

An Update to Amnesty International's

Human Rights Agenda for Canada

Time for consistent action

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AMNESTY
INTERNATIONAL



TIME FOR CONSISTENT ACTION:

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INTRODUCTION

A COLD SHOULDER TO INTERNATIONAL HUMAN RIGHTS SCRUTINY

Recommendations that Canada accepts in full or in part are those that FPT governments are already implementing through existing legislative or administrative measures, and are committed to continuing to take steps to achieve. Recommendations that Canada accepts in principle are those where governments are taking steps towards achieving the objectives of the recommendations, but do not accept the specific proposed action. Recommendations are not accepted if they call for specific actions that are not under consideration at this time, whether or not Canada supports the underlying objectives.¹

This passage may come across primarily as a baffling bureaucratic comment. At its heart, however, it is a deeply disappointing description of Canada's current approach to human rights. This statement is part of the government's official response, filed at the United Nations in September 2013, to the numerous important recommendations for human rights reform that had been made by 82 different countries, including many of Canada's closest friends and allies, in the course of Canada's second appearance before the still relatively new Universal Periodic Review (UPR) process at the UN Human Rights Council.²

The UPR is intended to encourage states to push ahead with improvements to their domestic human rights record. The process is about progress, reform and advancement. The Canadian government response is anything but that. The message conveyed is simple: the only recommendations being accepted are those that federal, provincial or territorial governments are already doing on their own initiative. Everything else is dismissed as, 'nice in principle' but no thanks. Or, simply, no thanks. There is no acknowledgement of a

need for change and no commitment to close the gaps in human rights protection highlighted in the review. It is status quo, full stop.

Canada's rather blithe rejection of international human rights advice is of course disappointing for the millions of people whose rights are impacted by the many recommendations that have been rejected. It is also disappointing in that it is a glaringly missed opportunity to set a positive example for other countries as to how to engage with UN level human rights reviews. Rather than demonstrate leadership, it suggests that giving the UN a cold shoulder is the way to go.

Canada's dismissiveness came across particularly strongly with respect to two important human rights recommendations that were among those most frequently repeated by states in the course of their review of Canada's human rights record in April.

Twenty-four countries raised questions and made recommendations with respect to deep concerns about staggeringly high rates of violence against Indigenous women and girls in

Canada. Nine countries specifically called on Canada to develop a comprehensive national action plan and/or carry out a national inquiry to address the violence. In a resolution that Canada champions annually at the UN Human Rights Council, Canada has introduced important language urging states to adopt national action plans to counter violence against women.³ Canada is having none of it this time however. No thank you, Canada told the world. We won't listen to the Canadian public, we won't take the advice of our fellow UN member states, and we will not, in fact, even follow our own advice.

Fifteen countries called on Canada to ratify the Optional Protocol to the Convention against Torture. This treaty, adopted by the UN in 2002, establishes a national and international system of prison inspections, designed to identify signs of torture and push for the reforms needed to prevent it from occurring in the first place. Canadian ratification should have been immediate. While torture is far from rampant in Canada and there are already many oversight bodies in place across the country, increased scrutiny never hurts when it comes to something as grave as torture.⁴ But most importantly Canadian diplomats need to be able to press hard for other countries to sign on; but can't do so until we have done so ourselves. In a 2006 pledge made when Canada was running for election to the UN Human Rights Council, we promised to consider ratifying. That commitment was taken up again during the 2009 Universal Periodic Review. This time around there was just a blithe statement that there is no "current plan" to ratify. Far from demonstrating progress, on this issue Canada seems to have taken a step backwards.

This disappointing response to the UPR follows a series of skirmishes with UN human rights experts and bodies in 2012. Throughout the

course of 2012 Canada criticized and derided UN Special Rapporteurs and Committees that examined or commented on Canada's human rights record.⁵ The response to the UPR is that much more troubling because of this context. Canada's response to the UPR compounds a growing tendency to dismiss and disengage from the UN, whenever international human rights scrutiny turns towards Canada.

The Canadian government did finally accept long-requested missions to Canada by the Inter-American Commission on Human Rights, the UN Committee on the Elimination of Discrimination against Women and the UN Special Rapporteur on the rights of indigenous peoples in the second half of 2013. Reports from those missions have not yet been released and there is no reaction from the Canadian government.

This engagement with the international human rights system in 2013 occurs against the longstanding backdrop of an inadequate approach to implementing the country's international human rights obligations. There has not been a meeting of federal, provincial and territorial ministers responsible for human rights since 1988. Amnesty International has repeatedly called for such a meeting to be held, to initiate a process of law, policy and institutional reform that would ensure effective, transparent and politically accountable implementation of Canada's international human rights obligations.

This Update to Amnesty International's 2012 Human Rights Agenda for Canada⁶ returns to the themes and recommendations outlined in the 2012 Agenda: the rights of Indigenous peoples; women's human rights; business, trade and human rights; refugees and migrants; Canadians at risk abroad; human rights and poverty; freedom of expression; and Canada's global human rights standing.

