

Real Security: A Human Rights Agenda for Canada

Amnesty International Canada

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We must continue the struggle to give everyone on this planet a reason to value their own rights, and to respect those of others. — UN Secretary General Kofi Annan, addressing the UN Commission on Human Rights, April 12, 2002.

On International Human Rights Day, December 10, 2000, Amnesty International issued its "Human Rights Agenda for the Canadian Government." The document made recommendations for action with respect to a number of important human rights issues.

Today, as Amnesty International issues this second Human Rights Agenda, human rights concerns, internationally and nationally, continue to preoccupy Canadians. Clearly the attacks in the United States on September 11, 2001 and the still unfolding aftermath which has included the war in Afghanistan and tough new anti-terrorism laws around the world, have been very much at the forefront. Canadians are determined that their government act to enhance their security, but also pursue policies which seek to deliver the reality of universal human rights protection to all of this planet's citizens. While not exhaustive, this Human Rights Agenda lays out a number of measures which should be adopted by Canada as part of an effort to make a difference. Proposals are made in five general areas: the "war on terrorism;" justice, not impunity; leadership on the homefront, human rights in the global economy, and protecting refugees.

Human Rights Day 2001 in New Jalozai refugee staging camp, outside Peshwar, Pakistan



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I THE “WAR ON TERRORISM”: TRUE SECURITY IS GROUNDED IN HUMAN RIGHTS

In the matter of a few shattering hours during the morning of September 11, 2001, devastating attacks in the United States led to the loss of some 3,000 lives in New York City, Washington, D.C. and Pennsylvania. Amnesty International immediately condemned the attacks as grave abuses of human rights and urged that the response be one firmly rooted in concepts of justice with scrupulous respect for fundamental human rights. We have stressed that security and human rights are not contradictory but in fact wholly compatible. Security that is not grounded in human rights will always be precarious, and human rights remain tenuous if security is not assured. Since September 11th Amnesty International has monitored events at the national and global level closely, and has frequently spoken out when measures adopted and initiatives launched have put human rights at risk.

a. Afghanistan

Any number of countries could be included in this Human Rights Agenda: countries trapped in unending cycles of conflict and human rights abuse, countries in need of decisive, meaningful international action. The one country that is included is Afghanistan - because of the scope and gravity of the problems, because the international community has long been implicated in what has gone so horribly wrong in Afghanistan, and because Afghanistan stands as a stark reminder that injustice, misery and international indifference often lies at the heart of violence and insecurity.

Afghanistan quickly became the focus of the international response to the attacks in the U.S., leading eventually to military action beginning in mid-October. The country has, for more than two decades, been a battleground in which larger global struggles have been fought. Throughout the 1980s in particular, while under Soviet occupation, a Cold War-era proxy war resulted in massive human rights violations and the flight of over five million Afghans from the country to seek refuge in neighbouring countries, particularly Pakistan and Iran.

The end of the Cold War did not unfortunately mark the end of suffering for the country's civilian population. Fighting among rival armed groups, some of which had been supported by western governments, particularly the United States, during the Soviet occupation, resulted in countless civilian deaths, torture and other serious human rights violations. Ultimately the harsh Taliban regime came to power and ruled much of the country for some six years, imposing sweeping restrictions on the rights of women, drastically limiting religious freedom, and launching violent reprisals against members of ethnic groups perceived to support armed opposition groups.

The sad irony of this recent history is that throughout Afghanistan's turbulent past two decades, the international community has done little to address the basic rights of the Afghan people. Rights have been violated, undermined and at best ignored in the midst of these conflicts. When military attacks began in October, Amnesty International stressed to all governments involved, including Canada, the need to adhere to international humanitarian law and fundamental human rights in the course of military action. We were concerned that civilians once again stood to suffer the consequences.

Ultimately, as the military attacks tapered off and Taliban forces retreated, the international community was faced with the challenge of rebuilding Afghanistan. Amnesty International insisted that those efforts make human rights the agenda for Afghanistan. An international meeting in Bonn, Germany in December 2001 led to the establishment of an interim administration to govern Afghanistan for six months until an emergency Loya Jirga, or council of elders, is convened. Amnesty International has made a number of recommendations to the interim administration and to the international community, recommendations which should become central to Canada's approach to assisting in efforts to rebuild Afghanistan.

- There can be no impunity for past human rights violations, meaning that no amnesties or pardons should be granted that would stand in the way of the truth being told, final determinations of guilt being reached, and full reparations being made to victims and their families. In this respect, Amnesty International welcomed the decision to exclude individuals who have committed human rights abuses and violated the laws of war from membership in the Loya Jirga. Canada must be part of an international effort to provide support to implement this decision.
- Restoring stable, just government to Afghanistan may bring to an end one of the world's longest-standing and most severe refugee crises. A precipitous rush to return large numbers of refugees could, however, be destabilizing. Canada should work to ensure that UN agencies and front-line states receive the support and assistance they require so as to ensure that the principle of voluntary repatriation of refugees to Afghanistan is respected.
- Among the many human rights concerns in Afghanistan, the drastic denial of the basic rights of women under the Taliban stands out. Rebuilding Afghanistan must remedy that severe injustice. Canada should continue to press for the broad inclusion of women in Afghanistan's new administration at all levels, including leadership.
- A priority need in Afghanistan at present is an independent justice system. Canadian aid and assistance to Afghanistan should

