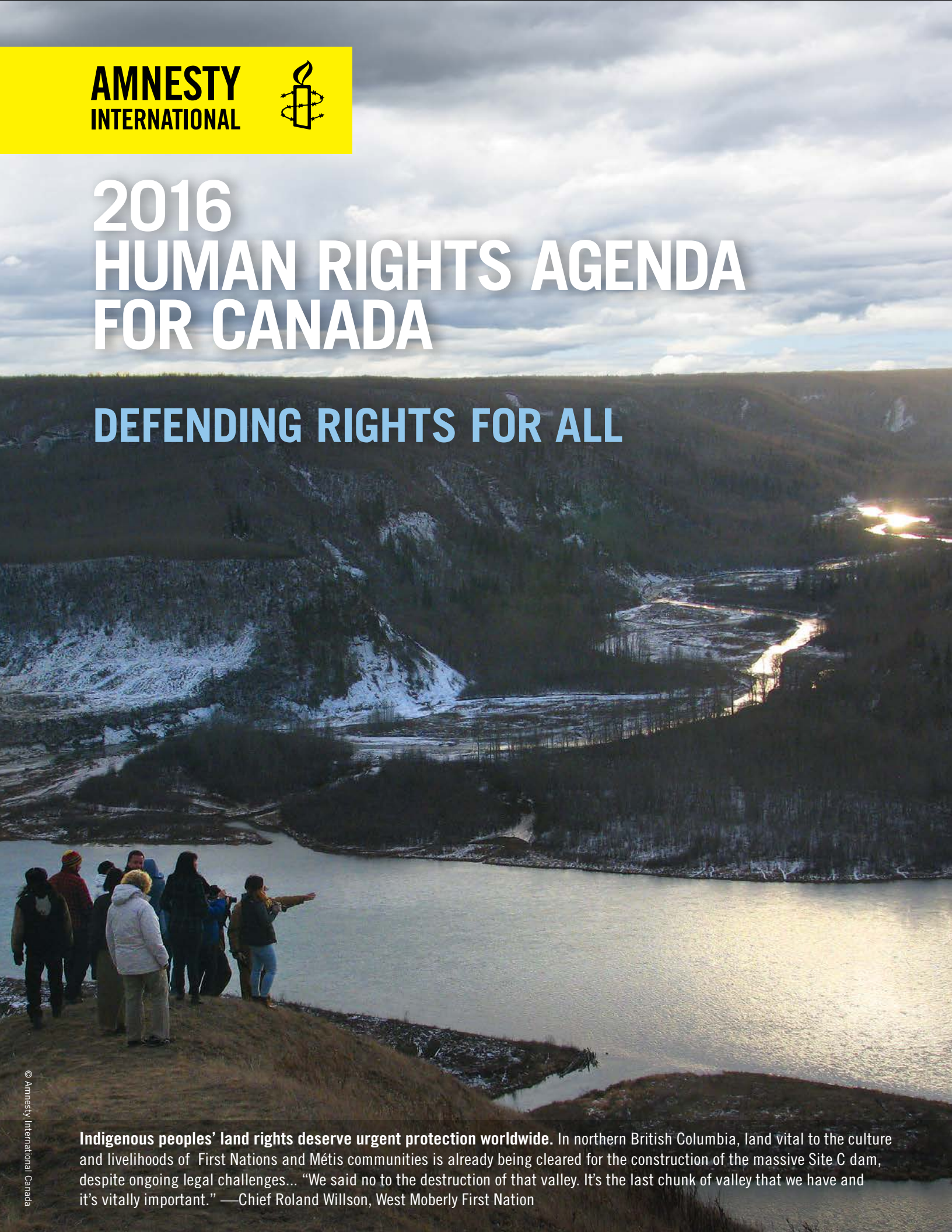
AMNESTY INTERNATIONAL

2016 HUMAN RIGHTS AGENDA FOR CANADA

DEFENDING RIGHTS FOR ALL



Indigenous peoples' land rights deserve urgent protection worldwide. In northern British Columbia, land vital to the culture and livelihoods of First Nations and Métis communities is already being cleared for the construction of the massive Site C dam, despite ongoing legal challenges... "We said no to the destruction of that valley. It's the last chunk of valley that we have and it's vitally important." —Chief Roland Willson, West Moberly First Nation

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AMNESTY INTERNATIONAL

Amnesty International is a global movement of more than seven million supporters, members and activists in over 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for all people to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion, and are funded mainly by our membership.

Until everyone can enjoy all of their rights, we will continue our efforts. We will not stop until everyone can live in dignity; until every person's voice can be heard; until no one is tortured or executed.

Our members are the cornerstone of these efforts. They take up human rights issues through letter-writing, online and off line campaigning, demonstrations, vigils and direct lobbying of those with power and influence.

Locally, nationally and globally, we join together to mobilize public pressure and show international solidarity.

Together, we make a difference.

For more information about Amnesty International visit www.amnesty.ca or write to us at: Amnesty International, 312 Laurier Ave. E., Ottawa, ON K1N 1H9.

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INTRODUCTION

Defending Rights for All:

Amnesty International's Human Rights Agenda for Canada, December 2015

"On the world stage and here at home now is the time for a renewed and strengthened Canadian human rights agenda. With political change domestically and a world facing numerous pressing human rights challenges there is a crucial opportunity, obvious opening and urgent need for Canada to step into the role of human rights champion. Canadian human rights leadership is good for the country and good for the world."

—The Honourable Louise Arbour, UN High Commissioner for Human Rights (2004-2008), Montreal, December 10, 2015

Amnesty International has drawn frequent attention in recent years to mounting concern that Canada's domestic human rights record and global human rights standing were both in serious and deeply troubling decline.[1] This year's Human Rights Agenda for Canada, issued as a new government comes to power in Ottawa, highlights the opportunities and the urgency of reversing that decline and also of moving ahead with long-needed reforms to advance stronger human rights protection nationally and internationally.

Over the past decade domestic concerns have included such glaring shortcomings as the entrenched refusal to establish a public inquiry leading to a comprehensive national action plan to address violence against Indigenous women, punitive legal and policy changes that dramatically curtail the rights of refugees, resistance to strengthening the human rights accountability of Canadian companies and national security reforms that violate human rights norms.

Internationally, Canada's diminished role as a human rights champion has been evident in the failure to sign on to important UN human rights treaties, polarizing positions

1 See, for example, Amnesty International, *Canada and the International Protection of Human Rights: An Erosion of Leadership? An Update to Amnesty International's Human Rights Agenda for Canada (December 2007) (on file with Amnesty International); Federal Election 2008, Strengthening our Commitment: A Human Rights Agenda for Canada: Amnesty International's Human Rights Agenda for Canada (September 2008) (on file with Amnesty International); Canada and Human Rights in 2010: Time to Return to Leadership: A Human Rights Agenda for Canada (February 2010) (on file with Amnesty International); Getting Back on the 'Rights' Track: A Human Rights Agenda for Canada (March 2011) online: <http://caid.ca/AmnIntHRACan2011.pdf>; Matching International Commitments with National Action: A Human Rights Agenda for Canada (December 2012) online: <http://www.amnesty.ca/sites/amnesty/files/canadaaihra19december12.pdf>; Time for Consistent Action: An Update to Amnesty International's Human Rights Agenda for Canada (December 2013) online: <http://www.amnesty.ca/sites/amnesty/files/canadahrareport18december13.pdf>; Jobs, Security … And Human Rights for All: A Human Rights Agenda for Canada (December 2014) online: <http://www.amnesty.ca/sites/amnesty/files/canadahumanrightsagenda16december14.pdf>.*

taken with respect to human rights issues associated with the Israeli/Palestinian conflict, dramatically diminished attention to Africa and backing away from full support for a strong women's human rights framework.

Following his October 2015 federal election victory, Prime Minister Trudeau has repeatedly said in comments directed at both Canadian and international audiences that Canada "is back", signalling an intention to pursue a different approach to global issues and a different commitment to human rights. In that regard, Amnesty International has welcomed many of the expectations expressly laid out in the mandate letters that the Prime Minister has provided to his new Cabinet, some of which are confirmed in the recent Speech from the Throne, detailing goals regarding a range of important national and international human rights issues.[2]

Defending Rights for All, Amnesty International's Human Rights Agenda for Canada, takes note of the pressing human rights challenges the new government faces on many fronts and the many opportunities for action to bring an immediate halt to ongoing violations, reverse legal and policy changes that have eroded human rights protections and move forward with a bold and long overdue agenda for national and international human rights reform. The agenda's focus is on the federal government, recognizing of course that other levels of government in Canada also bear important responsibilities for protecting human rights and need to pursue reform agendas in many areas.

Defending Rights for All looks at eight areas of challenge and opportunity for the new federal government:

- Human rights in Canadian foreign policy
- Living up to our international obligations
- The human rights of Indigenous peoples
- Gender equality
- Business and trade
- Protecting refugees
- A human rights-based approach to national security
- Embracing dissent and free expression

In a world that faces serious human rights crises across all of these areas of concern, including staggering numbers of refugees and other people forced from their homes not seen since the end of World War II, there is an overwhelming need for more, not fewer, global human rights champions. It is time for "defending the rights of all" to become Canada's priority.

2 Prime Minister of Canada, "Ministerial Mandate Letters" (2015) online: <http://www.pm.gc.ca/eng/ministerial-mandate-letters>; <http://www.speech.gc.ca/en/content/making-real-change-happen>.

CANADIAN FOREIGN POLICY

Towards a world of universal human rights protection

"When it comes to human rights, Canada's foreign policy must focus on doing and saying what is right, consistently and with conviction. When we failed to see beyond our borders we became irrelevant. The opportunities to take up human rights leadership now are tremendous. Doing so is in Canada's interest and it is precisely what the world needs of us."

—The Right Honourable Paul Martin, Prime Minister of Canada (2003-2006), Montreal, December 10, 2015.

Over the past decade Canada's global role as a champion and key player with respect to international human rights issues has diminished considerably. The shifts were substantial and consequential. The impact was twofold. Canada's reputation quickly began to tarnish. And the effectiveness of Canada's global diplomacy suffered.

Consensual bridge building gave way to polarizing isolation. A commitment to multilateralism was overtaken by a propensity for unilateralism. Signing on to UN human rights treaties fizzled. UN human rights reviews of Canada's own record were treated dismissively and even contemptuously. A commendable history of engagement with Africa was virtually dropped. The degree to which foreign policy positions were driven primarily by domestic political, usually electoral, considerations intensified. Mining and other commercial interests increasingly trumped human rights considerations. And on certain hot-button issues, such as Palestinian rights, sexual and reproductive rights, full support for death penalty abolition and the legal standing of the UN's Declaration on the Rights of Indigenous Peoples, there was no space for dialogue, let alone critique.

Some governments generously expressed confusion and disappointment about Canada's approach to human rights; while others more forthrightly made it clear that Canada had become an obstructive force with whom it was no longer worth partnering.

Amnesty International welcomes indications from the new government of an entirely new approach to international relations and global engagement. Notably the Minister of Foreign Affairs' mandate letter refers to restoring constructive Canadian leadership in the world; revitalizing public diplomacy, stakeholder engagement and cooperation with partners; and championing the values of inclusive and accountable governance, peaceful pluralism and respect for diversity, and human rights including the rights of women and refugees. Canada and the world would benefit considerably from such an approach.

RECOMMENDATION:

Effectively put human rights at the heart of Canadian foreign policy through the development of a Global Human Rights Plan and other measures to give greater prominence to human rights in parliament and government. These would include upgrading the House of Commons Subcommittee on International Human Rights to a full committee and appointing ambassadors and special envoys to lead advocacy and diplomacy with respect to key human rights priorities.

Speak out no matter the country: The universality of human rights

When it comes to reliably putting human rights first in dealings with foreign governments, there has never been a golden era. Political, economic and other strategic considerations have always interfered. And it has never been the case that one political party is inherently more dependable than another. Progressive Conservative governments in the 1980's were strong in tackling apartheid in South Africa. Liberal governments in the 1990's chose to take discussions of grave human rights concerns in China entirely behind closed doors. But the degree to which human rights concerns are relegated to the backseat or addressed inconsistently has become more pronounced than ever in recent years.

A notable example has been the adamant refusal to publicly or privately admonish Israel for war crimes and other grave human rights violations against Palestinians. Political-level attention to and engagement with serious human rights concerns throughout sub-Saharan Africa, once a cornerstone of Canadian foreign policy, has virtually disappeared. Some countries, such as Iran and Sri Lanka, have received prominent and deserved attention, often connected to domestic political considerations. Meanwhile, trading partners such as Colombia, Mexico, Honduras, Peru and China, amongst others, have largely escaped any meaningful, sustained human rights scrutiny, particularly from Canadian political leaders, despite the scope of serious abuses occurring in those countries.

RECOMMENDATION:

Establish a clear commitment to universal human rights as a guiding principle in Canada's bilateral and multilateral engagements with respect to human rights situations in other countries. No country should be immune from a blend of public and private criticism, or encouragement with respect to its human rights record.

Everyone matters equally: Defend the rights of individuals at serious risk without prejudice

Wide differences with respect to confronting human rights concerns in different countries are reflected in the inconsistency of government efforts to defend Canadian citizens, permanent residents and other individuals with close Canadian connections who experience or are at risk of serious human rights violations, most often while imprisoned by foreign governments or held captive by armed groups in other countries. Consular level support and assistance from officials is generally reliable and consistent. However, some individuals at risk receive considerable high-level political support, whether done privately or publicly. Others receive very little support and some, in fact, may be openly abandoned.

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The release of Canadian journalist Mohamed Fahmy from an Egyptian prison came after a two-year global human rights campaign. Former Prime Minister Harper showed reluctance to intervene with Egyptian leaders on Fahmy's behalf. Government has a duty to defend the human rights of individuals experiencing serious human rights violations in other countries.

That was evident, for instance, in the longstanding refusal of the Canadian government to offer any political-level assistance to Omar Khadr during the decade that he was unlawfully detained at Guantánamo Bay. Equally troubling was the reluctance of former Prime Minister Harper to intervene with Egyptian leaders to advocate for imprisoned Canadian journalist Mohamed Fahmy, in sharp contrast to the active efforts of Australia's Prime Minister on behalf of Mr. Fahmy's detained Australian colleague Peter Greste.

