum seekers in the United States with respect to detention and gender persecution. All refugee claimants who arrive on US shores by boat, except those from Cuba, are now placed in fast-track removal proceedings and detained for the duration of those proceedings. Operation Liberty Shield, a compulsory detention policy instituted from March-April 2003, required the detention of asylum seekers from Iraq and at least 33



People uprooted by the conflict in Côte d'Ivoire, AFP photo Georges Gobet

If done properly, in accordance with international standards, cooperation with the United States and other countries could lead to more equitable refugee protection worldwide. If done improperly the results will be disastrous for refugees.

other countries “for the duration of their processing period.” While the program has officially been terminated, concerns remain that asylum seekers from those countries are more likely to be detained and less likely to be released from detention. Blanket detention of asylum seekers is barred by international standards, which state that the detention of asylum seekers should normally be avoided and is justified only in limited cases prescribed by law.

With regard to gender persecution, it is feared that new regulations may soon be issued which would deny protection to women in a wide range of cases where their gender is central to the persecution they fear.

The time is now for Canada to ensure the rights of refugees, in Canada and abroad.

Canada must:

- act immediately to establish the new Refugee Appeal Division of the Immigration and Refugee Board and provide adequate resources to ensure its effective functioning
- amend the Immigration and Refugee Protection Act so as to fully implement Canada’s absolute obligation under the UN Convention against Torture not to return individuals to a country where they face a serious risk of torture
- not encourage the operationalization of the Canada/US safe third country agreement unless and until the concerns about immigration detention and protection of women refugees in the United States are addressed

6. SECURITY AND HUMAN RIGHTS

There is no choice between security or human rights. Current political debate and media commentary frequently suggest otherwise, but real security must ultimately be based on advancing the human rights of everyone. We must not pursue the security of some at the expense of others. The time is now for the Canadian government to play a leadership role in calling for human rights to be at the centre of efforts to enhance security.

Central to this effort is the crucial need to draw the collective attention of the international community to populations at risk in “forgotten” conflicts across the planet. The protection and promotion of human rights and international humanitarian law must be assured for all peoples.

International intervention in Afghanistan in 2001 brought with it the Bonn Agreement and the promise of transition to a “broad-based, gender-sensitive, multi-ethnic and fully representative government” which would act in accordance with international human rights and humanitarian law standards”. The events of the past year, however, have done little to build faith among a population which has suffered tremendously under a succession of repressive and violent regimes and which continues to experience widespread insecurity. Initial developments in Iraq following the recent US & UK led military intervention seem to be leading in the same faulty direction.

As part of the so-called “war on terrorism”, the US administration has detained over 600 individuals indefinitely at a US base in Guantanamo Bay, Cuba. Many have been held for close to two years. Although captured during the course of military operations in Afghanistan, they have not been accorded prisoner of war status. Instead, they have been unilaterally declared “illegal combatants”, despite the provisions of the Geneva Convention which call for a tribunal to make a determination in cases where prisoner of war status is in doubt. Rather than being charged with recognizable criminal offences and being accorded the related legal rights of criminal proceedings, the detainees remain in legal limbo. Of additional concern is the detention of numerous juveniles, including Omar al-Khadr, a 16-year-old Canadian, and an unconfirmed number of 13-15 year olds. The detainees, including possibly some of the juveniles, could face the death penalty. Further transfers of detainees from both Afghanistan and Iraq have not been ruled out by US authorities.

The “war on terrorism” has also led to new laws and policies here in Canada. In the wake of September 11th, Canada introduced a range of legislation – including the Anti-terrorism Act. While there were some positive provisions, such as an emphasis on bringing individuals suspected of involvement in acts of “terrorism” to justice rather than resorting to deportation proceedings, other aspects of the legislation undermine basic human rights. The definition of “terrorism” remains broad and includes a number of undefined terms. Preventative detention and secret evidence provisions raise concerns about due process and abuse of power. The listing procedure for “entities” considered to support “terrorism” does not allow any



Thousands of Colombian women took to the streets in July 2002 to protest against continuing insecurity in their country. Photo © Reuters

Basic rights denied: Maher Arar



On September 26, 2002 Maher Arar, a Syrian-born Canadian citizen, was stopped by US authorities at JFK airport in New York City on his way home to Ottawa from a family vacation in Tunisia. Not allowed to continue his travel home to Canada, he was deported, to Syria likely via Jordan.