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focus on these needs and help develop an effective justice system including an independent judiciary, a professional civilian police force, and adequate detention facilities that meet international standards. All should receive training in basic human rights standards and practical implementation of those standards.

b. "Prisoners" of War

Early this year the question of the legal status, rights and treatment of individuals detained by U.S. forces in the course of the military campaign in Afghanistan received considerable international attention. The U.S. government refused to accord the detainees prisoner of war status under the Third Geneva Convention, referring to them instead as illegal or unlawful combatants. Amnesty International urged the U.S. fully to abide by the Geneva Convention, which provides that in cases of doubt the question of whether an individual detained in the course of an armed conflict qualifies for POW status should be decided by a competent tribunal.

However U.S. policy remains unchanged. As such, the detainees, now held at the U.S. base in Guantanamo Bay, Cuba and in Afghanistan, find themselves in a legal limbo - not accorded Geneva Convention rights, but also not charged with recognized criminal offences and thus not accorded the rights that would flow from a lawful criminal process. Some may eventually come before special military commissions whose process is flawed in lacking an independent appeal provision. U.S. officials have, furthermore, indicated that they are prepared to continue to detain some individuals even if they are acquitted by a commission. The failure to follow international law in these cases is of even greater concern because there is every prospect that the death penalty may be sought when criminal proceedings are launched.

While some of those held may well have been responsible for acts of violence, that does not justify an unlawful suspension of their basic rights. Allowing an erosion of rights in these cases strikes at a principle that lies at the heart of the universal human rights system — that rights protection applies to all people and at all times. It conveys to other states a destructive message that they are free to pick and choose among international legal standards and abide only by those which are expeditious and convenient.

The Canadian government has indicated that it does consider the Geneva Conventions are applicable, but also is satisfied that U.S. practice conforms with those obligations. Consequently Canadian troops in Afghanistan have handed detainees over to their U.S. counterparts.

■ Canada's current practice of handing over detainees to U.S. forces should be discontinued unless and until U.S. 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, including the referral of all cases to a competent tribunal for the determination of eligibility for prisoner of war status.

- No one should be handed over, surrendered, extradited or otherwise returned to U.S. 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.

c. Anti-Terrorism Laws

In the months following the September 11th attacks governments have launched numerous initiatives in response to the threat of "terrorism." This has included national-level reform of counter-terrorism and security laws as well as efforts within the UN and regional inter-governmental bodies to adopt relevant treaties and other legal instruments. Amnesty International has monitored these initiatives closely and highlighted the importance of maintaining full respect for international human rights standards. We have also documented the extent to which anti-terrorism rhetoric, laws and policies are being used by governments around the world as an excuse to repress peaceful dissent and target ethnic and religious groups who seek only to exercise their basic rights.

In the Canadian context Amnesty International has followed post-September 11th legislative developments closely, in particular Bills C-35, C-36 and C-42, all of which were introduced in Parliament in the weeks immediately following the attacks.

Bill C-35, the Foreign Missions and International Organizations Act, appears poised to be passed by Parliament soon. This new law will expand the immunity granted to individuals who attend international meetings in Canada. At present, immunity is granted only if the meeting is of an organization that is created by treaty. The new law will extend that to any and all organizations, with no requirement that it be created by treaty. Amnesty International is concerned that expanding immunity also expands impunity, as it makes it more difficult to press charges against individuals who may have committed war crimes, crimes against humanity, and other serious human rights abuses, including acts considered to be "terrorist."

- Bill C-35 should be amended to make it clear that immunity will not cover charges of war crimes, crimes against humanity, genocide, torture, "disappearances," extrajudicial executions and "terrorist" offences which give rise to universal jurisdiction under international law.

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Bill C-36, the Anti-Terrorism Act, was passed by Parliament in December, 2001. Amnesty International welcomed the fact that the new law concentrates on bringing individuals suspected of involvement in acts of "terrorism" to justice, rather than relying on immigration remedies such as deportation. However, we also expressed concern that several of its provisions will undermine basic human rights.

- The definition of "terrorism" included in the Bill when first introduced in the House of Commons risked encompassing legitimate dissent. The definition was improved, but the concern remains that the new provisions could be used broadly and inappropriately. Bill C-36 requires a review and report to Parliament within three years. Amnesty International urges that, in the interim, the government institute a process of providing regular reports detailing cases in which this definition of "terrorism" has been used.
- The process of listing "entities" which are considered to support "terrorism" is flawed. A group receives no prior notice and no opportunity to refute the allegations before the decision is made public. Given the grave and possibly irreversible consequences of a wrong decision, the law should be amended to provide groups with an opportunity to respond before a final decision is made to list them as an entity that supports "terrorism."

The government has just withdrawn Bill C-42, the Public Safety Act and replaced it with Bill C-55, the Public Safety Act, 2002. Bill C-42 would have given sweeping new powers to the Minister of National Defence to declare certain locations to be "military security zones" if he or she was of the opinion that it would be necessary to do so for the protection of international relations, national defence, or security. Once designated, Canadian military forces would have been authorized to prohibit, restrict or control access to the area and anyone found in the zone could be forcibly removed.