Several thousand Canadians are jailed around the world at any given time. However, there are only ever a small number of such cases which involve very serious human rights concerns, including individuals who may be prisoners of conscience, experiencing torture or facing the death penalty. Those cases must become priorities not only for our consular experts but for senior ministers and even the Prime Minister. And while the strategies may differ and the legal demands Canada can advance are not the same, this commitment should extend to individuals who are permanent residents or who have other close Canadian connections, such as being married to or the child or parent of a Canadian citizen.

Through the experiences of these individuals and their families, as well as individuals and families who have been released and returned to Canada after imprisonment and human rights violations in other countries, it has become clear that legal and policy reforms are needed to bring greater consistency and effectiveness to Canadian consular and diplomatic efforts in such cases.

There is also a need for law reform to better ensure that individuals who have been unlawfully imprisoned or who have experienced other human rights violations abroad can turn to the Canadian legal system to pursue justice for what they have endured.

Presently, Canada's State Immunity Act bars lawsuits in Canadian courts against foreign governments for harms experienced outside of Canada. While the Act provides an exception for commercial matters, there is no exception for harms arising from human rights violations.

RECOMMENDATION:

Develop comprehensive strategies, including a commitment to pursue high-level political diplomacy, to defend the human rights of the following individuals who have experienced, and continue to face, the threat of serious human rights violations in other countries:

- Canadian citizen Huseyin Celil, in China;
- Raif Badawi, married to and father of Canadian permanent residents, in Saudi Arabia;
- Canadian citizen Salim al-Aradi, in the United Arab Emirates;
- Canadian citizen Mohammed el-Attar and permanent resident Khaled Al-Qazzaz, in Egypt;
- Canadian citizen Bashir Makhtal, in Ethiopia;
- Canadian permanent residents Saeed Malekpour and Mostafa Azizi, along with Mohammad Ali Taheri who has close Canadian relatives, in Iran; and
- Canadian citizen Ronald Smith, sentenced to death in the US state of Montana.

RECOMMENDATION:

Initiate legal and policy reforms to more consistently and effectively protect the rights of Canadian citizens, permanent residents and other individuals with close Canadian connections who are at risk of serious human rights violations abroad.

RECOMMENDATION:

Amend the State Immunity Act to allow lawsuits against foreign governments in Canadian courts for harm arising from human rights violations that are recognized to be crimes under international law.

Committing to international human rights means signing on to international treaties

There are many steps to creating a strong and effective international human rights system. These certainly include engaging in discussion and negotiations that lead to the development of new international legal standards, including treaties. They must also extend to subsequently ratifying new treaties and acting in good faith to comply fully with the obligations arising from those treaties.

Over the past decade Canada's rate of ratifying international human rights treaties has slowed to a virtual halt. Canada ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, regarding abolition of the death penalty, in 2005 and the Convention on the Rights of Persons with Disabilities in 2008. However there are numerous treaties, many, but not all of which, have been adopted by the United Nations in the past decade, that Canada has not yet ratified. These include treaties dealing with enforced disappearances, migrant workers and three optional protocols that establish complaint mechanisms with respect to the rights of children, persons with disabilities and economic, social and cultural rights. There are also a range of important human rights treaties within the Organization of American States that have not yet been signed or ratified by Canada. The following two UN treaties, not yet ratified by Canada, are of particularly urgent concern.

Karel Chladek

At a demonstration in Montreal, Ensaf Haidar (centre) calls for her husband, Raif Badawi, to be freed from jail in Saudi Arabia. Badawi is a prisoner of conscience, sentenced to be flogged 1,000 times.

Preventing torture:

In 2002, the UN adopted an important torture prevention treaty, the Optional Protocol to the Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment. It establishes national and international committees to inspect prisons and identify conditions that encourage torture and ill-treatment. Canada made UN-level promises to consider ratification in 2006 and 2009. Yet in 2013, during a second appearance before the UN Human Rights Council's Universal Periodic Review, Canada stated that there was no intention to ratify at this time. Canada's failure to ratify makes it impossible to press governments of other countries to sign-on; countries where torture is rampant and where inspections and scrutiny are non-existent.

Amnesty International

Human rights activists calling for a global Arms Trade Treaty. A treaty was adopted by the United Nations in 2013, but Canada has yet to sign or ratify it.

Controlling the global arms trade:

In 2013, the UN adopted a ground-breaking new treaty, the Arms Trade Treaty, which brings sorely-needed human rights rules to one of the deadliest forms of global commerce, the cross-border sale or transfer of arms and weapons which are then used to commit genocide, crimes against humanity and war crimes. Canada voted for, but did not co-sponsor, the UN General Assembly resolution adopting the new treaty in April 2013. More than two years later roughly two-thirds of world states have either ratified or at least symbolically signed the treaty. Canada has done neither. Amnesty International welcomes commitments in both the Liberal Party election platform and the mandate letter for the Minister of Foreign Affairs to accede to the Arms Trade Treaty, though there is not yet an indication as to when that will occur.

RECOMMENDATION:

Make strong public statements committing to accede to both the Optional Protocol to the UN Convention against Torture and the Arms Trade Treaty as soon as possible and initiate the process to do so, including tabling the treaties in the House of Commons and carrying out any needed provincial/territorial consultations at an early stage.

RECOMMENDATION:

Initiate reviews and consultations across government, with other levels of government and with Indigenous peoples' organizations and civil society groups with respect to all other UN and OAS human rights treaties not yet ratified by Canada.

Bring a strong, principled human rights voice to the United Nations

Extremely troubling over the past decade has been the degree to which Canada has often obstructed, undermined or sought to distance itself from important UN level human rights-related decisions, principles, instruments and institutions.

Women's human rights:

For many years Canada has led on an important resolution, previously at the UN Commission on Human Rights and now the Human Rights Council, dealing with violence against women and girls. More recently Canada has also led important new international initiatives focusing on maternal, newborn and child health, sexual violence in conflict zones, and early and forced marriage. All of these initiatives have, however,

been hampered by a reticence to ground them in a strong gender equality framework, particularly with respect to sexual and reproductive rights.

RECOMMENDATION:

Ensure that all resolutions and positions advanced within international fora, touching on the needs and challenges faced by women and girls, including the Muskoka Initiative, are rooted in a gender equality framework which respects and promotes sexual and reproductive rights.

The death penalty:

There has not been an execution in Canada since 1961. Canada is fully abolitionist with respect to the death penalty in both law and practice. However, with ground-breaking resolutions that have come before the UN General Assembly in 2007, 2008, 2010, 2012 and 2014 calling for a global moratorium on executions, Canada has offered only half-hearted support. While voting in favour of the resolution all five times, on none of those occasions would Canada consider co-sponsoring the resolution, which is the means of showing the depth of our commitment. The resolution is now co-sponsored by 94 states, but not Canada, the only firmly abolitionist country to refuse to take that step. In 2007 the government also ended a policy of always seeking clemency on behalf of Canadians sentenced to death in foreign countries and adopted a new policy of only doing so on a case-by-case basis. These developments have left governments confused as to whether Canada truly means it when we say we are against the death penalty.

RECOMMENDATION:

Announce to other states that Canada will co-sponsor the next resolution calling for a global moratorium on executions, expected to come before the UN General Assembly in the fall of 2016.

RECOMMENDATION:

Adopt a policy of consistently seeking clemency on behalf of Canadian citizens sentenced to death in other countries.

Indigenous peoples:

Canada opposed and voted against the UN Declaration on the Rights of Indigenous Peoples, when it came before the UN Human Rights Council in 2006 and the UN General Assembly in 2007. The Declaration nonetheless received overwhelming support and was adopted. The Canadian government did announce support for the Declaration in November 2010. However, Canada has continued to make statements in United Nations meetings qualifying and limiting that support, particularly with respect to provisions dealing with the crucial right of free, prior and informed consent.

On that basis Canada was the only government at the 2014 World Conference on Indigenous Peoples to issue a statement qualifying its support for the consensus final Outcome Document which called for implementation of the Declaration. Furthermore, in that statement Canada continued to misrepresent the legal effect of the Declaration

in Canada and the obligations that already exist in Canadian law to seek Indigenous consent. [3]

In opposition, the Liberal Party expressed strong support for the Declaration and the Minister of Indigenous and Northern Affairs has been given a mandate to implement it.

RECOMMENDATION:

Withdraw the 2014 statement qualifying Canada's support for the consensus Outcome Document from the 2014 World Conference on Indigenous Peoples and make statements within all relevant UN bodies confirming Canada's full and unqualified support of the UN Declaration on the Rights of Indigenous Peoples.

International justice and human security:

Canada is regularly lauded for two important human security-related initiatives that benefited from Canadian leadership, the agreement in 1998 to establish the International Criminal Court (ICC) and the development of the Responsibility to Protect (R2P) norm, which has been recognized in various UN General Assembly and Security Council resolutions starting with the 2005 World Summit Outcome Document. However, in recent years Canadian support for both the ICC and R2P has wavered. Notably, Canada declined to support Swiss-led initiatives urging the Security Council to refer the crisis in Syria to the International Criminal Court and more recently, has been firmly opposed to budget increases for the ICC despite wide agreement among allies that the increases are merited. Explicit support for R2P has been virtually nonexistent in Canadian foreign policy for many years.

RECOMMENDATION:

Recommit to strong support for the International Criminal Court and the Responsibility to Protect norm.

Safe water and sanitation:

In recent years there have been important international advances in firmly recognizing the rights to safe water and sanitation. Though those rights are not expressly included in international treaties, UN expert bodies, as well as General Assembly and Human Rights Council resolutions, have all clarified that those two rights are covered by provisions in instruments such as the International Covenant on Economic, Social and Cultural Rights. Importantly, access to safe water and sanitation has also been included in the 2015 UN Sustainable Development Goals. Canada has a long history of opposition to international recognition of these important rights, particularly the right to safe water. Canada did for the first time express reluctant support for the right to safe water at the 2012 United Nations Conference on Sustainable Development but that support remains tentative and qualified, particularly with respect to suggestions that the right extends to

3 Government of Canada, "Statement on the World Conference on Indigenous Peoples Outcome Document" (22 September 2014) online: <http://www.canadainternational.gc.ca/prmny-mponu/canada_un-canada_onu/statements-declarations/other-autres/2014-09-22_WCIPD-PADD.aspx?lang=eng>.

obligations beyond Canada. The UN General Assembly is currently debating a resolution on the human rights to safe water and sanitation, to be adopted before the end of the year.

RECOMMENDATION:

Demonstrate a strong commitment to internationally-protected human rights to safe water and sanitation by voting in favour of the resolution currently before the UN General Assembly, without limitation or qualification.

Champion a human rights approach to addressing climate change

The time is right for Canada to consider opportunities for international human rights leadership with respect to important issues that would benefit from a strong human rights agenda. One such issue is climate change. That is because climate change is more than an environmental issue alone; it is also on course to become one of the most significant threats to human rights in the world.

Climate change and government responses to climate change have considerable consequences on the enjoyment of a wide range of human rights, including the rights to life, health, water, food, housing, an adequate standard of living, and the land and cultural rights of Indigenous peoples. The global debate must therefore take account of the impact of climate change on the ability of people to enjoy their human rights as well as the legal obligation of states to respect, protect and fulfil those rights and the responsibility of the private sector to respect those rights. The adverse effects of climate change will be disproportionately experienced by women, children, Indigenous peoples and others who are already marginalized due to poverty and discrimination, thereby compounding the human rights impact.

It is encouraging to see a provision on human rights in the operative section of the negotiating text of the agreement set to be adopted at the United Nations Conference on Climate Change in Paris. There is much more work that should be done to elaborate and implement the human rights obligations related to climate change.

RECOMMENDATION:

Take the lead in working with civil society groups and other governments to integrate existing human rights obligations into climate change policy frameworks and commit to contribute Canada's fair share to finance climate change-related mitigation, adaptation, loss and damage in a manner that prioritizes the needs of the poorest and most vulnerable.

Ensuring compliance with Canada's international obligations

"It is one thing to sign on to international treaties. It is another to comply with the obligations inherent in these treaties. Honouring these international obligations – which improve human rights protection in Canada and help secure such protection abroad – is what matters most. Simply put, Canada will have standing to call on other governments to meet these obligations, while we fulfill our own. Canada's oversight and implementation of its international human rights obligations require reform."

—The Honourable Irwin Cotler, Minister of Justice and Attorney General of Canada (2003-2006), Montreal, December 10, 2015

Canada engages substantially and regularly with the international human rights system. The country has ratified most of the major international human rights treaties[4] and regularly participates in the UN processes which review countries' human rights records under those treaties.[5] Canada has accepted the right for individuals to make complaints about human rights violations under several of those treaties[6] and we regularly welcome UN human rights bodies and experts to Canada to carry out research missions.[7] Canada has been examined twice as part of the UN's Universal Periodic Review, under which all country's human rights record is reviewed every four and a half years.[8]

However, there is a significant gap between this commendable level of engagement on the one hand and meaningful compliance on the other. The list of UN advice to and requests of Canada that has been dismissed, ignored or the status of which is completely unclear, has grown long. That is largely due to the lack of a system to ensure that UN human rights conclusions, recommendations and requests directed to Canada

4 See Office of the United Nations High Commissioner for Human Rights, "Status of Ratification: Canada – Interactive Dashboard" (2015) online: <http://indicators.ohchr.org/>, with respect to international human rights treaties not yet ratified by Canada.

5 Canada was reviewed by the UN Human Rights Committee in 2015 and will be reviewed by the UN Committee on Economic, Social and Cultural Rights in 2016.

6 Canada accepts individual complaints under the International Covenant on Civil and Political Rights, the Convention on the Elimination of Discrimination against Women and the Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment. Canada has not yet accepted the right of individual petition with respect to racial discrimination, economic, social and cultural rights, children's rights and the rights of persons living with disabilities.

7 In recent years that has included the UN Special rapporteur on the rights of Indigenous peoples, the Inter-American Commission on Human Rights, the UN Committee on the Elimination of Discrimination against Women and the UN Special rapporteur on the right to food.