Maher Arar has since languished in detention without charge or trial for close to a year. His wife and two young children have had no contact with him. Canadian officials have been allowed to visit him on occasion, but never in private.

There are credible reports that he has been tortured, something Amnesty International knows to be commonplace in Syrian jails. While unspecific allegations have Mr. Arar linked to terrorist groups, that evidence has never been presented and he has had no opportunity to respond to the allegations.

When human rights are blatantly contravened in the name of security, the result is injustice and insecurity. The time is now for Canada to do more to ensure that Maher Arar's right to be free from torture and arbitrary imprisonment and his right to a fair trial are scrupulously upheld.

Addendum: Maher Arar returned to Canada on October 6, 2003 after more than a year in detention. Amnesty International welcomes his release from Syrian prison. Amnesty International remains deeply concerned by allegations that he was tortured and ill-treated in Syria -- allegations which Amnesty is not yet in a position to confirm but which we consider credible. Amnesty also believes that there must be a clear public accounting of why Maher Arar was put in peril through his deportation from the US to Syria and insists there must be a public inquiry into what, if any, role was played by Canadian law enforcement or security agencies in this case.

opportunity to refute the decision before it is made public.

Before and after September 11th, military and security technology from the world's most powerful nations continues to make its way past inadequate controls into the hands of abusive regimes. At least two thirds of all global arms transfers between 1997 and 2001 came from five members of the G8: the US, Russia, France, the UK, and Germany. Members of the G8 have varying laws requiring military exports to be licensed. These controls have either been proven ineffective or have simply been bypassed.

One notable concern in Canada is that export controls regarding arms transfers to the US are almost non-existent, and the US does not provide re-export assurance about the end use of materials. Between 1998 and 2000, Canada sold and transferred 40 Huey military helicopters to the US State Department, 33 of which were then upgraded in the US and sent on to the Colombian military as part of Plan Colombia, a US aid package purportedly to dismantle the drugs trade. Canadian policy would not have allowed these helicopters to be transferred directly to Colombia.

True security will only be achieved if governments make an unequivocal commitment to upholding universal human rights. Measures that lead to further human rights abuses only foster greater insecurity.

Canada must work actively to create real security at home through justice, and step to the forefront of international efforts to achieve real security through human rights.

Canada must:

- press the international community to ensure that the post-war reconstruction in Afghanistan and Iraq has the protection and promotion of human rights at its centre, including the establishment of:
 - genuine justice for past human rights violation
 - an inclusive reconstruction process, in particular with respect to women
 - restoration of the rule of law, including a functioning criminal justice system
 - adequate training in human rights, gender and cultural sensitivity for troops, police or other personnel deployed in international operations
- not transfer detainees to US forces unless US authorities unequivocally agree to follow the Geneva Convention and all other applicable international legal standards governing the treatment and status of individuals detained in the course of armed conflict in Afghanistan, Iraq or elsewhere
- not hand over anyone to US military or other authorities in circumstances where a capital charge is a possibility, unless and until assurances are obtained that the death penalty will not be sought
- amend its Anti-terrorism Act to provide groups with an opportunity to respond before a final decision is made to list them as an entity that supports “terrorism”, especially given the grave and possibly irreversible consequences of an incorrect decision
- broaden the annual report on the use of the Anti-terrorism Act to include the full range of anti-terror measures developed by the Canadian government; the review process should be more rigorous, transparent and public
- undertake a comprehensive review of the military, security and policing goods export control system and should implement immediately a more rigorous interpretation of its existing export control guidelines, especially those calling for strict control of military exports to countries at conflict or with a record of human rights violations
- require permits or licenses for all military and security exports to the US; these should be refused if there is a danger that the US recipient will subsequently transfer the items to others likely to commit human rights violations
- ratify and implement two key international conventions related to small arms to which it is a signatory: the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials and the UN Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition

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