Amnesty International was concerned that such powers could lead to violations of the rights to freedom of expression and assembly. For instance, the Minister could conceivably declare the site of an international meeting to be a military security zone, in the name of international relations. That would limit the degree to which protesters could be present near the location of the meeting. The rights to freedom of expression and assembly are critical rights that lie at the heart of the international human rights system. International treaties do recognize that limitations can be imposed on these rights on specified grounds: respect of the rights or reputations of others, or the protection of national security, public safety, public order, public health or morals. "International relations" is not recognized as a legitimate reason for restricting these precious rights.

Bill C-55 does limit Bill C-42's widesweeping powers. Instead of "military security zones" the Minister is now empowered to designate "con-

trolled access military zones." Amnesty International welcomes the fact that "international relations" no longer appears as a ground that would justify such a designation. The zones are now limited to defence establishments, defence property outside defence establishments, and the property of visiting armed forces - but extends to a "reasonably necessary" surrounding structure or area of land, water, or airspace. The National Defence Act defines a defence establishment as "any area or structure under the control of the Minister, and the materiel and other things situated in or on any such area or structure." This definition, the notion of a reasonably necessary surrounding area, and the inclusion of property outside of defence establishments, leaves open the possibility of broad application. Amnesty International welcomes the Minister's statement that the intent is to limit application to military objects and property. Measures should be included in the legislation to make that clear and to safeguard against infringements of basic rights.

- Amnesty International welcomes the improvements Bill C-55 offers over Bill C-42. We remain concerned that "controlled access military zones" may effectively restrict the peaceful exercise of the rights to free expression and free assembly. The Bill should be amended to explicitly affirm that such zones will be designated and enforced in a manner consistent with basic human rights, particularly the rights to free expression and assembly.

II. JUSTICE NOT IMPUNITY

Recent years have seen remarkable progress in efforts to tackle one of the most formidable obstacles to human rights protection - impunity. Around the globe, war criminals, perpetrators of crimes against humanity, torturers and other human rights abusers have, for centuries, carried out their horrendous crimes confident that they would get away with it. This culture of impunity, deeply entrenched worldwide, has encouraged and even rewarded genocide, mass torture and other human rights atrocities.

Over the past decade, however, there has been unparalleled movement against impunity worldwide. Special UN tribunals are conducting trials of human rights criminals from the former Yugoslavia and Rwanda. A third tribunal, dealing with Sierra Leone, should be established soon. At a national level, the 1999 decision of the British House of Lords in the Pinochet case affirmed that the principle of universal jurisdiction gives all courts the power to prosecute all torturers, war criminals and others who have committed crimes that are international in scope. It is not necessary for there to be a specific connection between the court and the location of the crime, or the nationality of the accused or victim. Perhaps most significantly, the process of establishing a permanent International Criminal Court is now irreversible.

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On April 11, 2002 the 60th nation ratified the 1998 Rome Statute, meaning that on July 1, 2002 that treaty comes into force and the work of setting up the court will begin.

Canada has been a leader around many of these efforts internationally. Canada has played a particularly valuable role with respect to the drive to establish an International Criminal Court, including through leadership at the 1998 conference that led to the Rome Statute, being one of the first countries to ratify the treaty, actively encouraging other countries to follow suit and providing assistance and support to governments with respect to related law reform and training.

Canada's record when impunity issues are raised domestically is much more problematic. The leadership Canada has demonstrated internationally does not unfortunately translate into action on the homefront, both with respect to cases where the alleged human rights abuses took place abroad, and cases arising within Canada itself.

a. Prosecutions overdue

It is estimated that there are likely several hundred individuals in Canada against whom allegations of responsibility for serious human rights abuses have been made. The cases date back to World War II and through to recent wars and human rights tragedies. Canadian law has, since 1987, allowed prosecutions of these individuals in Canadian courts. A handful of prosecutions were launched at that time involving World War II era cases. A complicating Supreme Court of Canada decision in 1994 ended those early efforts. Since that time Canadian practice has been to rely on immigration remedies — excluding and deporting — rather than criminal prosecution.

Amnesty International has pressed the government to pursue criminal prosecution because of concern that deportation generally means that the individual concerned will simply escape justice and worse, in some instances, suffer serious human rights violations him or herself. Other organizations have made similar recommendations. Notably, an expert international body, the UN Committee against Torture, urged Canada, in November 2000, to “prosecute every case of an alleged torturer ... where it does not extradite the person and the evidence warrants it.”

Amnesty International welcomed the law reform that accompanied Canada's ratification of the Rome Statute in mid-2000. The Crimes against Humanity and War Crimes Act was passed by Parliament in June and came into force in October, 2000. The hope that these legislative changes would be accompanied by the launch of a number of prosecutions has been shortlived. It is now eighteen months since the law came into force and Amnesty International is not aware of any case having been opened. Instead it seems clear that Canadian practice is still to prefer immigration remedies to criminal prosecution.

The fact that the establishment of the International Criminal Court is drawing closer makes this even more important. The Court has jurisdiction to hear a case only to the extent that it is not possible for the case to be handled at national level. The system of international justice, at the centre of which the court is situated, depends upon national courts to carry out many, likely the majority, of prosecutions. The International Criminal Court will be able to deal only ever with a small percentage of cases.