8 Canada championed the establishment of the Universal Periodic Review process, which was instituted in 2006 and began carrying out reviews in 2008. Canada was reviewed in 2009 and 2013.

are implemented. Federal responsibility for ensuring implementation is dispersed among a number of different ministries.[9] Implementation of UN human rights recommendations very often engages federal, provincial and territorial governments, but there is no effective political-level coordination among those governments other than a committee of mid-level government officials established 40 years ago which meets annually behind closed doors and has no authority to reach decisions. Federal, provincial and territorial ministers have not convened a human rights-focused meeting since 1988.

RECOMMENDATION:

Convene a meeting of federal, provincial and territorial ministers responsible for human rights as part of a process of developing and adopting a strengthened system for ensuring implementation of Canada's international human rights obligations that is transparent, well-coordinated and politically accountable.

Stand up for human rights in court

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In recent years, the federal government has advanced positions in court proceedings that contravene Canada's international human rights legal obligations and contravene the Charter of Rights and Freedoms. These positions were often maintained aggressively through various appeals—all the way to the Supreme Court of Canada in some cases.

Of particular concern in recent years has been the frequency with which the government has advanced positions in court proceedings that breach Canada's international human rights legal obligations and contravene the Charter of Rights and Freedoms and other constitutional protections. These positions were often maintained aggressively through various appeals, even as judges consistently rejected government arguments. The concern is further reflected in the Edgar Schmidt case, a now-retired Department of Justice lawyer who has challenged the government in Federal Court for failing to notify Parliament when draft laws were unconstitutional, except in a very small percentage of cases.

This has been a serious concern in national security cases, notably the Omar Khadr case[10] and the recent case involving a government imposed ban on wearing the niqab during citizenship ceremonies.[11] It was also evident in the Federal Court judgement over-ruling government cuts to the federal health-care program for refugee claimants and refugees, found to violate the protections against cruel and unusual treatment or punishment in the Charter.[12]

There has been a mounting preoccupation about government positions taken in court in cases involving the rights of Indigenous peoples. In those cases, in addition to concerns

9 The Minister of Foreign Affairs engages at the United Nations, the Minister of Justice is responsible for oversight of relevant Canadian laws and the Minister of Heritage convenes inter-departmental and inter-governmental meetings and committees to discuss international human rights compliance.

10 Notably the government appealed rulings in Omar Khadr's case all the way to the Supreme Court of Canada on three separate occasions. Rulings in 2008, 2010 and 2015 were all unanimous in Omar Khadr's favour.

11 Government arguments that the niqab ban be upheld were rejected by the Federal Court and the Federal Court of Appeal. The previous government sought leave to further appeal to the Supreme Court of Canada. Amnesty International welcomed the new government's announcement on November 16, 2015 to drop that appeal.

12 The previous government appealed that ruling. The scheduled hearing of that appeal was set to begin on October 26, 2015 but has been adjourned until the end of 2015 to give the new government time to decide how it intends to proceed.

about government legal positions that contravene international law and the Charter, positions advanced have often breached the government's fiduciary duty to Indigenous peoples.

Amnesty International welcomes the fact that the Minister of Justice has been given a mandate to review the government's litigation strategy, including "early decisions to end appeals or positions that are not consistent with our commitments, the Charter or our values."

RECOMMENDATION:

Revise the government's litigation strategy to ensure that positions taken by the government in legal proceedings will be consistent with the Charter of Rights and Freedoms and international human rights obligations, as well as constitutional, treaty and fiduciary duty obligations towards Indigenous peoples.

Uphold the universality of human rights

Of particular concern has been the position that various governments have adopted and government lawyers have advanced in court cases, arguing that economic, social and cultural rights are of a different nature and not susceptible to the same level of judicial enforcement as civil and political rights. As such, efforts by those living in poverty or homelessness, or other disadvantaged groups, to rely on international human rights such as the rights to an adequate livelihood or access to healthcare as a basis for interpreting the Charter and other laws in Canada have faced stiff opposition from government lawyers. There is no basis in international law for the government's position but judges have generally ruled in the government's favour. This has created a growing incompatibility between the way in which Canadian law is being interpreted and applied and Canada's international obligations under international human rights law to ensure access to justice and effective remedies for all human rights, including economic, social and cultural rights.

Amnesty supports a national housing strategy that recognizes the right to housing in keeping with international human rights norms.

Government reticence about the status and standing of economic, social and cultural rights has been evident on the international stage, in Parliament and in the courts. That has included:

- refusal to-date to initiate consultations to consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, an important treaty that offers individuals the opportunity, in limited circumstances, to lodge complaints with the UN about violations of economic, social and cultural rights;
- the previous government's opposition to Bill C-400, a private members bill supported by all other Members of Parliament that would have led to creation of a national housing strategy recognizing the right to housing in keeping with international human rights norms, something that UN human rights experts have been urging of Canada for years;

- legal arguments in a recent Charter case, in which homeless people sought positive measures from governments to protect their right to life, government lawyers argued that the case should not be heard because economic, social and cultural rights, such as the right to housing, are not justiciable. This position was accepted by the Ontario Superior Court[13] and Ontario Court of Appeal[14]; and

- arguments advanced by government lawyers in recent cases challenging the exclusion of irregular migrants and refugee claimants from the Interim Federal Health Program that, while the rights to life under the Charter protects from government interference with access to private health care, it should not be interpreted consistently with international human rights law as requiring positive measures to ensure access to publicly funded health care.

RECOMMENDATION:

Cease arguing in court that economic, social and cultural rights are not amenable to judicial enforcement and ensure there are meaningful and accessible remedies for violations of economic, social and cultural rights.

RECOMMENDATION:

Implement recommendations to include economic, social and cultural rights and protection from discrimination on the ground of social condition in the Canadian Human Rights Act.

Show the international community we mean it: restrict solitary confinement in Canada

As Canada's international human rights implementation gap has grown over the years, the list of unimplemented UN human rights recommendations has become lengthy. Action to close the implementation gap necessitates reforming the intergovernmental system for overseeing Canada's international human rights obligations, beginning with convening a ministerial conference as suggested above. This must also entail taking steps to address longstanding UN recommendations, many of which are highlighted throughout this Human Rights Agenda.

One area of wide concern for UN human rights experts and bodies, whose advice and recommendations to Canada have been ignored to-date, is Canada's extensive use of solitary confinement, termed administrative or disciplinary segregation in the Canadian corrections system. The physical and psychological impact of solitary confinement is frequently irreversible and is often so severe that the UN's leading expert on torture, the Special Rapporteur on torture, has called for it to be prohibited against certain groups of individuals and for its use to be restricted and limited more generally. Canada's practice is not even close to the Special Rapporteur's standards. The UN Committee against Torture and the UN Human Rights Committee have, therefore, both recently

13 *Tanudjaja v Canada (Attorney General),* 2013 ONSC 5410, 116 OR (3d) 574.

14 *Tanudjaja v Canada (Attorney General),* 2014 ONCA 852, 123 OR (3d) 161.

urged Canada to reform laws, policies and practice with respect to solitary confinement. The Human Rights Committee called on the government to "effectively limit the use of administrative or disciplinary segregation as a measure of last resort for as short a time as possible and avoid such confinement for inmates with serious mental illness."[15]

There is serious domestic concern about Canada's use of segregation or solitary confinement as well. The Coroner's inquest in the Ashley Smith case in Ontario called for its use to be restricted.[16] That recommendation was rejected by the federal government.[17] As a last resort, lawsuits challenging and seeking restrictions on the use of segregation or solitary confinement have been launched by the British Columbia Civil Liberties Association and the John Howard Society in British Columbia,[18] and the Canadian Civil Liberties Association and the Elizabeth Fry Society in Ontario.[19] In Ontario, the Advocate for Children and Youth has called for a ban on placing juvenile offenders in solitary confinement for periods over 24 hours after revelations that, contrary to international standards, some youth had spent extended periods in isolation.

Amnesty International welcomes the mandate given to the Minister of Justice to implement the "recommendations from the inquest into the death of Ashley Smith regarding the restriction of the use of solitary confinement." Action to curtail the widespread use of solitary confinement in Canada would address a serious national human rights concern and would demonstrate that the Canadian government is prepared to take action to implement international human rights obligations.

RECOMMENDATION:

Review and reform the circumstances, frequency and length of the use of solitary confinement or administrative or disciplinary segregation in Canadian prisons so as to ensure compliance with international human rights standards and to implement the recommendations from the Ashley Smith Inquest.

15 United Nations Human Rights Committee, *Concluding observations on the sixth periodic report of Canada (13 August 2015) UN Doc CCPR/C/CAN/CO/6 at para 14.*

16 Correctional Service Canada, *Coroner's Inquest Touching the Death of Ashley Smith (21 May 2014) online: <http://www.csc-scc.gc.ca/publications/005007-9009-eng.shtml>.*

17 Josh Wingrove, "Canadian government rejects solitary confinement limits" (11 December 2014) online: *The Globe and Mail <http://www.theglobeandmail.com/try-it-now/?articleId=22049695>.*

18 British Columbia Civil Liberties Association, "BCCLA and JHSC v. AG of Canada: challenging solitary confinement in Canadian prisons" (19 January 2015) online: <https://bccla.org/our_work/bccla-and-jhsc-v-ag-of-canada-challenging-solitary-confinement/>.

19 Canadian Civil Liberties Association, "CCLA and Canadian Association of Elizabeth Fry Societies Launch Lawsuit Challenging Solitary Confinement in Prisons" (27 January 2015) online: < https://ccla.org/ccla-and-canadian-association-of-elizabeth-fry-societies-launch-lawsuit-challenging-solitary-confinement-in-prisons-2/>.

INDIGENOUS PEOPLES IN CANADA

Time for reconciliation and respect for rights

"Canadian governments and churches and others sought to erase from the face of the earth the culture and history of many great and proud peoples. This is the very essence of Colonialism leaving in its path the pain and despair felt by thousands of Indigenous people today. But rather than denying or diminishing the harm done, we must agree that this damage requires serious, immediate, and ongoing repair. We must endeavour instead to become a society that champions human rights, truth and tolerance; not by avoiding a dark history but rather by confronting it."

—Justice Murray Sinclair, Chair of the Truth and Reconciliation Commission of Canada, Speaking at the release of the TRC's Findings and Call to Action on Indian Residential Schools, Ottawa, June 2, 2015.

By any measure the longstanding, widespread, pervasive, entrenched and grave violations of the rights of Indigenous peoples is Canada's most glaring and unforgiveable human rights failing. The Canadian government has repeatedly confirmed that to be true. With growing recognition of the urgency of the challenges and the momentum for change that come with the release of the calls to action of the Truth and Reconciliation Commission (TRC) and the federal commitment to a National Inquiry on missing and murdered Indigenous women and girls, there is considerable opportunity and expectation for a new approach to the relationship with Indigenous peoples in the country.

The TRC findings are necessarily grim and stark. The report notes that, "for over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada." The report further notes that residential schools were central to that policy, "which can best be described as "cultural genocide."[1] The TRC lays out a roadmap for moving forward focused on reconciliation, and concludes that the United Nations Declaration on the Rights of Indigenous Peoples provides the framework for that reconciliation.[2]

1 Honouring the Truth, *Reconciling for the Future, Summary of the Final Report of the Truth and Reconciliation Commission of Canada (June 2015)* online: <http://www.trc.ca/websites/trcinstitution/File/2015/Honouring_the_Truth_Reconciling_for_the_Future_July_23_2015.pdf> at 1.

2 *Ibid at 21.*

Minister of Indigenous and Northern Affairs Carolyn Bennett has been given a mandate to renew the relationship between Canada and Indigenous Peoples, and to ensure that the renewal is a "nation-to-nation relationship, based on recognition, rights, respect, co-operation and partnership." The government has committed to implementation of the TRC recommendations and the UN Declaration on the Rights of Indigenous Peoples. During the election campaign the Liberal Party, in response to questions posed by Amnesty International and other organizations, noted that key to building a collaborative relationship with Indigenous peoples is "rejecting the unilateral imposition of policies and regulations affecting their rights."

The combined impact of the TRC recommendations and a new government which has committed to a fundamentally different approach to building a relationship with Indigenous peoples in Canada offers an unprecedented opportunity for progress.

RECOMMENDATION:

Work collaboratively with Indigenous peoples in Canada to fully implement the calls to action from the Truth and Reconciliation Commission.

RECOMMENDATION:

Work collaboratively with Indigenous peoples in Canada to implement the UN Declaration on the Rights of Indigenous Peoples, including through reform of federal laws and policies and a legislated requirement that there be regular public progress reports.

Land rights, resource development and respect for the principle of free, prior and informed consent

Across the country, First Nations, Inuit and Métis people are under increasing pressure from large-scale resource development projects and related infrastructure development on and near their traditional territories. Plans for these projects have largely failed to account for the potential impact on the traditional occupations of Indigenous peoples which remain important sources of food and livelihood for people who are among the most marginalized in the Canadian economy. Despite concerns raised by many Indigenous peoples about the potential harmful impacts of large-scale resource development, the federal government has failed to establish sufficiently rigorous formal mechanisms and processes to ensure that Indigenous Peoples are meaningfully consulted and their rights adequately protected when such projects affect their traditional territories.

Supreme Court rulings have affirmed that there are circumstances in which decisions about resource developments should only be made with the consent of the affected Indigenous peoples. Yet under the previous government, Canada persisted in denouncing the standard of free, prior and informed consent, as set out in the UN

The environmental impact assessment of the proposed $8 billion Site C hydroelectric dam in Northern British Columbia is clear that flooding such a large section of the Peace River valley would "severely undermine" First Nations, Métis and non-Aboriginal use of the area for hunting, trapping, and gathering plant medicines; would make fishing unsafe for at least a generation; and would submerge burial grounds and other crucial cultural and historical sites.

Declaration on the Rights of Indigenous Peoples and in international human rights law more broadly, and characterized this standard as irreconcilable with Canadian law.

This entrenched opposition can and must change, and commitments from the new government give rise to an expectation that it will change. As noted above, the Minister of Indigenous and Northern Affairs has been given a mandate to implement the UN Declaration on the Rights of Indigenous Peoples, which includes important provisions with respect to consultation, collaboration and free, prior and informed consent. Her mandate, jointly shared with the Minister of Justice, includes as well a review of laws, policies and operations to ensure the government is "fully executing its consultation and accommodation obligations, in accordance with its constitutional and international human rights obligations, including Aboriginal and Treaty rights."

There are numerous high-profile situations in the country where quick government action is needed to demonstrate that the new approach is real and meaningful. That includes decisions about the Northern Gateway Pipeline and the Site C Dam in British Columbia, as well as follow-up to ensure compliance nationwide with the Supreme Court of Canada's historic ruling in the 2014 Tshilhqot'in decision.[3]

RECOMMENDATION:

In keeping with Canadian support for and implementation of the UN Declaration on the Rights of Indigenous Peoples, incorporate the obligations with respect to meaningful consultation and the right of free, prior and informed consent into Canadian law.

RECOMMENDATION:

Announce that neither the Northern Gateway Pipeline nor the Site C Dam in British Columbia will proceed without the consent of affected Indigenous peoples.

3 Tsilhqot'in Nation v British Columbia, 2014 SCC 4, [2014] 2 SCR 257.

RECOMMENDATION:

Collaborate with Indigenous peoples to ensure recognition of land rights and title across the country, consistent with the Supreme Court of Canada's Tsilhqot'in decision and international law.

Environmental assessments and the rights of Indigenous Peoples

Amnesty International has expressed concern about recent changes to environmental, fisheries and oceans, internal waterways and other laws. The environmental assessment process is an important mechanism to ensure that Indigenous rights are recognized and protected when decisions are being taken about pipelines, dams, mines and other proposed developments that impact the lives and rights of Indigenous peoples. While recent changes to federal laws have significantly weakened the country's environmental assessment processes, and must be corrected, there are long-standing gaps and shortcomings in these processes which must also be addressed. A particular concern is the need for long-term land use planning processes that ensure the full and effective participation of Indigenous peoples consistent with their rights, and for comprehensive review of social and cultural impacts, including a gender-based analysis of the potentially differing impacts on people of different genders.

The Ministers of Indigenous and Northern Affairs, of the Environment and Climate Change, of Fisheries, Oceans and the Canadian Coast Guard, and of Natural Resources have jointly been tasked with carrying out an immediate review of Canada's environmental assessment processes. That mandate specifically includes ensuring that the "consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects" is enhanced. It is crucial that the review of environmental assessment legislation involves Indigenous peoples organizations and that it ensures Canada's environmental review processes meet international human rights requirements.

RECOMMENDATION:

Reform legislation for the review and approval of resource development projects, including the Canadian Environmental Assessment Act, to clearly mandate a comprehensive social and cultural impact assessment, including a gender-based analysis.

First Nations children

The federal government bears the responsibility of funding child and family services on First Nations reserves and in the Yukon. In other communities these services would generally be funded by the provincial and territorial governments. However, the federal government's funding of such services is at least 22 percent less per child than what provincial governments dedicate for child protection services in other, predominantly non-Indigenous communities. This is despite higher costs in delivering services in small and remote communities and often greater needs resulting from the impoverishment and marginalization of Indigenous communities and the ongoing, inter-generational impacts of residential schools. The persistent underfunding has limited the child and family services available in many First Nations communities to the point that the removal of children and their families, meant to be strictly a last resort, has become the only option available when families are not able to provide adequate care.

A supporter of the First Nations Child and Family Caring Society's "I Am A Witness" campaign, which urged people to follow a case regarding equity for First Nations children that was before the Canadian Human Rights Tribunal. The case was initiated by the Caring Society and the Assembly of First Nations. Amnesty intervened in the case.

This serious human rights concern is the subject of a complaint to the Canadian Human Rights Commission that has been before the Canadian Human Rights Tribunal since 2008. That complaint was the subject of numerous unsuccessful government attempts to shut it down or limit it. The hearing before the Tribunal concluded in October 2014 and the decision has been reserved for fourteen months.[4]

RECOMMENDATION:

Work with First Nations to ensure adequate funding to meet the needs of families and children on reserves and in the Yukon, including equitable access to culturally appropriate programmes and support services within families and communities.

Safe water

First Nations face a persistent crisis of unsafe and insecure drinking water. An estimated 20,000 First Nations people living on reserves across Canada still have no access to running water or sewage. In addition, where water systems exist, between 110 and 130 boil water advisories are in place at any time. In some cases, the problem has gone uncorrected for years. In 2006, an expert panel appointed by the federal government concluded that drinking water problems in First Nations communities were primarily the result of federal underfunding.

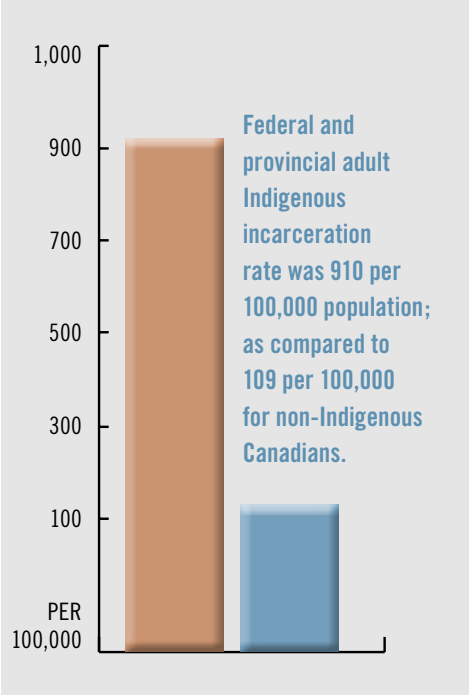
4 For more details and current status of the case, see First Nations Child and Family Caring Society of Canada, "I Am a Witness" (2015) online: <http://www.fncaringsociety.com/i-am-witness>.

First Nations communities across Canada have the right to have access to clean drinking water and adequate sanitation, including through provision of adequate, sustained funding for such services. Failure to ensure access violates the rights to safe water and sanitation and is discriminatory. Furthermore, rights to safe water and sanitation in First Nations communities must be protected in a manner that respects Indigenous rights. Amnesty International has repeatedly called for amendments to the Safe Drinking Water for First Nations Act to ensure respect for First Nations self-government rights in regulating First Nations water systems.

RECOMMENDATION:

Work with First Nations to ensure all First Nations communities across the country have access to clean drinking water and adequate sanitation.

Over-incarceration of Indigenous women and men in Canada



For many years, Indigenous peoples organizations, front line groups working with prisoners, corrections experts, academics, human rights advocates and UN bodies have expressed growing concern about the disproportionately high rate of incarceration of Indigenous women and men in federal and provincial prisons across Canada. In Canada's most recent international human rights review, before the UN Human Rights Committee in July 2015, it again emerged as a concern. The Committee called on Canada to "ensure the effectiveness of measures taken to prevent the excessive use of incarceration of Indigenous peoples and resort, wherever possible, to alternatives to detention."[5] In its 2008 review of Canada the UN's Committee on the Elimination of Discrimination against Women called on Canada to address the over-incarceration of Indigenous women in Canadian prisons.[6]

The Supreme Court has determined that sentencing decisions must take into consideration background factors that may have negatively affected Aboriginal offenders.[7] These factors include the history of "colonialism, displacement and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide and, of course, higher levels of incarceration for Aboriginal Peoples."[8] Despite these sentencing principles – known as the Gladue principles – the objective of reducing Aboriginal incarceration through promotion of alternatives has not been achieved.

5 United Nations Human Rights Committee, *Concluding observations on the review of the sixth periodic report of Canada (13 August 2015) UN Doc CCPR/C/CAN/CO/6 at para 18.*

6 United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations with respect to Canada (7 November 2008) UN Doc CEDAW/C/CAN/CO/7 at paras 33, 34.*

7 *R. v. Gladue*, [1999] 1 S.C.R. 688

8 *R v Ipeele,* [2012] SCC 13

The federal Office of the Correctional Investigator (OCI) has long been concerned about "the severe and chronic state of Aboriginal over-representation in federal penitentiaries" and notes in an October 2012 report that "Aboriginal offenders now account for 21.5% of [the federally] incarcerated population." The report refers to estimates that the overall federal and provincial adult Indigenous incarceration rate was 910 per 100,000 population; as compared to 109 per 100,000 for non-Indigenous Canadians.[9] That is almost a 900% difference.

Factors leading to high rates of incarceration of Indigenous women and men have also contributed to a disproportionate number of Indigenous people being declared 'dangerous offenders' – and thus potentially incarcerated for the rest of their lives – under a system that can be triggered by any three convictions that could have led to incarceration in federal prison, regardless of their degree of seriousness or mitigating circumstances considered at the time of sentencing for these convictions.

RECOMMENDATION:

Increase funding to support alternatives to incarceration for Indigenous peoples where the individual does not represent a danger to the community, as called for by the Office of the Correctional Investigator.

RECOMMENDATION:

Review Canada's dangerous offender legislation to address conflicts with the Gladue principles and Canada's overall commitment to address the over-incarceration of Indigenous people.

9 Office of the Correctional Investigator, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act (22 October 2012) online: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022-eng.aspx> at paras 17, 18.*

GENDER EQUALITY

Ending discrimination and violence

"When I look at the bigger picture, I say, wow, this is really the value of women in Canadian society."

—Judy Maas, sister of Cynthia Maas, who was murdered in Prince George, British Columbia in 2010, November 26, 2015

"We have instilled the belief in our society that Trans people are people who are not worth protecting, and have done that through the institution of systems of oppression which result in the murders and suicides of our Trans people. It is time for our government to step up and make explicit protections for gender identity and expression in the Canadian Criminal Code and the Canadian Charter of Rights and Freedoms."

—Rachel Clark, transgender rights activist, Toronto, November 25, 2015

Around the world and here in Canada, women and girls continue to face alarmingly high rates of discrimination and violence. Tolerance of these grave human rights abuses and the overwhelming power imbalance between people of different genders is so deeply entrenched in societal attitudes and traditions as to be accepted as the norm. Canada has traditionally been a world leader on the international stage in efforts to counter what must surely, by magnitude of numbers, be seen as the world's biggest human rights problem. As noted earlier in this Human Rights Agenda, that has included leadership with respect to such pressing foreign policy concerns as violence against women and girls, maternal, newborn and child health, sexual violence in conflict zones, and early and forced marriage.

There continues to be a pressing need for that leadership, both internationally and domestically, which Amnesty International has recommended, be strengthened by more explicitly grounding these initiatives, such as the Muskoka Initiative, within a full gender equality framework. Canada's standing with respect to gender equality has been further eroded given the piecemeal response to the urgent crisis of violence against Indigenous women and girls in Canada and the failure to implement at home the calls for a national action plan on violence against women that Canada helped to champion at the UN.

Globally, LGBTI and other gender-nonconforming individuals are among the most vulnerable and marginalized members of any community. LGBTI individuals experience high rates of harassment, discrimination and violence and, because of their marginalization, may not report rights violations due to fears around stigmatization and lack of confidence that police and justice systems will offer any protection.

In recent years Canadian diplomats have been outspoken in opposing the criminalization of homosexuality, both bilaterally and within multilateral settings, but that has not been backed up by budget allocations to support substantive programming. Canada's interventions have not always anticipated the resistance and even outright hostility many governments express when faced with demands to ensure equal human rights protection for LGBTI individuals.

Given the degree to which Canadian foreign policy has largely been strong with respect to women's human rights and gender equality, it is all the more important to ensure that domestic laws and practice follow suit. The Minister for the Status of Women has been mandated to take action in a number of important areas, including developing a federal gender violence strategy and action plan, tackling harassment and sexual violence in federal workplaces, and promoting gender parity in the government's senior appointments. Importantly, there will also be efforts to ensure that proposals brought to Cabinet have been through a gender-based analysis. Public reporting with respect to these new initiatives and approaches will be very important. Additionally, there are several pressing areas of concern in need of urgent attention.

Violence against Indigenous women and girls

Across Canada, families of Indigenous women and girls who have been murdered or who have gone missing continue to call for action from the federal government.

Indigenous women and girls are far more likely than non-Indigenous women and girls to experience violence—and the violence they experience is typically much more severe. Across Canada, families of Indigenous women and girls who have been murdered or who have gone missing continue to call for real, meaningful action from the federal government. Amnesty International welcomes the government's commitment, repeated frequently, including by Prime Minister Trudeau, and confirmed in the mandates of the Ministers of Indigenous and Northern Affairs, Justice and Status of Women, to "develop an approach to, and a mandate for, an inquiry into murdered and missing Indigenous women and girls in Canada." We welcome as well the government's commitment to work with affected families and Indigenous women's organizations in the establishment of what must be a comprehensive, well-resourced inquiry.

Inquiries take time, and immediate action is required and can readily be taken before more lives are lost. The government should therefore act now on recommendations made in previous studies, including the two Parliamentary committees tasked with studying the issue and recent reports from the Inter-American Commission on Human Rights and the UN Committee on the Elimination of Discrimination against Women.

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Amnesty International and other organizations held a vigil in solidarity with Indigenous women from Val d'Or after publicly denouncing the abuses they suffered at the hands of Sûreté du Québec officers. Montreal, October 2015.

These recommendations include the need for significantly greater levels of funding for women's shelters on reserve, and the introduction of national protocols and training which will ensure that police reliably and consistently gather and record data on the Indigenous identity of missing and murdered women. That data is essential to effective policy-making and programming.

These recommendations, plus others that are identified in the eventual public inquiry, must be taken up as part of a comprehensive national action plan on violence against women and girls. The UN Secretary-General's UNiTE to End Violence against Women campaign calls on all states to create a national action plan on violence against women and girls, coupled with robust systems to collect and analyze data on violence against women and girls.[1]

RECOMMENDATION:

Consult in a meaningful and timely fashion with Indigenous women and girls who have survived violence, the families of murdered and missing Indigenous women, Indigenous women's organizations, and Indigenous peoples' representative organizations with respect to the mandate and design of a public inquiry into missing and murdered Indigenous women and girls. Ensure the inquiry is well-resourced and is launched quickly after consultations are complete.

RECOMMENDATION:

Act immediately on existing recommendations with respect to violence against Indigenous women and girls, in particular the need to increase funding for women's shelters on reserve and the introduction of national protocols and training to ensure accurate police data on the Indigenous identity of missing and murdered women is gathered.

RECOMMENDATION:

Ensure that all recommendations with respect to addressing violence against Indigenous women and girls are taken up as part of a comprehensive, coordinated, time-bound and well-resourced national action plan on violence against women and girls.