- Canada should adopt and implement a clear policy requiring that cases involving allegations of serious human rights abuse be first considered for either extradition to a jurisdiction where a fair trial would be possible, surrender to an international tribunal, or prosecution in Canada, before resort is made to immigration remedies.

There are clearly many cases that could or should be pursued through Canadian courts. One, too late now, was the case of José Barrera Martínez, a former Honduran military officer who may have been implicated in the torture in 1981 and death in 1984 of a Honduran journalist, Eduardo Lopez. Eduardo Lopez's wife Nora escaped to Canada after his death and is now a Canadian citizen. Martínez himself arrived in Canada in 1987 and lived here illegally for fourteen years. When Canadian officials became aware of his case, the immigration route was chosen over prosecution and he was deported to Honduras in early 2001. An opportunity to ensure justice for Eduardo Lopez and his family was lost.

- Canadian officials should press the government of Honduras to investigate allegations that José Barrera Martínez may have been involved in torture and other serious human rights abuses, leading to criminal charges if the evidence so warrants. If Honduran authorities are unwilling or unable to do so, Canada should request that Martínez be returned to stand trial in Canada.

Amnesty International has, for several years, pressed Canadian officials to take action with respect to a number of cases of Lebanese nationals, resident in Canada. Serious allegations have been made that these individuals, former members of the South Lebanon Army, were responsible for torture and other human rights violations, including at the notorious Khiam Detention Centre. According to reports received by Amnesty International, many of the former guards, and at least one former director of Khiam, have taken refuge in Canada over the years. Some are now Canadian citizens. The RCMP has opened an investigation into the case of one alleged torturer. But there appears to have been very little progress.

- Canadian officials should move forward with investigations into claims that individuals now resident in Canada may have been responsible for acts of torture and other serious human



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rights abuses while involved in the South Lebanon Army, and commence prosecution in cases where there is sufficient admissible evidence.

b. Compensation for victims

Ensuring that perpetrators face justice is one important part of the struggle to confront impunity. Another is ensuring that victims of human rights abuses or their families are compensated for the grievous harms they have suffered. Here too the courts are often called upon to play an important role. Human rights abusers or the governments of which they were a part rarely offer compensation freely. Instead, lawsuits have been brought by survivors or by the families of individuals who were killed, seeking damages for murder, rape, "disappearance" and other abuses.

Canadian law does not expressly allow lawsuits in Canadian courts against foreign nationals or governments for damages associated with acts, such as human rights abuses, that took place outside Canada. Amnesty International has recently intervened in an Ontario court case in which an Iranian man is suing the government of Iran for damages arising from the torture he experienced when imprisoned in Iran. The government of Iran chose not to enter a defence in the case. However, the Canadian government intervened. The government argued that the concept of universal jurisdiction, which gives courts the power to conduct criminal trials even when the torture did not take place in Canada and neither the victim or torturer was Canadian, should not apply to civil lawsuits. As well, the Canadian government has argued that foreign governments should enjoy immunity from such lawsuits in Canadian courts. Amnesty International urged the court to recognize that universal jurisdiction does apply here and that state immunity should not prevail. The recent decision of the court concludes that state immunity applies and that Mr. Bouzari's suit is barred.

- The Canadian government should reverse the position taken in its intervention in the case of *Bouzari v. Iran*. If an appeal goes ahead the government should submit to the court that Canada is prepared to allow lawsuits of this nature to go ahead. Law reform should be pursued, so as to clearly provide a remedy of compensation, in Canadian courts, for victims of serious human rights abuses abroad.

c. Accountability for abuses in Canada

Human rights leadership is most effective when it is practised at home and abroad. Increased efforts to ensure that individuals who commit human rights abuses outside Canada do not escape justice, and that their victims are compensated, will be compromised if Canada

does not demonstrate a clear commitment to accountability and justice when abuses occur within Canada.

One case in which questions of accountability remain unanswered is the 1995 killing by an Ontario Provincial Police officer of Dudley George, an unarmed Indigenous man involved in a land claims protest at Ipperwash Park. Amnesty International, and many other groups and individuals in Canada and abroad, have insisted that there is a crucial need for a full inquiry into Dudley George's killing and the circumstances that led to the police decision to use lethal force. Notably, the UN Human Rights Committee made that same recommendation to Canada in 1999, as part of its review of Canada's record of compliance with the International Covenant on Civil and Political Rights. Yet more than six years after the incident neither the Ontario nor federal government has agreed to convene an inquiry.

- The Canadian government should implement the recommendation made to it by the UN Human Rights Committee in 1999 to convene an inquiry into the 1995 killing of Dudley George. If the Ontario government continues to refuse to convene such an inquiry, the Canadian government should do so itself.

In November 2000 Canada's record of compliance with the Convention against Torture was considered by another expert UN human rights body, the Committee against Torture. Amnesty International had brought to the Committee's attention a number of cases of allegations of violence by Canadian law enforcement agencies, possibly amounting to torture or ill-treatment, when dealing with Indigenous peoples, including disputes regarding resources or land claims. The Committee recommended that Canada create an independent body which would receive and investigate allegations of this nature. Amnesty International welcomed the Committee's recommendation, which would not only help safeguard against torture and ill-treatment in Canada, but serve as a valuable model worldwide.