1 United Nations Secretary-General, "UNiTE Goals" (2015) online: <http://www.un.org/en/women/endviolence/goals.shtml>.

Promote gender equality

Canada has been a global leader in developing tools and methodologies for conducting gender analysis – the process of examining inequalities and ensuring that policies and programs best promote gender equality. Supporting research, advocacy and other programs to address persistent gender inequalities and promote the empowerment of women and girls is critical to making progress towards gender equality. Status of Women funding for research and advocacy ended in 2006, and was followed by extensive funding cuts which led to the closing of 12 out of 16 regional Status of Women offices. These cuts have substantially undermined the ability and capacity of civil society groups to engage in research and advocacy focused on promoting women's equality. The revised funding rules and closure of Status of Women offices attracted the concern of the UN Committee on the Elimination of Discrimination against Women at the time of its last review of Canada's record.[2]

RECOMMENDATION:

Ensure all policy and programming decisions, including with regard to proposal brought before Cabinet, include comprehensive gender analysis. This includes gender analysis in the federal approvals process for large-scale natural resource development process.

RECOMMENDATION:

Restore Status of Women funding rules to support research and advocacy with respect to women's human rights and provide sufficient resources to ensure Status of Women offices are present across the country.

RECOMMENDATION:

Revise the Muskoka Initiative on Maternal, Newborn and Child Health to fund the full range of sexual and reproductive health services and reframe the program firmly from a gender equality perspective that extends beyond issues related only to women giving birth.

Federal action to protect transgender rights

In Canada and worldwide, transgender individuals face a heightened risk of murder, assault, and other crimes and human rights violations. They also experience widespread discrimination with respect to employment, housing, and other essential rights. The impact is devastating. Transgender individuals face some of the highest levels of depression and suicide of any sector in society.

Law reform is one of the many measures needed to better protect the rights of transgender individuals. Over the past decade there have been four attempts to strengthen Canadian legal protections for transgender individuals through private members legislation. The most recent effort, Bill C-279, An Act to amend the Canadian

2 United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations with respect to Canada (7 November 2008) UN Doc CEDAW/C/CAN/CO/7 at paras 25-28.*

Bill C-279 would have amended the Canadian Human Rights Act and the Criminal Code of Canada to include provisions on gender identity.

Human Rights Act and the Criminal Code (gender identity), passed in the House of Commons but became stalled in the Senate in the face of opposition from a number of Senators appointed by the previous government. It did not pass before the last session of Parliament ended.

Bill C-279 would have added gender identity to the prohibited grounds of discrimination under the Canadian Human Rights Act as well as the hate crime provisions in the Criminal Code. Notably it was endorsed by police forces in Canada, who indicate it would significantly improve their ability to investigate and punish crimes committed against transgender individuals. Eight provinces and territories are now ahead of the federal government in having added gender identity to the prohibited grounds of discrimination under provincial and territorial human rights laws.

Amnesty International strongly welcomes the fact that the Minister of Justice has been mandated to "introduce government legislation to add gender identity as a prohibited ground for discrimination under the Canadian Human Rights Act, and to the list of distinguishing characteristics of 'identifiable group' protected by the hate speech provisions of the Criminal Code." It will be the first time that a proposal for federal legislation in this area goes forward as a government bill. The initiative will be significantly strengthened if it is extended to cover both gender identity and gender expression, as was done, for example, in Ontario. Gender identity is a person's individual sense of gender—whether they identify as a woman, man, both, or neither. Gender expression is how a person publicly presents their gender and can include behaviour and appearance. Gender non-conforming individuals may experience discrimination because of who they are (their gender identity) and/or because of how they express their gender outwardly (their gender expression), making it important to include both gender identity and expression as prohibited grounds of discrimination.

Given that the legislation required here is not detailed and involved, yet has received considerable study and review by various parliamentary committees over the past decade and has already frequently been debated in Parliament, this could and should come forward and be adopted as a matter of priority. Transgender individuals need and deserve quick action after their rights have been kept on hold for so many years.

RECOMMENDATION:

Introduce, as a matter of priority, legislation to add gender identity and gender expression to the prohibited grounds of discrimination under the Canadian Human Rights Act and the hate crimes provisions of the Criminal Code.

BUSINESS AND TRADE

It's a matter of rights

"Transnational mining companies come in here as if we don't even exist. They don't see us. We're invisible to them. They come in like invaders, victors. But they aren't. We tell them: "We've made a decision ... and you are not welcome". They are violating our rights. They are ignorant about our lives. And you in Canada bear responsibility too."

—Lolita Chavez, Maya-Quiche leader, Guatemala, March, 2013.

"Indigenous people need to be respected. How can it be that foreign companies come and invest here and then afterwards we have worse problems than before? Maybe it doesn't affect you. But it's very serious for us. It's our people who are dying."

—Jaisaibuma, Emberá Katío Indigenous woman community leader, Colombia, July, 2000.

Every year the global market place expands, commercial links across nations grow, trade regimes solidify rules and it seems as if there is no corner of the world where Canadian firms, particularly extractives companies, are not actively exploring or doing business. The mining sector is of particular note as it is an industry which is led by Canadian companies, in terms of size, numbers and reach. Canadian geologists, banks, securities exchange commissions, insurers and lawyers provide the technical, financial and legal backbone to the global mining industry, but are often divorced from human rights realities. The extractives industry faces considerable human rights challenges, including land ownership and territorial rights of Indigenous peoples, poorly trained company security personnel, potential health issues related to polluted water, social impacts where they do business and the increasing state militarization of communities opposed to mining. Without clearly applicable and enforceable human rights standards, the risk that the operations of extractives companies will cause or contribute to serious human rights violations is very real.

At the same time, growing numbers of bilateral and multilateral free trade agreements open up more and more corners of the world to multinational business. That is not a human rights problem in and of itself. In fact, there are many ways that the increased employment and prosperity that flows from growing trade and investment can, if managed responsibly and sustainably, boost the enjoyment of human rights. The contrary is true, as well. And that downside to trade deals is often exacerbated by investor-state dispute clauses that allow businesses to sue governments for significant sums of money for laws and policies that may have been adopted to safeguard human

rights or the environment but have in some way limited free trade possibilities. As the current government embarks on a review of the massive Trans-Pacific Partnership trade agreement, these issues are of paramount concern.

In recent years, Canada's foreign policy has been increasingly driven by economic considerations. The previous government adopted a Global Markets Action Plan in November 2013, which established economic diplomacy as the centrepiece of Canada's international relations. The Action Plans does not give even a passing nod to the importance of pursuing greater trade and investment in ways that promote and strengthen respect for human rights, protection of the environment and other fundamental values.

Under the Action Plan, Canada's diplomatic missions are expected to channel all of their resources into supporting the expansion of Canadian business interests. However, the Action Plan does not require companies to carry out human rights due diligence, engage in meaningful consultation with communities, or obtain free, prior and informed consent from Indigenous communities that will be impacted by their proposed operations. Canada should provide specific guidance to companies on these matters. Similarly there is no reference to human rights in the mandate that has been laid out for the new Minister of International Trade, including in the description of the Canadian Trade and Export Strategy she is expected to develop.

RECOMMENDATION:

Enhance the mandate of the Minister of International Trade to include responsibility for ensuring that Canada's trade policy and agreements, and the country's laws, policies and services that support Canadian investment and business operations abroad, are consistent with Canada's international human rights obligations.

Farmers protest before riot police at Letpadaung copper-mine, Monywa, in northwestern Myanmar. A Canadian company, Ivanhoe Mines, had been part owner of the mine but ownership was transferred in circumstances that have not been fully explained according to a recent Amnesty report.

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Local leader Yolanda Oquelí, who suffered an assassination attempt on June 2012 due to her involvement, warns the Guatemalan government will be held responsible for any blood spilled. After two years and two months of peacefully blocking the entrance to U.S.-based Kappes, Cassiday & Associates (KCA) El Tambor gold mine, local residents of San Jose del Golfo and San Pedro Ayampuc were violently evicted by Guatemalan Police forces in order to introduce heavy machinery inside the industrial site. La Puya, San Pedro Ayampuc, Guatemala. May 23, 2014.

No trade without human rights

There are eleven free trade agreements in force between Canada and other countries; three that have been concluded (including very significantly the Trans-Pacific Partnership and the Comprehensive Economic and Trade Agreement), seven which are being negotiated, one that is being updated and four more that are being explored. Collectively the agreements involve dozens of countries.

Current Canadian policy does not require free trade agreements to include provisions that will ensure compliance with international human rights standards. Several existing free trade agreements involve countries where there have been mounting concerns about human rights abuses associated with economic activities, including increased mining, oil and gas operations.

Trading with Colombia:

The Canada-Colombia Free Trade Agreement (CCFTA) received parliamentary approval only after the addition of a requirement for the two governments to each prepare annual reports assessing the agreement's human rights effects. It is the only free trade agreement to which Canada is a party that includes such a provision, creating an opportunity for a constructive precedent in terms of human rights due diligence. Implementation of the CCFTA's human rights review requirement has proven to be a meaningless exercise in turning a blind eye to pressing human rights concerns. Amongst other concerns, the four reports prepared by Canada in 2012, 2013, 2014 and 2015 have all failed to mention, let alone assess, one of the most significant trade-related human rights concerns in Colombia: the rapidly increasing presence of extractive companies in and around the territories of Indigenous peoples amidst armed conflict, grave human rights violations and forced displacement that, according Colombia's Constitutional Court, threaten more than one-third of Indigenous nations in Colombia with physical or cultural extermination.[1] A set of benchmarks for assessing the human rights impact of trade deals has been developed by the UN Special Rapporteur on the right to food.[2]

1 See *Auto 004/2009, Constitutional Court of Colombia, online: <www.corteconstitucional.gov.co/relatoria/autos/2009/a004-09.htm>.*

2 See Oliver De Schutter, Report of the UN Special Rapporteur on the right to food: Guiding Principles on Human Rights Impact Assessments of Trade and Investments, A/HRC/19/59/Add.5 (19 December 2011) online: <www.ohchr.org/

Trading across the Pacific:

Now, very notably, the government and Canadians are faced with the recently concluded Trans-Pacific Partnership a proposed trade deal which would link Canada with eleven other nations,[3] accounting for an estimate 40 percent of world trade. The deal does not include any human rights safeguards, a concern that has been flagged by ten UN human rights experts who point to the secrecy that surrounds negotiations of agreements such as the TPP and their potential adverse impact on human rights. These experts highlight a number of ways that trade agreements such as the TPP may have "retrogressive effects on the protection and promotion of human rights", ranging from lowering thresholds of health promotion, food safety and labour standards, aggravating extreme poverty, and affecting the rights of Indigenous peoples, minorities and other persons living in vulnerable situations. They point to the problematic impact of investor-state dispute settlement (ISDS) chapters in free trade deals, noting that decades of ISDS arbitration demonstrates that these provisions constrain the ability of states to legislate in the public interest.[4]

The statement from the UN human rights experts proposes five overarching recommendations to help ensure that trade deals do not impair human rights protection: transparent negotiations; publication of draft text with ample time to allow parliamentarians and civil society to review and comment; human rights impact assessments conducted before and after deals are concluded; an obligation on states to detail how they will uphold human rights obligations if a particular deal is ratified; and robust safeguards embedded in trade agreements to ensure full protection and enjoyment of human rights.

RECOMMENDATION:

Consult widely with Indigenous peoples organizations, trade unions and other civil society groups in Canada and Colombia in advance of the 2016 human rights review of the Canada-Colombia Free Trade Agreement to ensure that a credible process is put in place that will deliver an independent, impartial and comprehensive human rights assessment that complies with UN benchmarks, and addresses the impact of the agreement on the rights of Indigenous peoples, as well as other affected sectors of the population, connected to the increased presence of Canadian companies resulting from the agreement.

RECOMMENDATION:

Apply and adopt the recent recommendations about free trade and investment agreements proposed by ten UN human rights experts to the government's review of and decision-making with regard to ratification of the Trans-Pacific Partnership.

3 United States, Mexico, Peru, Chile, New Zealand, Australia, Japan, Vietnam, Malaysia, Singapore and Brunei.

4 Office of the United Nations High Commissioner for Human Rights, "UN experts voice concern over adverse impact of free trade and investment agreements on human rights" (2 June 2015) online: <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031&LangID=E>.

Human rights must be the government's business

As noted above, Canadian extractives companies, particularly in the mining sector, are present in virtually all corners of the planet. Many of those companies are involved in situations in which human rights violations are directly or indirectly associated with the company's presence or operations.[5]

Recognizing that reality, Amnesty International and numerous organizations have pressed the government to significantly strengthen Canada's Corporate Social Responsibility Strategy. The inadequacy of existing standards and mechanisms is reflected by a growing number of lawsuits against Canadian mining companies regarding alleged human rights abuses associated with their overseas operations. Legal challenges are currently underway in Ontario and British Columbia against three mining companies with respect to operations in Guatemala and Eritrea.

There are significant barriers to justice for victims of Canadian corporate human rights harms, such as the forum of convenience doctrine, financial costs, time and expertise. Seeking justice in Canada is beyond the reach of most individuals and communities. Amnesty International and numerous other civil society groups from across the country have joined together through the "Open for Justice" campaign to urge the Canadian government to establish an Extractive Sector Ombudsperson and legislate access to Canadian courts for individuals and communities who have experienced human rights harms related to the overseas operations of Canadian companies. In its 2015 review of Canada's human rights record the UN Human Rights Committee similarly called on Canada to "establish an independent mechanism with powers to investigate human rights abuses by corporations abroad; and develop a legal framework that affords legal remedies to people who have been victims of activities of such corporations operating abroad."[6]

At the same time, it is clear that mandatory human rights standards for Canadian corporations operating overseas, corporate human rights due diligence requirements, and more meaningful enforcement processes in Canada would likely reduce the need to turn to the courts. The government has not yet adopted a National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights, as recommended by the UN Working Group on Business and Human Rights.

5 See Amnesty International, *Mining in Guatemala: Rights at Risk (2014) online: <http://www.amnesty.ca/sites/amnesty/files/mining-in-guatemala-rights-at-risk-eng.pdf>; Open for Business: Corporate Crimes and Abuses at Myanmar Copper Mine (2015) online: <http://www.amnesty.ca/sites/amnesty/files/asa160032015en.pdf>; Undermining Rights: Forced evictions and police brutality around the Porgera Gold Mine, Papua New Guinea (2010) online: <https://www.amnesty.org/en/documents/ASA34/001/2010/en/>; Colombia: Restoring the Land, Securing the Peace: Indigenous and Afro-Descendant Territorial Rights (2015) online: <https://www.amnesty.org/en/documents/amr23/2615/2015/en/>; Human Rights Watch, Hear No Evil: Forced Labor and Corporate Responsibility in Eritrea's Mining Sector (2013) online: <https://www.hrw.org/sites/default/files/reports/eritrea01134Upload.pdf>; Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine (2011) online: <https://www.hrw.org/sites/default/files/reports/png0211webwcover.pdf>; Toxic Toil Child Labor and Mercury Exposure in Tanzania's Small-Scale Gold Mines (2013) online: <https://www.hrw.org/sites/default/files/reports/tanzania0813_ForUpload_0.pdf>.*

6 United Nations Human Rights Committee, *Concluding observations on the review of the sixth periodic report of Canada (13 August 2015) UN Doc CCPR/C/CAN/CO/6 at para 6.*

RECOMMENDATION:

Strengthen Canadian corporate accountability for human rights by establishing an Extractive Sector Ombudsperson; legislating a right of access to Canadian courts in cases alleging human rights harm associated with overseas operations of Canadian extractive companies; and adopting a National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights.

Business, trade and investment policy and respect for the rights of Indigenous peoples

Among the many human rights considerations that must figure prominently in Canada's laws and policies with respect to trade, investment and corporate accountability, it is crucially important that there be strong attention to the rights of Indigenous peoples. Both in Canada and in overseas operations, the direct and very serious impact that the activities of Canadian mining, oil and gas companies have on the human rights of Indigenous peoples, including land rights, is of serious concern. Not surprisingly, therefore, the UN Committee on the Elimination of Racial Discrimination has called on Canada to "take appropriate legislative measures to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada, and hold them accountable.[7]

RECOMMENDATION:

Ensure that government support for corporate activities in Canada and internationally, whether in the form of tax credits, grants, financing assistance, loans, or political and diplomatic support, will be contingent on company actions being consistent with international human rights standards with respect to the rights of Indigenous peoples, including the crucial human rights principle of free, prior and informed consent.

No business arming human rights violators

Another aspect of Canada's international trade policy that is of considerable interest and often very serious concern, from a human rights perspective, is the sale to foreign governments of arms and weapons manufactured in Canada. Current legal and policy measures do not sufficiently ensure that international arms sales will not be approved if the weapons involved would be likely to be used in the commission of serious human rights violations. This concern is related to the recommendation, earlier in this Human Rights Agenda, that Canada accede to the UN Arms Trade Treaty. Accession must be accompanied by more stringent legal measures to ensure compliance with the treaty. Standards and practices such as the Automatic Firearms Country Control List will need to be reviewed and brought into line with the requirements of the Arms Trade Treaty.

7 United Nations Committee on the Elimination of Racial Discrimination, *Concluding observations with respect to Canada (4 April 2012) UN Doc CERD/C/CAN/CO/19-20 at para 14.*


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An illustrative example is the approach taken by the previous government to a $15 billion sale of armoured vehicles to Saudi Arabia, a country with a deeply troubling human rights record. The deal raises very obvious questions about compliance with Canada's export-control rules which call for a "case-by-case" risk assessment to determine "that there is no reasonable risk that the goods might be used against the civilian population." It has been difficult to obtain a clear indication as to what, if any, assessment of the Saudi deal has been carried out and to gain agreement that concerns about commercial confidentiality do not justify withholding it from the public.

RECOMMENDATION:

Conduct and publicly release a human rights assessment of the agreement to sell armoured vehicles to Saudi Arabia.

RECOMMENDATION:

Consult with experts and civil society organizations to develop legal and policy reforms needed to ensure compliance with the Arms Trade Treaty, including a review of related mechanisms such as the Automatic Firearms Country Control List.

PROTECTING THE RIGHTS OF REFUGEES AND MIGRANTS:

An end to suspicion and restrictions

"I miss everything from Syria; my family, friends, work, life; everything I had is gone. I hope my children will not lose as much as I have lost. You can never replace your home. The separation of families is the hardest thing to think about. Grandparents will never know their grandchildren. Children lose their roots. There is no one to go to for help; there is no sister or cousin."

—Muftakher, a Syrian refugee interviewed shortly after his arrival in Canada, Toronto, September 24, 2015.

While there have certainly been many ups and downs, Canada has for the most part earned accolades and respect internationally over several decades for a strong commitment to protecting refugees. In fact, Canada remains the only nation to have received the United Nations High Commissioner for Refugee's highest honour for respecting the rights of refugees; the Nansen Medal in 1986.

That record deteriorated significantly under the previous government. A number of punitive legal and policy measures adopted domestically violated and undermined the rights of refugee claimants and refugees including cuts to the federal refugee healthcare program, restrictive procedures for individuals coming from so-called "safe" countries of origin, and mandatory detention for refugee claimants deemed to have arrived "irregularly" in the country. Internationally, Canada's recalcitrance and foot-dragging throughout 2014 and much of 2015 in making a significant commitment to assist in resettling Syrian refugees was deeply troubling.

These worrying developments proceeded in a context of toxic government rhetoric about "bogus" refugee claimants, suggesting that significant numbers of refugee claimants were dishonest and not in need of protection. Speeches and media commentary from previous Ministers of Citizenship and Immigration far too often pandered to and fueled misconceptions and xenophobia about refugees rather than demonstrating leadership and reminding Canadians about the crucial humanitarian and human rights needs at stake. In that regard, Amnesty International welcomes the government's decision to rename the Ministry of Citizenship and Immigration as the Ministry of Immigration, Refugees and Citizenship; a change that sends a crucial message of a renewed and stronger commitment to refugee protection.

RECOMMENDATION:

Assert high-level leadership in reaffirming the humanitarian and human rights imperatives at the heart of refugee protection and dispelling myths and misconceptions that erode support for refugees.

Syrian refugees

The staggering Syrian refugee crisis, alongside the overwhelming numbers of Syrians who are internally displaced in precarious and dangerous conditions inside Syria, is by far the most serious crisis of displacement the world has seen since the end of World War II. With each passing year the conflict and human rights violations in Syria have deepened and become more complex; the inability and unwillingness of the international community to end that crisis has become entrenched; the numbers of displaced has grown; and the resulting desperation has compelled refugees to take to dangerous journeys across the Mediterranean and through Central Europe, claiming thousands of lives in recent years.

The international response to the needs of Syrian refugees was shamefully inadequate until a wave of international concern was unleashed following the publication of a photo of the dead body of 3 year-old Syrian refugee Alan Kurdi on a Syrian beach in September. At that time, in the middle of the recent federal election campaign, the Liberal Party committed to resettle 25,000 Syrian refugees to Canada by December 31, 2015 if elected. The government has now announced the details of the resettlement plan, extending the timeline by two months to February 28, 2016.

© Richard Burton/Amnesty International

Tariq, Neda and their three children are refugees from the Syrian conflict. They share a small apartment in Jordan with 16 other family members.

Initially a majority of the Syrian refugees resettled to Canada will arrive through private sponsorship, but the government has committed that by the time resettlement is complete in 2016 there will indeed have been 25,000 Syrian refugees resettled through government sponsorship. In response to heightened concerns in the aftermath of the recent Paris terrorist attack about some refugees posing potential security threats, the government has also announced that women and children and families would be prioritized for resettlement and that single men, other than gay men, would not be eligible. Amnesty International has expressed concern that this bar on resettlement of single men perpetuates stereotypes of young Arab men being dangerous and suspicious, and it means that particularly vulnerable men – such as those who worked as human rights activists, lawyers and journalists in Syria – will not be eligible for protection in Canada.

The program for resettling 25,000 Syrians by early 2016 is an important and welcome initiative. It is important as well to consider commitments beyond 2015, and the need for more effective and coordinated international response to the Syrian refugee crisis.

RECOMMENDATION:

Pursue a response to the Syrian refugee crisis that includes: (1) meeting the commitment to resettle 25,000 Syrian refugees to Canada through government sponsorship by February 28, 2016 in a manner that best supports successful integration; (2) lifting the restriction on resettlement for single men; (3) working with all levels of government, the UNHCR, organizations involved in refugee resettlement and the Syrian community in Canada to develop commitments and plans for further resettlement of Syrian refugees in 2016 and 2017; and (4) playing a constructive international leadership role with respect to the Syrian refugee crisis.

Refugee resettlement

The world faces a global refugee crisis beyond Syria. The UNHCR has recently reported that worldwide 59.5 million women, men and children are refugees or are internally displaced, the highest number since records have been kept. Those numbers have risen dramatically in all world regions. The number of refugees alone increased from 16.7 million in 2013 to 19.5 million in 2014; a 17 percent increase in just one year.[1] The UNHCR estimates that approximately 1.2 million refugees are in urgent need of resettlement from front-line countries where they have found immediate shelter in refugee camps and within local communities, to safer conditions in third countries such as Canada. Those in need of resettlement are individuals UNHCR has identified as being particularly vulnerable due to ongoing security risks, serious health problems, being single parents or having survived sexual violence and other forms of torture. Currently, UNHCR has only received pledges equal to about 10 percent of the resettlement need.

Beyond the current generous commitment to resettle 25,000 Syrian refugees, annual refugee resettlement figures for Canada have remained around 15,000 for several years. That figure includes both government and private resettlement. The proportion of government sponsored refugees has, however, steadily decreased over the years. At the same time organizations involved in private sponsorship point to a growing number of challenges in their resettlement efforts, including lengthy delays that frequently extend to three or four years in processing applications.[2] The Canadian Council for Refugees has urged the government to commit to a resettlement program that is "broad, inclusive and effective".[3] Resettlement organizations are pressing the government to increase the number of government sponsored refugees resettled to Canada annually

1 United Nations High Commissioner for Refugees, "Worldwide displacement hits all-time high as war and persecution increase" (18 June 2015) online: <http://www.unhcr.org/558193896.html>.

2 Canadian Council for Refugees, "Canada's Private Sponsorship of Refugees Program: Proud History, Uncertain Future" (December 2014) online: <http://ccrweb.ca/sites/ccrweb.ca/files/psr-overview-challenges.pdf>.

3 Canadian Council for Refugees, "Letter to the Prime Minister Designate" (23 October 2015) online: <http://ccrweb.ca/

to 20,000 by the year 2020.[4] The mandate letter for Minister of Immigration, Refugees and Citizenship John McCallum indicates an intention to "reduce application processing times for sponsorship".

RECOMMENDATION:

Initiate consultations with refugee resettlement organizations to identify and implement reforms needed to reduce barriers and shorten processing times for refugee sponsorship applications and to phase in increases in the number of refugees resettled annually through government and private sponsorship.

Healthcare

Amnesty International welcomes the new government's clear commitment to reverse the punitive cuts the previous government made in 2012 to the Interim Federal Health Program, denying healthcare coverage to large numbers of refugee claimants and refugees. Amnesty International had repeatedly highlighted that the cuts violated Canada's international human rights obligations. Minister McCallum's mandate is to "fully restore the Interim Federal Health Program that provides limited and temporary health benefits to refugees and refugee claimants."

There is an urgent need to go further. At the present time irregular migrants in Canada do not have access to government-funded essential healthcare, with potential life and death consequences. In its July 2015 review of Canada's record of compliance with the International Covenant on Civil and Political Rights, the UN Human Rights Committee called on the government to ensure that "all refugee claimants and irregular migrants have access to essential health care services irrespective of their status."[5]

RECOMMENDATION:

Reform the Interim Federal Health Program to reverse cuts made in 2012, restoring coverage for refugee claimants and refugees, and also revising the program to ensure that irregular migrants in the country have access to essential health care, regardless of immigration status.

Reversing rights-violating refugee reforms

Numerous immigration and refugee law reforms were passed under the previous government. Three in particular, the Balanced Refugee Reform Act, the Faster Removal of Foreign Criminals Act and the Protecting Canada's Immigration System Act, included worrying provisions that contravene Canada's international human rights obligations.

4 Change.org, "20k2020 Campaign: Increase the number of refugees accepted annually into Canada to 20,000 by 2020" (2015) online: <https://www.change.org/p/the-government-of-canada-increase-the-number-of-refugees-accepted-annually-into-canada-to-20-000-by-2020?recruiter=347066868&utm_s>.

5 United Nations Human Rights Committee, *Concluding observations on the sixth periodic report of Canada (13 August 2015) UN Doc CCPR/C/CAN/CO/6 at para 12.*

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Together, hundreds of people held hands to form a giant human chain in solidarity with the refugees on the 9 of September 2015. This activity was organised by Amnistie internationale Canada francophone in collaboration with Oxfam-Québec and the TCRI.

These reforms have been criticized by three expert UN bodies, the Committee on the Elimination of Racial Discrimination, the Committee against Torture and the Human Rights Committee, in reviews of Canada's record carried out in 2012 and 2015.[6]

One particularly serious concern is the introduction of a "designated country of origin" list for refugee determination through which refugee claimants originating from certain countries are treated differently and denied access to key due process safeguards in the refugee determination process. Most significantly they are not allowed to appeal a negative decision to the Refugee Appeal Division. Countries on the list include Mexico, currently a country of focus in Amnesty International's global Stop Torture campaign, because of spiralling rate of torture over the past decade, and also a country facing a staggering crisis of enforced disappearances of tens of thousands of people. Amnesty International has opposed the country of origin list, highlighting the impossibility of drawing a clear line between countries considered to have "safe" human rights records and those that do not. Amnesty International has also expressed concern about discrimination on the basis of nationality when it comes to something as fundamental as access to justice.

6 United Nations Committee on the Elimination of Racial Discrimination, *Concluding observations with respect to Canada (4 April 2012) UN Doc CERD/C/CAN/CO/19-20; United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Concluding observations with respect to Canada (25 June 2012) Un Doc CAT/C/CAN/CO/6; United Nations Human Rights Committee, Concluding observations on the sixth periodic report of Canada (13 August 2015) UN Doc CCPR/C/CAN/CO/6.*

Christophe archambaulT/AFP/Getty Images

A boat carrying Rohingya refugees off the coast of Thailand. Human traffickers are abusing many Rohingya refugees.