- The Canadian government should implement the recommendation made to it by the UN Committee against Torture in 2000 and establish an independent body which would receive and investigate allegations of torture and ill-treatment in Canada.

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III LEADERSHIP BEGINS AT HOME

Over the past several decades, Canada has played an important role in efforts to construct an effective global system of human rights protection. Some recent initiatives, such as the establishment of the International Criminal Court and the adoption of the landmines treaty, benefitted greatly from Canadian leadership and commitment. With that leadership comes a concomitant responsibility to accept and adhere to international obligations at the domestic level. When any state fails to do so, the international human rights system — so reliant on the good faith and cooperation of states for its success — is undermined. The promise of the eloquent words and bold commitments of the Universal Declaration of Human Rights and other documents remains a cruelly unfulfilled promise. That is perhaps more markedly the case when the state concerned has, as is the case with Canada, been a human rights champion within international fora.

a. Assuming Obligations

Canada's record of ratification of international human rights treaties is reasonably good. But there are several important documents that Canada has failed to sign on to - all of which would be greatly strengthened through Canada's participation.

- Canada should ratify the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women.

The Protocol would give women the right to lodge individual complaints against Canada with an expert UN body, alleging violations of their rights. This would strengthen rights protection for women in Canada and, equally importantly, enhance Canada's ability to encourage other countries to ratify the Protocol as well, thus strengthening rights protection for women around the world. The possibility of ratification has been under discussion by the federal and provincial governments for over two years. Now is the time to act.

- Canada should ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

This document commits states to the abolition of the death penalty. Canada is an abolitionist state and the Supreme Court of Canada ruled in early 2001 that, absent extraordinary circumstances, assurances should be obtained in extradition cases where the death penalty is a possibility. By joining the 46 countries which have already ratified this important agreement, Canada would be furthering its longstanding support for the UN's human rights goal of progressive reduction and eventual abolition of the death penalty worldwide.

- Canada should ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Around the world migrant workers are often among the most vulnerable members of any society. With precarious, temporary or no lawful status in host countries, migrant workers are easily and frequently abused and exploited, and are often too fearful to exert their basic rights. Recognizing this concern the UN adopted a specific treaty dealing with the rights of migrant workers over a decade ago. It remains one of the least ratified treaties within the UN human rights system. Twenty states must ratify the Convention before it will enter into force. At the present time nineteen have done so. Canadian ratification would bolster the rights of migrant workers here, assist in efforts to press other states to better protect the rights of their migrant worker populations, and lead to the entry into force of this important treaty.

- Canada should ratify the six key human rights treaties within the Organization of American States: the American Convention on Human Rights and its two protocols dealing with economic, social cultural rights and with abolition of the death penalty, and three separate OAS treaties dealing with torture, violence against women, and “disappearances.”

Canada joined the Organization of American States in 1990 and has increased its profile within the OAS recently, hosting the body’s General Assembly in 2000 and the Summit of the Americas in 2001. The OAS human rights system needs strengthening. The potential for Canada to contribute to that process would be much greater if Canada ratifies these instruments and becomes a full player in the system. That is sorely needed at a time when other states in the hemisphere have actively sought to undermine the OAS mechanisms, and with ongoing serious human rights concerns on both continents. Federal and provincial governments have expressed concern that the American Convention on Human Rights protects the right to life, “in general” from the moment of conception. Numerous proposals have been made regarding a reservation or statement of understanding that could accompany Canadian ratification, consistent with Canadian constitutional protections regarding access to abortion services.

b. Walking the talk

The need for human rights leadership does not only arise in the formality of ratifying a treaty. It plays out more broadly in many different ways, including Canada’s negotiating position on a human rights issue, or its manner of dealing with an international human rights body. When Canada’s conduct in such arenas is inconsistent with its stated aim of strengthening and supporting international mechanisms for the protection of rights, the entire system suffers. This arises as a concern in a number of different venues, at home and abroad. At the annual sessions of the UN Commission on Human Rights, for instance, it appears that political, trade and other concerns influence Canada’s position on some human rights issues. As such, since 1997 Canada has

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refused to support efforts to have the Commission criticize China's human rights record, and at the Commission's session this year Canada was one of only two countries to vote against a resolution calling on the UN High Commissioner for Human Rights to carry out a mission to Israel.

Canada's human rights advocacy suffers when it is inconsistent or contradictory. Two examples highlighted here involve the rights of Indigenous peoples and cooperation with expert international human rights bodies.

c. The Rights of Indigenous Peoples

While the UN has, over the past several decades, progressively adopted a number of important treaties, declarations and resolutions, covering an impressive range of human rights concerns, one notable exception remains — the rights of Indigenous peoples.

Since 1985, a draft declaration on the rights of Indigenous peoples has been under consideration within, first, the UN Sub-Commission on the Promotion and Protection of Human Rights, which finally approved the draft in 1994 and, now, the UN Commission on Human Rights. The slow progress means that fundamental rights, critical to the survival and well-being of Indigenous peoples remain inadequately defined and recognized at the international level. Canada has alternately been viewed as a champion of this process and an obstacle to progress. There is no time to lose. In 1995, the UN General Assembly launched the International Decade of the World's Indigenous People. It will be a travesty if the decade closes in 2004, without adoption of the Declaration.