A recent Federal Court ruling has overturned the provision denying access to the appeal process for individuals coming from designated countries of origin.[7] A further appeal of that ruling to the Federal Court of Appeal is pending. Minister McCallum has been mandated to ensure that individuals from designated countries of origin do have a right to appeal refugee decisions. However, the government has not committed to abolishing the list, which also serves as a basis for expediting the processing of cases, and will instead "establish an expert human rights panel" to help the Minister determine the countries to be designated.

RECOMMENDATION:

Repeal provisions establishing "designated countries of origin" in the refugee determination system.

Reform immigration detention

There are a variety of concerns, which have deepened in recent years, about the many ways that immigration detention laws and practices contravene international standards.

There is, for instance, no maximum period of time for immigration-related detention in Canada. Some individuals have been detained for many years. A Cameroonian national, Michael Mvogo was deported earlier this year after being held for more than eight years. He continued to be detained, in fact, for close to one year after the UN's expert Working Group on Arbitrary Detention called for his immediate release. Notably the UNHCR calls on states to establish in law maximum limits to detention so as to avoid indefinite detention.

Reforms passed in 2012 allow for the mandatory detention of migrants, including refugee claimants, who are deemed to have arrived irregularly in Canada. If deemed to be part of a group of "irregular arrivals" an individual must be taken into detention; not because of a valid individual reason related to unconfirmed identity, security concerns or being a flight risk, but only because they are part of that group of "irregular arrivals". That constitutes arbitrary detention under international law insofar as it is imprisonment that is not based on individual factors and an individual assessment. There is no

7 *YZ v Canada (Citizenship and Immigration),* 2015 FC 892.

legislated review of that detention until two weeks have passed and thereafter detention reviews are only held every six months. As with individuals from designated countries of origin, individuals deemed to be irregular arrivals are denied access to the Refugee Appeal Division. They also face delays in being granted permanent residence and being reunited with family members, even if their claims for refugee status are eventually successful.

There are also growing concerns that children, including infants and toddlers, are frequently taken into immigration detention, despite Canadian law requiring that to be a measure of last resort.

RECOMMENDATION:

Reform the provisions governing immigration detention in Canada to explicitly prohibit indefinite detention and the detention of children; abolish mandatory detention of "irregular arrivals"; and more consistently ensure that detention as a form of immigration control or enforcement is a measure of last resort used only in the most exceptional of circumstances.

PROTECTING RIGHTS KEEPS US SECURE:

Time for a new approach to national security

"In 2009, a majority vote in the House of Commons concluded the Canadian government owed me an apology and compensation, for its role in defaming my name and actions that led to my unlawful imprisonment and brutal torture in Syria. That vote also called for significant changes that would hold security agencies accountable for their actions and, hopefully, prevent the kinds of abuses that I suffered from happening to anyone else. For six years the previous government refused to act on this motion. I hope that will change with a new government. I look forward to a new approach in our country that recognizes that human rights are the foundation for strong, long-term and sustainable national security."

—Abdullah Almakli, a Canadian citizen whose case was examined as part of the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, which was completed in October, 2008.

In Canada and around the world the debate about the relationship between national security and human rights has dominated media headlines, political debates and public discourse ever since the September 11th terrorist attacks in the United States in 2001. That was renewed nationally following the October 2014 attacks in St-Jean-sur-Richelieu, Quebec and Ottawa and now again globally in the wake of the November 2015 terrorist attacks in Beirut, Paris, Bamako and other cities. Inevitably the immediate debate focuses on the need to curtail human rights protection in the name of public safety and national security. Then, as time passes from the emotional intensity of a particular attack, concern about restrictions on civil liberties and the discriminatory impact of new laws mounts and calls for repeal or revisions gather support.

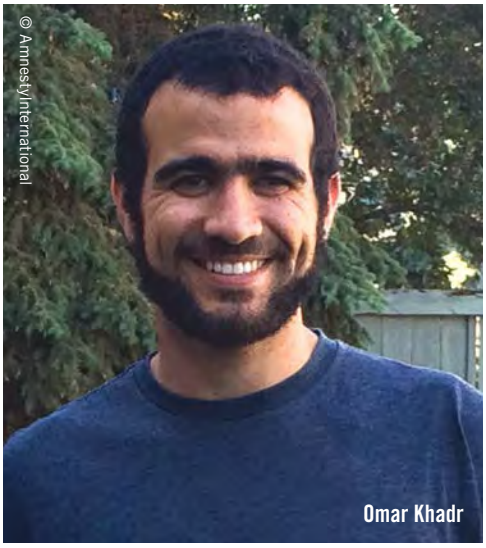
Amnesty International has repeatedly underscored that respecting human rights is in no way an obstacle to protecting national security. Quite the contrary, human rights violations only deepen the divisions and inequalities that are often at the heart of insecurity; and a strong and unwavering commitment to universal human rights offers the best roadmap for an approach to security that is inclusive, meaningful and durable.

RECOMMENDATION:

Develop a legislated human rights framework for Canada's national security laws.

Righting past wrongs

Amidst the debate about national security laws and policies it is important to remember the impact that national security-related human rights violations in Canada have had on individuals and their families. Central to establishing a new approach is ensuring that past wrongs are remedied, through appropriate apologies and redress. This includes:



Omar Khadr

Abdullah Almalki

- Omar Khadr: the Supreme Court of Canada has ruled that Canadian officials were responsible for violations of his rights through their participation in interrogation sessions at Guantánamo Bay knowing that he had been subjected to sleep deprivation, a form of torture or ill-treatment, by US officials. Rather than redress these and other violations, the previous government actively and unsuccessfully opposed all legal proceedings launched by Omar Khadr to defend his rights.
- Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin: the government has refused to act on the 2008 findings of a judicial inquiry headed by former Supreme Court of Canada Justice Frank Iacobucci cataloguing numerous ways that action and inaction by Canadian officials contributed to the human rights violations they experienced in Syria and, in Mr. Elmaati's case, Egypt. Instead the three men have had to pursue an apology and redress through protracted and contentious litigation.
- Abousfian Abdelrazik: the Federal Court has ruled that the government violated his Charter rights, leading to his extended detention and torture in Sudan. The federal government has steadfastly refused to apologize and has forced Mr Abdelrazik to pursue litigation for appropriate redress.
- Immigration security certificate cases: over the course of many years of judicial review, at several levels of court, there have been numerous instances documented of misconduct and "lack of candour" on the part of Canadian officials in relation to the cases of individuals subject to immigration security certificates. Some of those individuals have lawsuits pending. None have been compensated for the resulting violations of their rights.

RECOMMENDATION:

Appoint a judge or other independent expert to review and resolve, consistent with international human rights principles, all pending legal cases involving claims for damages related to human rights violations arising in the context of national security operations.

Reforms to the Anti-terrorism Act, 2015

Amnesty International raised serious concerns with respect to Bill C-51, the Anti-terrorism Act, 2015, when it was rushed through Parliament in the first half of 2015 through a legislative process that was expedited and through which many experts and other important voices were given no opportunity to testify before parliamentary committees. The Bill contained so many serious and inter-connected human rights problems that we urged it be withdrawn in its entirety and that any further national security law reform proceed in a more open and consultative manner, in conformity with international human rights obligations. Bill C-51 passed into law in June.

Bill C-51, reforms to Canada's anti-terrorism laws, were fast-tracked through Parliament in 2015. The new government has committed to amend some of the Bill's problematic provisions, but concerns remain.

Amnesty International's concerns about the new Act remain, including CSIS threat-reduction warrant provisions that anticipate Federal Court judges authorizing violations of the Charter; the most expansive information sharing provisions in Canadian history without adequate safeguards for accuracy and relevancy or to ensure shared information does not contribute to human rights violations abroad; a vague criminal offence of promoting or advocating the commission of terrorism offences 'in general' which will chill free expression; a no-fly list appeal process that does not satisfy due process; extended powers for detention without charge or trial; and further impairment of the already unfair immigration security certificate process.

Amnesty International's concerns about the Anti-terrorism Act, 2015 are amplified because of the continuing failure to institute effective expert review and robust parliamentary oversight of Canada's national security agencies. The longstanding recommendation for comprehensive integrated national security review proposed in 2006, as part of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, remains unimplemented.

The ministerial mandate letters for the Minister of Public Safety and Minister of Justice anticipate steps to address some of these concerns, including the creation of a "statutory committee of Parliamentarians" to review national security activities, the repeal of the "problematic elements of Bill C-51" and bringing forward legislation that "strengthens accountability with respect to national security". There are further commitments in the Liberal election platform, including guaranteeing that all CSIS warrants respect the Charter and that "Canadians are not limited from lawful protests and advocacy."[1] Serious concerns remain however that many of the human rights shortcomings in the new law may not be repealed or reformed. At the same time, a law reform process that focuses only on Bill C-51 will not include other provisions in Canadian national security laws that raise human rights concerns.

RECOMMENDATION:

Launch a comprehensive process of review and public consultation, including a wide range of experts and stakeholders, to identify reforms needed to bring the Anti-terrorism Act, 2015 and other Canadian national security laws into conformity with Canada's international human rights obligations.

1 Liberal Party of Canada, "The Platform: Bill C51" (2015) online: <http://www.liberal.ca/realchange/bill-c-51/>.

RECOMMENDATION:

Establish a comprehensive, integrated, expert and independent mechanism for review of agencies and departments involved in national security activities, as well as a robust parliamentary oversight body with a national security mandate.

Rejecting two-tier citizenship

Amnesty International actively opposed Bill C-24, the Strengthening Canadian Citizenship Act, passed by Parliament in June 2014, which allows for Canadian citizenship to be stripped from individuals who possess at least one nationality in addition to their Canadian citizenship, for a limited number of criminal offences such as terrorism and high treason. Amnesty International is concerned that the revocation process is unfair and the premise of stripping Canadian citizenship only from individuals with more than one nationality is discriminatory, xenophobic and undermines rule of law principles that criminality be dealt with through the criminal justice system. Amnesty International welcomes the fact that the mandate letter for the Minister of Immigration, Refugees and Citizenship, lays out a commitment to "repeal provisions in the Citizenship Act that give the government the right to strip citizenship from dual nationals".

RECOMMENDATION:

Repeal provisions in the Citizenship Act allowing for the revocation, on grounds of criminality, of the Canadian citizenship of dual nationals.

Implement United Nations national security recommendations

Over the years UN human rights bodies and experts have made a series of recommendations to the Canadian government with respect to changes needed to bring Canada's national security laws and policies into compliance with international human rights requirements. Canadian compliance strengthens the government's ability to press other nations to ensure their national security laws and practices do not contravene human rights. Those recommendations, which have not been implemented, include:

- enacting the unconditional ban on deporting an individual to a country where he or she would face a serious risk of torture[2];
- addressing concerns about the unfair nature of the immigration security process, despite the 2008 addition of Special Advocates[3]; and

2 Recommended by the UN Committee against Torture in 2001, 2005 and 2012 and by the UN Human Rights Committee in 2006 and 2015: United Nations Committee against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, *Concluding observations with respect to Canada (1 January 2001) UN Doc A/56/44 at paras 54-59; Concluding observations with respect to Canada (7 July 2005) Un Doc CAT/C/CR/34/CAN; Concluding observations with respect to Canada (25 June 2012) UN Doc CAT/C/CAN/CO/6; United Nations Human Rights Committee, Concluding observations on the fifth periodic report of Canada (20 April 2006) UN Doc CCPR/C/CAN/CO/56; Concluding observations on the sixth periodic report of Canada (13 August 2015) UN Doc CCPR/C/CAN/CO/6.*

3 United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, *Concluding observations with respect to Canada (25 June 2012) UN Doc CAT/C/CAN/CO/6; United Nations Human Rights Committee, Concluding observations on the sixth periodic report of Canada (13 August 2015) UN Doc CCPR/C/CAN/CO/6.*

- bringing the Ministerial Directions with respect to intelligence-sharing, which presently allow intelligence to be shared or received, in exceptional circumstances, when there may be a serious concern about torture, into compliance with the UN Convention against Torture.[4]

RECOMMENDATION:

Review and implement outstanding national-security related recommendations from UN human rights bodies and experts.

Battlefield prisoners

Amnesty International, together with the British Columbia Civil Liberties Association (BCCLA), had serious concerns about Canada's approach to the handling of the battlefield detainees during the 12 years of Canadian military involvement in the conflict in Afghanistan. The initial policy of handing prisoners over to US forces, despite the risk of further transfers to Guantánamo Bay, then followed by a policy of handing prisoners over to Afghan officials, despite a clear risk of torture in Afghan custody, both raised the serious prospect of Canadian complicity in human rights violations. Amnesty International and the BCCLA instead urged that Canada adopt an approach to the handling of prisoners consistent with international human rights obligations.

A court challenge to the detainee policy was dismissed by the Federal Court and upheld by the Federal Court of Appeal[5] in 2008 on the grounds that the Charter did not apply to the Canadian military outside of Canada and that there was, therefore, no jurisdiction to hear the case. The issue has resurfaced in 2015 with news that the Military Police Complaints Commission has launched an investigation into allegations that Canadian soldiers may have themselves been directly responsible for abusing prisoners in Afghanistan by means of aggressive and intimidating middle of the night raids of jail cells.

RECOMMENDATION:

Conduct a review of laws, policy and training with respect to the handling and treatment of detainees by members of the Canadian Armed Forces during military operations to identify legal and other changes needed to ensure conformity with international human rights standards.

4 United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, *Concluding observations with respect to Canada (25 June 2012) UN Doc CAT/C/CAN/CO/6.*

5 *Amnesty International Canada v Canada (Minister of National Defence), 2008 FC 336, affirmed 2008 FCA 401.*

EMBRACING DISSENT:

Restoring respect for free expression, debate and disagreement in Canada

"The people who say there is nothing to fear from government surveillance unless you have something to hide, have never experienced it – I have, I am afraid and I didn't have anything to hide. In 2011, I discovered government documents showing that 189 government officials were tasked with following my electronic communications and my movements. The surveillance continued over several years and was vigorous. They even had notes on a talk I did in the middle of the Australian desert. The documents say they were following me to try to find "other motives" for a human rights case our organization filed demanding equitable services for children and young people on reserve. Democracy is in danger when the government wants to know more about the people than the people know about the government. I hope that with a new government we will return to a nation that not only tolerates and accepts, but encourages and embraces, outspokenness and debate. And I look forward to a Canada that recognizes and celebrates that we all must step up and speak out for each other's rights. Until then, I will continue to speak up for the kids; no matter how afraid I am."