- Canada must make it a priority to press for rapid adoption of the Draft Declaration on the Rights of Indigenous Peoples and must be unequivocal in its support for the document.

d. Playing by the Rules

At the present time, three expert international human rights bodies have jurisdiction to hear cases alleging that Canada has violated treaty-protected rights: the UN Human Rights Committee, the UN Committee against Torture, and the Inter-American Commission on Human Rights. While these bodies are authoritative, they lack conventional means of enforcing their decisions, and rely on good faith, cooperation and adherence on the part of states. In some cases, these bodies may make an official request to a state to refrain temporarily from a certain course of conduct while a case is under review, out of concern that irreversible harm may be inflicted before consideration of the case is complete. This is, for example, often the case when deportation or extradition is imminent, and the individual concerned has alleged that he or she will face serious human rights abuse on the other end. If the

international body believes that there is a serious, credible issue at stake, they may ask that the deportation or extradition be suspended, while the case is being fully reviewed.

Canada has, on a number of occasions, failed to comply with such requests and argues that it is not legally bound to comply. That has been problematic in those individual cases and, also, conveyed a message to other states that they too should feel free to disregard recommendations from international human rights bodies. The issue is presently before Canadian courts in the case of Ahani, an Iranian man facing deportation from Canada, who has raised the question of Canada's obligation to comply with such requests in an application for leave to appeal to the Supreme Court of Canada. The UN Human Rights Committee has asked Canada to delay the deportation until they have completed their review of his case. Canada has refused to do so.

- Canada should adopt a clear policy of complying with the views and recommendations of those international human rights bodies which have jurisdiction to hear individual complaints against Canada. This should include any requests from those bodies requesting that Canada refrain from a certain course of conduct pending review of a case.

IV. HUMAN RIGHTS IN A GLOBAL ECONOMY

In recent years, substantial attention has been given to the role that transnational companies, international financial institutions and other players in the global economy can and must play in protecting basic human rights. It has increasingly become accepted that businesses have a responsibility to understand their international human rights obligations as well as their local human rights context, and to refrain from operations which directly or indirectly contribute to human rights violations. They must go further, by pressing the governments of countries where they do business to enact reforms that will improve their record of human rights protection.

Equally, bodies such as the World Bank, the World Trade Organization, as well as major intergovernmental meetings must ensure that human rights concepts underpin financial and trade discussions and decisions. Amnesty International had, for instance, pressed that the Summit of the Americas, hosted by Canada and held in Quebec City in April 2001, take decisive steps to affirm the primacy of human rights in any process of trade liberalization in the Americas. The outcome was, unfortunately, weak in that respect. Governments in the Americas surge ahead enthusiastically with determination to create a closer economic relationship. Meanwhile this hemisphere's system for human rights protection - the Inter-American Commission and Inter-American Court of Human Rights - is under-resourced, poorly supported and actively undermined.



The revenues that flow from diamonds, oil, timber and other minerals, extracted in African countries, often by G8-based companies, make it possible for armed groups and government forces to buy the weapons which lead to human rights abuses. International mechanisms need to be established to cut the link between resources and conflict.

- Canada should insist that as governments continue their efforts to create a Free Trade Area in the Americas, explicit and concrete recognition is given to the central importance of human rights in any such trading relationship, and is accompanied by equivalent attention and commitment to strengthening the hemisphere's human rights system.

a. The G8: An Opportunity to Make a Difference

Canada will play host to an important intergovernmental meeting in June, 2002, when the G8 Summit is held in Kananaskis, Alberta. G8 states, often described as the world's most industrialized countries, have set the question of African development as a priority during this year's deliberations. They will be responding to an initiative launched by a number of African leaders, the New Partnership for Africa's Development (NEPAD), which proposes a new relationship between Africa and the international community, aiming to place African nations on a path of sustainable growth and development.

Amnesty International has urged G8 governments to ensure that human rights figure prominently in all aspects of their response to NEPAD. In particular, concrete commitments and progress are needed to ensure that trade does not lead to war and human rights violations for Africans:

- G8 countries are the source of the majority of small arms that fuel conflict and human rights abuses throughout Africa. The G8 must take steps to ensure that this trade is better regulated, by pressing for early adoption of a binding international agreement with rigorous criteria for transfers and a mechanism for review.
- The revenues that flow from diamonds, oil, timber and other minerals, extracted in African countries, often by G8-based companies, make it possible for armed groups and government forces to buy the weapons which lead to human rights abuses. International mechanisms need to be established to cut the link between resources and conflict. One example lies in the recently concluded Kimberley Process which will launch, in November 2002, an international certification system for the world's diamond trade. It is weak, however, in that inadequate provision has been made for ongoing, expert monitoring of the system at national level. G8 states have been involved in the Kimberley Process. Several G8 states are important players in the international diamond trade. The G8 should press for immediate improvement of the Kimberley Process' monitoring provisions.
- More generally, G8 governments, working with African governments and African civil society, must adopt concrete measures which ensure that their companies, when they operate in Africa

and around the world, do so in a responsible and accountable fashion, helping to promote rather than undermine fundamental human rights standards.

In addition to discussions about African development, G8 states have the issue of "fighting terrorism" on their agenda. Amnesty agrees that governments must take steps to ensure that the world's citizens are protected from all manner of abuses of their basic rights, including acts which may be considered "terrorist" in nature. We are equally concerned however, that efforts to address "terrorism" not lead to further human rights violations.

- G8 states should unequivocally reaffirm that fundamental human rights and security are not inconsistent goals and that universal human rights standards can and must be at the centre of any strategy to "fight terrorism."

Finally, there is every prospect that there will be protest and demonstrations in and around the G8 Summit, possibly near the official meeting site, possibly also in Calgary. Amnesty International agrees that governments must take steps to ensure security at international meetings. We have consistently reminded governments, however, that this includes the security of those individuals who seek to exercise their basic rights to peaceful assembly and free expression.

Amnesty International monitored police operations at the time of the Summit of the Americas in Quebec City in April 2001 and reported that there had been incidents of excessive use of force by the police, often involving tear gas and plastic bullets, in circumstances where the security or integrity of the Summit was not in jeopardy. We called for a public inquiry into the policing operation, highlighting that the resulting recommendations would be of assistance to police at future similar events, in Canada and abroad. That inquiry has not yet been held. Its recommendations would have been of use to the police who will provide G8 security.

In November 2001, there were clashes between police and protesters at the G20 Finance Ministers meeting in Ottawa. Allegations have been made that the police response may have been excessive in some instances. No public inquiry has been held to consider those allegations.

- The government should convene a public inquiry to examine the question of policing in the context of international meetings, with a mandate to specifically consider how to provide security while maintaining fulsome respect for basic rights such as those of free assembly and expression.
- At the G8 Summit in June 2002, police should strictly adhere to accepted international standards: force should only be used to the extent strictly required and policing should at all times be



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carried out in a way that provides the maximum possible protection of the rights to free assembly and expression.

b. Responsible Management of Pension Funds

Increasingly Canadians demand that the pension and mutual funds in which they invest their retirement dollars be managed according to ethical criteria. They want to be sure that their money is not supporting companies which have irresponsible or destructive human rights practices. As such, they need reliable and accurate information as to the criteria that are used by the managers of their funds. Last year, a private member's bill was introduced to Parliament, Bill C-394, an Act to amend the Pension Benefits Standards Act, which would make it a requirement for administrators of pension plans to report, on a yearly basis, what "social, ethical and environmental factors" they have considered in making investment decisions. With that information Canadians would be able to make better informed choices and exert pressure on plan administrators to do better when it comes to socially responsible investing. Legislation of this nature has been introduced in the United Kingdom and Australia.

- The Canadian government should take steps to introduce government-sponsored legislation which would require pension plan administrators to report annually as to the social, ethical and environmental factors, including human rights, that are considered in the course of investment decisions.

c. The Need for Coherent Government Policy with respect to Corporate Social Responsibility

As expectations grow that businesses will operate in a socially responsible manner and be guided by labour, human rights, environmental and other ethical standards, questions are being asked about the role of government. Generally, companies and government have indicated that they prefer to leave it to the corporate community to voluntarily regulate their conduct with respect to these issues. As such, businesses have been encouraged to draft or adhere to codes of conduct or principles that set out criteria with respect to corporate social responsibility and to develop their own processes, internal and external, for measuring their record of compliance with those criteria. Non-governmental organizations have expressed concern that relying solely on voluntary processes is inadequate and uneven, and that there is likely a government role in at least establishing minimum baseline requirements.

This tension has, for example, been at the centre of concern about the operations of Talisman Energy in Sudan. The government's approach has been to allow Talisman to voluntarily define and evaluate its human rights responsibilities. Amnesty International and

numerous other organizations are concerned, however, that Talisman's operations, as well as the operations of other foreign oil companies in Sudan, continue to directly or indirectly contribute to the ongoing civil war and widespread human rights violations.

As the debate continues it has become clear that there is not yet a coherent, coordinated approach to corporate social responsibility issues within Canadian government. Responsibility for and interest in these issues lies within a number of government departments, including foreign affairs and international trade, finance, industry, trade and commerce, justice and natural resources. There does not appear to be a coordinating or lead agency within government tasked with ensuring coherent policy in this area. Other governments have gone further. For example, in March 2000, the British government expressly assigned responsibility for corporate social responsibility to a Minister of State.

- The government should develop a solid policy framework within which responsibility for corporate social responsibility issues will receive better coordinated and higher profile attention.

V PROTECTING REFUGEES

Refugee protection provides a crucial means of preventing human rights violations, by ensuring that victims are kept safe from those who seek to persecute them. Sadly, in the world today, refugees often face further persecution along their journey to safety. Worldwide, millions of people have been forced to flee their homes, and they face danger, hostility and resentment as they search for security. Canada has long prided itself as a nation that welcomes refugees. For several years, however, Amnesty International and other organizations have raised concerns about law reform and policy initiatives that make it more difficult for refugees to reach Canada and, for those who do, to receive the protection they require.

a. Integration with the United States

For over a decade, Canadian immigration law has included a provision which would allow Canada to refuse entry to refugee claimants who pass through a so-called "safe country" on their way to Canada. Instead, individuals would be turned back to that third country and told to make their claims there. The provision has not yet been enacted, but Canadian officials have actively pursued an agreement with the United States, termed a responsibility-sharing agreement, that would lead to its implementation. Those discussions were renewed in December 2001.