—Dr. Cindy Blackstock, Advocate for the rights of Indigenous children, Executive Director, First Nations Child and Family Caring Society, Ottawa, December 10, 2015.

Over the past decade the rights to freedom of expression, association and assembly in Canada have been eroded and violated in a multitude of ways that have been both insidious and corrosive. The measures have focused on targeting and silencing a wide range of voices considered to be critical of or in disagreement with the previous government's positions and policies, particularly with respect to a number of perceived 'hot-button' issues, such as environmental concerns linked to pipelines, the rights of Palestinians, the funding of safe abortion services as part of Canada's overseas development assistance and the rights of Indigenous peoples.

The measures included punitive funding cuts of the programs and budgets of civil society organizations, targeted charitable audits of the so-called 'political activities' of environmental and other groups, silencing of independent watchdogs, the muzzling of government scientists and other civil servants, surveillance of human rights advocates, curtailing access to information and public smear campaigns of the reputations and integrity of individuals who speak out critically about government positions.

The impact has been both direct, in that organizations have closed or have cut programs and civil servants have been barred from speaking publicly, and also indirect,

Cindy Blackstock, an advocate for the human rights of First Nations children, has expressed her hopes that Canada's new federal government will tolerate and embrace debate.

in that a substantial chill has spread leading many civil society groups and activists to question whether or not to speak out publicly about various issues and to frequently censure themselves.

When it became obvious that this was an orchestrated and targeted pattern – even a campaign and not merely occasional and disconnected cases – across Canada coalition of organizations, Voices-Voix, came together to begin to document what was happening. After the coalition completed its 100th case-study earlier this year, Voices-Voix released a comprehensive report, *Dismantling Democracy*, as part of an urgent call to end the clampdown on dissent in the country.[1]

These developments led a longstanding member of the UN Human Rights Committee to declare, during the Committee's July 2015 review of Canada's human rights record that this was "not the Canada he knew" and for the Committee to recommend, for the first time in any of its reviews of Canada, that the government take steps to "renew its traditional commitment to the promotion and protection of the exercise of freedom of assembly, association and expression" and launch a "well structured dialogue with civil society and indigenous peoples, to restore confidence in [Canada's] commitment in this area."[2] Notably, Canada has never developed an action plan for implementing its obligations under the UN's Human Rights Defenders Declaration, something that was never previously seen as a pressing need in the Canadian context.

RECOMMENDATION:

Launch the 'well-structured dialogue' with civil society and Indigenous peoples called for by the United Nations Human Rights Committee so as to identify the steps needed to restore strong protection of the freedoms of expression, association and assembly in Canada and to support robust human rights advocacy in the country.

Doing good work and working for change: a new understanding of charitable status in Canada

Over the course of the past decade charities in Canada that were critical of government policies were particularly vulnerable to retaliatory measures, particularly through government-initiated audits of their charitable status. The audits have focused on the amount of resources charities have expended on so-called "political activities", pursuant

1 Voices-Voix, *Dismantling Democracy: Stifling debate and dissent in Canada (June 2015) online: <http://voices-voix.ca/en/document/dismantling-democracy-stifling-debate-and-dissent-canada>.*

2 United Nations Human Rights Committee, *Concluding observations on the review of the sixth periodic report of Canada (13 August 2015) UN Doc CCPR/C/CAN/CO/6 at para 15.*

to section 149.1 of the Income Tax Act. Political activities are defined much more broadly than engaging in partisan political activities in direct support of or opposition to a particular political party, a limit that charities widely agree to be appropriate and necessary. Rather, "political activities" extends to a vaguely defined range of efforts by organizations to encourage legal and policy changes or to call for particular steps to be taken by a government to address the concerns at the heart of an organization's charitable purpose. The distinction is often described as follows, that feeding the poor is charitable, but pressing a government to end poverty is political. Current guidelines limit a charity to spending 10 percent of its budget on "political activities".

Over the past decade, a campaign against dissent in Canada has eroded the right to freedom of expression. Government should now take steps to protect freedom of expression and support human rights advocacy.

Section 149.1 of the Income Tax Act has attracted the attention of the UN Human Rights Committee which has urged that measures be taken to ensure that its application does not "result in unnecessary restrictions on the activities of non-governmental organizations defending human rights."

Amnesty International welcomes the strong commitment the new government has made to institute reforms in this area, well-reflected in the fact that one of the three priorities set out for the Minister of National Revenue is to "allow charities to do their work on behalf of Canadians free from political harassment." This will include "clarifying the rules governing 'political activity,' with an understanding that charities make an important contribution to public debate and public policy." The intention is to develop a new legislative framework to strengthen the charitable sector.

RECOMMENDATION:

Consult widely with the charitable sector to reform laws and policies governing "political activities" restrictions on charities so as to ensure the rules do not infringe free expression, association or assembly and the exercise of other human rights and maximize the contribution charitable groups are able to make to important public policy debates. Suspend "political activities" audits of charitable groups currently underway until the applicable rules are clarified and reformed.

Challenging the government in court

Some human rights issues can be addressed and resolved through public debate and political change. Sometimes it is necessary to turn to the courts and press for human rights protections to be upheld and reforms mandated through judicial rulings. Over the past decade organizations and advocates concerned about laws and policies violating or restricting human rights increasingly turned to the courts, as avenues for dialogue, engagement and change through the political process dried up.

Access to justice is central to upholding and defending human rights, in good times and bad. Justice is often complex, cumbersome and expensive. The very sectors of society who experience the most serious discrimination and other violations and who are often the most marginalized and face the highest levels of poverty, are the ones who will face the most difficulties and obstacles in turning to the courts. It is critical therefore, that government step in to ensure that individuals and communities have equal access to the justice system and do not face barriers in mounting legal challenges to defend their rights.

In Canada, access to the courts has been assured through a combination of provincially-funded legal aid programs to ensure low-income individuals are legally represented in criminal proceedings, family law disputes and other important matters in which fundamental rights are at stake, alongside a federally-funded Court Challenges Program that supported legal challenges focused on defending language and equality rights in Canada.

A variation of the Court Challenges Program was first instituted in 1978 and was established in its current form in 1994. However the previous government cut funding for the Court Challenges Program in 2006 and since that time it has only supported cases that were already underway, with some new funding restored for language rights challenges in 2008. The cuts to the program have made it difficult, often impossible, for many groups to turn to the courts to advance important equality rights challenges.

The cuts to the Court Challenges Program have been of concern to numerous UN human rights bodies and Canada has been repeatedly urged to consider restoring funding for the program, including by the Committee on the Elimination of Discrimination against Women in 2008[3] and the Committee on the Elimination of Racial Discrimination in 2012.[4] The Minister of Canadian Heritage and the Minster of Justice have now been jointly tasked with working to "restore a modern Court Challenges Program."

RECOMMENDATION:

Consult widely with Indigenous peoples organizations and civil society groups and move quickly to restore a Court Challenges program that ensures equal access to the courts for individuals and groups mounting equality and other human rights challenges in Canadian courts.

3 United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations with respect to Canada (7 November 2008) UN Doc CEDAW/C/CAN/CO/7.*

4 United Nations Committee on the Elimination of Racial Discrimination, *Concluding observations with respect to Canada (4 April 2012) UN Doc CERD/C/CAN/CO/19-20.*

CONCLUSION AND SUMMARY OF RECOMMENDATIONS

Amnesty International's Human Rights Agenda for Canada, *Defending Rights for All*, is released amidst significant political change in Canada following the October 2015 federal election—change which can and must catalyze sorely-needed improvements to the country's domestic and international human rights record. Following close to a decade of significant setbacks across a wide array of pressing human rights concerns, there is both a sense of urgency and strong opportunity to move forward.

As we move past an era of laws, policies and actions that have undermined human rights protection, as well as many years of lost opportunities to demonstrate leadership, Amnesty International's 14th Human Rights Agenda for Canada lays out the most comprehensive set of recommendations, 60 in total, that we have ever put before the Canadian government. The extent of the proposed agenda reflects serious concern about lost ground and considerable hope that Canada's approach to human rights will be considerably strengthened.

The recommendations are summarized in three categories: (1) adopting new approaches; (2) getting it done; and (3) getting started.

1 Adopting new approaches

For Canada to re-emerge as a leader on human rights the new government must commit to new approaches to international relations, doing business, enacting laws and setting policy at home and abroad that place human rights at the centre of government action.

RECOMMENDATIONS

Put human rights at the heart of Canadian foreign policy.	P. 4
Raise human rights concerns universally and consistently with all countries.	P. 4
Consult and launch a public inquiry into murdered and missing Indigenous women.	P. 26
Implement the Truth and Reconciliation Commission calls to action.	P. 18
Embrace the UN Declaration on the Rights of Indigenous Peoples internationally.	P. 10
Implement the UN Declaration on the Rights of Indigenous Peoples domestically.	P. 18
Integrate the Supreme Court's Tshilqot'in decision in the federal comprehensive land claims policy.	P. 20
Champion gender equality at the UN.	P. 9
Tackle climate change as a human rights issue.	P. 11

Bring federal, provincial and territorial ministers together to discuss human rights.	P. 13
Stop undermining human rights in court.	P. 14
Entrust the Minister of International Trade with a human rights mandate.	P. 30
Strengthen Canadian laws and policy regarding corporate accountability for human rights by appointing an Extractive Sectors Ombudsperson, legislating access to courts in cases of corporate human rights harm, and enacting a National Action Plan for the UN Guiding Principles on Business and Human Rights.	P. 34
Ensure all laws, policies and proposals brought to Cabinet are subject to gender analysis.	P. 27
Speak up for refugees.	P. 36
Enshrine human rights obligations in national security laws.	P. 43
Consult with civil society to restore the space for dissent and advocacy.	P. 49
Champion the International Criminal Court and Responsibility to Protect.	P. 10
Recognize that economic, social and cultural rights must be enforced.	P. 15

2 Getting it done

A significant number of the recommendations presented in this Human Rights Agenda can and must be carried out and completed over the course of 2016. Many relate to commitments the government has already made, in opposition, during the recent election campaign and since coming to power. They are all reflective of serious human rights concerns that do not require complicated legislative reform or years of study and reflection. Amnesty International looks forward to being able to report in the next Human Rights Agenda 2017, that these recommendations have been met.

RECOMMENDATIONS

Pursue generous resettlement and champion a coordinated global response to Syrian refugees.	P. 38
Ensure major development projects like the Northern Gateway Pipeline and the Site C Dam do not proceed without Indigenous consent.	P. 19
Act on existing recommendations regarding murdered and missing Indigenous women.	P. 26
Reverse the cuts and ensure access to essential health care regardless of immigration status.	P. 39
Take high-level action on behalf of Canadians and others experiencing rights violations abroad.	P. 6

Accede to the Optional Protocol to the Convention against Torture and the Arms Trade Treaty.	P. 8
Bring forward legislation to protect rights of transgender individuals.	P. 28
Ensure adequate funding for First Nations children's services on reserve.	P. 21
Revise Muskoka Initiative to include funding for sexual and reproductive rights services.	P. 27
Launch consultations and conduct a credible review of Canada/Colombia Free Trade Agreement.	P. 32
Review Trans-Pacific Partnership in line with UN human rights recommendations.	P. 32
Conduct and publicly release a human rights assessment of Saudi Arabia arms deal.	P. 35
Appoint an Independent Expert to ensure redress in cases of security-related rights violations.	P. 44
Launch a comprehensive process to review Bill C-51 and other national security laws.	P. 45
Repeal Bill C-24 Citizenship Act reforms.	P. 46
Abolish the designated country of origin list for refugee claimants.	P. 41
Restore the Court Challenges Program.	P. 51
Unreservedly support UN resolutions on the rights to safe water and sanitation.	P. 11
Co-sponsor the 2016 UN resolution calling for a global moratorium on executions.	P. 9
Amend policy to ensure clemency support for all Canadians sentenced to death abroad.	P. 9

3 Getting started

Many of the recommendations in *Defending Rights for All* will take time to fully implement. They reflect, at the same time, serious concerns that have long-awaited action or reform. While it may not be feasible to complete the implementation of these recommendations during the course of 2016, it is vital that meaningful progress begin during the year.

RECOMMENDATIONS

Develop a National Action Plan on violence against women, including Indigenous women.	P. 26
Ensure all First Nations communities have access to safe water and adequate sanitation.	P. 22
Enshrine the right of Indigenous peoples to free, prior and informed consent in law.	P. 19
Include social, cultural and gender impacts in the assessment and regulation of resource development projects.	P. 20
Establish expert review and parliamentary oversight of national security agencies.	P. 47
Strengthen laws and policies with respect to consular assistance and support.	P. 4
Rein in solitary confinement to meet international human rights standards.	P. 16
Increase funding to support alternatives to incarceration for Indigenous women and men.	P. 23
Address disproportionate impact of dangerous offender legislation on Indigenous persons.	P. 23
Restore Status of Women funding rules and reopen Status of Women offices.	P. 27
Ensure all government support for corporate activities respects Indigenous rights.	P. 34
Reform Canadian arms sales laws and policies consistent with Arm Trade Treaty obligations.	P. 35
Phase in higher levels of refugee resettlement.	P. 39
Carry out comprehensive review and reform of immigration detention laws and practice.	P. 42

Implement outstanding national security recommendations from UN human rights bodies.	P. 47
Reform policy regarding charities and "political activities" to meet human rights obligations.	P. 50
Amend State Immunity Act to allow human rights lawsuits against foreign governments.	P. 6
Amend Canadian Human Rights Act to prohibit discrimination on grounds of social condition.	P. 15
Launch reviews and consultations regarding unratified human rights treaties.	P. 8
Review battlefield prisoner policies to ensure conformity with international obligations.	P. 47

By moving forward with these recommendations Canada can and will demonstrate that we are prepared to defend the rights of all. That is what Canadians expect and is what the world needs.

AMNESTY INTERNATIONAL

2016 HUMAN RIGHTS AGENDA FOR CANADA

DEFENDING RIGHTS FOR ALL

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Above: Christopher Sorio survived torture in the Philippines in the 1980s. Now he campaigns for human rights in Toronto.

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