Amnesty International does not oppose initiatives which encourage closer cooperation and collaboration between states in the area of



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refugee protection. If done properly, in accordance with international standards, cooperation should lead to more equitable refugee protection worldwide, particularly with respect to developing countries, which presently shoulder some 80% of the world's refugee population. Unfortunately, efforts to cooperate have more frequently been initiatives designed to avoid refugees and block access, rather than improve the world's capacity to provide meaningful protection.

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 do so. They would instead be 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. This means the very real likelihood that they would face arbitrary and lengthy imprisonment, often in isolated detention centres alongside criminal detainees. This means a real risk that women refugee claimants, who fear gender-specific forms of persecution such as domestic violence and honour killings, would have their claims rejected, claims that would, if credible, almost certainly be accepted in Canada. This means that individuals who lack proper identity documents, a frequent reality for refugees, would be dealt with through a summary process without access to legal counsel or advice from nongovernmental organizations.

- Canada should enter into an agreement with the United States to share responsibility for refugee protection only if safeguards are put in place to ensure that the treatment afforded refugee claimants in both countries fully complies with relevant international standards in the areas of human rights and refugee law.

b. Protection in the face of torture

For several years, one particular vexing issue in Canadian refugee law has been the protection of individuals who are alleged to be security risks, but who face a substantial risk of being tortured or executed if deported from Canada. 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 possibility that deportation could go ahead, in "exceptional circumstances." Amnesty International had urged the Court to recognize that the protection against torture is an absolute right, with no exceptions. In November 2000, the expert UN Committee against Torture 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. The Supreme Court did agree that the obligation is absolute within international law, but left open the "exceptional circumstances" possibility when applying that in the

Canadian context. There can be no exceptions when it comes to torture. Security and criminality concerns can and must be addressed through national and international justice systems, not by deporting individuals to situations where further human rights violations will occur.

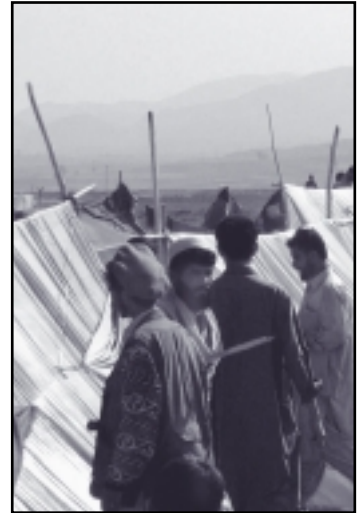
- Canada's Immigration and Refugee Protection Act should be amended so as to fully implement Canada's absolute obligation under the UN Convention against Torture not to return individuals to a country where they face a serious risk of torture.

c. Procedural Reform

The Immigration and Refugee Protection Act, passed by Parliament late last year, includes a long overdue improvement to Canada's refugee determination system. The Act introduces a full appeal for refugee claimants whose cases are turned down. Previously, rejected claimants could only avail themselves of limited access to the Federal Court, or apply for administrative review processes within the department of immigration. Lives are at stake in the decisions rendered in refugee claims. A meaningful appeal is a vital safeguard against mistakes that could have devastating consequences. The new Act is to come into force in June of this year but the government has recently announced an indefinite delay in implementation of the provisions which would lead to creation of the Refugee Appeal Division.

Failure to implement the new appeal process is a disappointing failure to ensure that Canada's refugee protection system is improved. Worse, it also significantly weakens the existing system. At present, refugee claimants have a right to a hearing in front of two decision-makers, only one of whom needs be convinced in order for a claim to be granted. The new Act removes this safeguard. Instead, hearings will be conducted by one decision-maker. Amnesty International, other organizations and a number of parliamentarians were concerned that this change removed an important procedural protection for refugee claimants, but considered that it would be at least partially offset by the introduction of a new appeal process.

- With entry into force of the new Immigration and Refugee Protection Act, the government should immediately establish the new Refugee Appeal Division of the Immigration and Refugee Board and provide adequate resources to ensure its effective functioning.



CONCLUSION

With heightened global concern about security, it is time for a renewed and unwavering commitment to fundamental human rights. The world cannot risk an erosion of hard-won standards for the protection of basic rights, standards that provide a clear framework for delivering a truly equitable and sustainable sense of security to people in every corner of the planet. Canada has made important contributions to that struggle over the past decades and can and must continue to do so. This Human Rights Agenda has recommended action that Canada can take, so as to continue to make a difference:

- by insisting that the “war on terrorism” be grounded in human rights;
- by acting decisively to break the vicious cycles of impunity that have held men, women and children all over the world hostage to human rights violators for centuries;
- by ensuring that words and deeds at home match the commitments Canada has helped to craft at the international level;
- by committing to build a global economy that puts human rights at the forefront; and
- by continuing to offer a place of safety to refugees.