THE RECORD

I. THE HUMAN RIGHTS OF INDIGENOUS PEOPLES

As the 2012 Human Rights Agenda was launched, a remarkable movement was beginning in Indigenous communities across Canada. The Idle No More movement was catalyzed in part by concern that unprecedented federal omnibus legislation was stripping away important environmental safeguards necessary to protect the rights of Indigenous peoples. The Idle No More movement focused unprecedented public attention on the situation of Indigenous peoples. Despite the gains that were made, however, concern has deepened that the government is not prepared to pursue a meaningful, collaborative approach to addressing the needs and demands of Indigenous peoples.

As James Anaya, the UN Special Rapporteur on the rights of indigenous peoples, said at the end of his October 2013 mission to Canada: “The well-being gap between aboriginal and non-aboriginal people in Canada has not narrowed over the last several years, treaty and aboriginals claims remain persistently unresolved, and overall there appear to be high levels of distrust among aboriginal peoples toward government at both the federal and provincial levels.”⁷

As highlighted in the introduction, Canada has adamantly refused to adopt a comprehensive national action plan on violence against women, including an independent public inquiry into missing and murdered Indigenous women and girls. This refusal flies in the face of recommendations made by numerous UN human rights bodies and experts and disregards the standards Canada has promoted through the resolution it leads at the UN Human Rights Council on violence against women, urging states to adopt national action plans.⁸ There is growing momentum within Canadian society as a whole to demand meaningful commitments to address this human rights tragedy. In October 2013, 216 communities across the country hosted vigils to honour missing and murdered Indigenous women.

First the Federal Court in April 2012 and then the Federal Court of Appeal in March 2013 rejected the federal government’s disgraceful position that it should be shielded from complaints of discrimination in respect to services for which it is uniquely responsible for funding. The complaint at the heart of the court case was brought by the First Nations Child and Family Caring Society and the Assembly of First Nations, challenging the systemic underfunding of on-reserve First Nations child protection services in comparison to provincially funded services available to all other children. The case is still underway before the Canadian Human Rights Tribunal, and is expected to wrap up in 2014. Meanwhile, a disproportionately high number of First Nations children living on reserves continue to be taken from their families and cultures simply because less drastic forms of intervention are not available with current funding.

The federal government has predicted that more than 600 major resource development projects will get underway across Canada in the next decade.⁹ While the federal government has made such projects a priority, it has not established adequate formal mechanisms to ensure that Indigenous peoples are meaningfully consulted and their rights appropriately protected when such projects

may affect their traditional territories. The government points to environmental impact assessments as a key means for Indigenous peoples' voices to be heard when projects are considered, even as new legislation reduces the likelihood of projects being subject to such reviews.

Upcoming decisions on the proposed New Prosperity Mine and the Enbridge Northern Gateway Project in BC will be crucial tests of whether government is prepared to listen when Indigenous peoples reject unwanted development on their lands. While industry is beginning to engage with, and in some cases adopt, the internationally-established standard of free, prior and informed consent, the federal government remains entrenched in its opposition. Clashes around anti-fracking

protests at the Elsipogtog Mi'kmaq Nation in New Brunswick this year highlight the conflicts that are created when projects are pushed ahead without Indigenous consent.

Over six years after the UN adopted the groundbreaking Declaration on the Rights of Indigenous Peoples, and more than three years since Canada publicly lent its support to the Declaration, the government has not yet developed a national implementation plan to ensure that Canadian law, policy and practice is guided by this important international human rights instrument. To the contrary, Canadian officials continue to erroneously assert that the Declaration has no effect on Canada's legal obligations toward Indigenous peoples.

II. GENDER RIGHTS

The Canadian government's two main foreign policy priorities in the area of human rights are safeguarding women's human rights, in particular confronting the practice of early and forced marriage of girls and sexual violence in conflict; and pressing for an end to laws that criminalize gay, lesbian, bisexual, transsexual, transgendered, and intersex (LGBTI) individuals.

At the G8, UN and other international forums, Canada has promoted an end to early and forced marriage, and an end to sexual violence in conflict. Canada has also been outspokenly critical about laws and policies that criminalize homosexuality or curtail the freedom of expression of LGBTI individuals in various countries, such as in Uganda, Iran and Russia.

The focus on these important and often contentious human rights issues is certainly welcome. At the same time, other positions taken with respect to important women's human rights, gender equality and sexual identity have diminished the sense of leadership that Canada could be enjoying.

While promoting the protection of LGBTI individuals around the world, Canada has failed to provide adequate protection for its own transgendered community. Bill C-279,

which would provide critical human rights protections to transgendered individuals by adding gender identity to federal anti-discrimination and anti-hate legislation, continues to languish in Parliament, where it has faced continued opposition not related to its ability to protect the human rights of this vulnerable population.¹⁰

Canada's reputation for leadership on women's human rights issues continues to be eroded. A champion of UN Security Council Resolution 1325 on Women, Peace and Security,¹¹ Canada adopted a national action plan to implement this resolution in 2010¹² but despite the promise of regular reporting on the plan's implementation, nothing has been released to date. This is all the more disappointing considering that sexual violence in conflict, a priority issue for Canada, would be covered in such reporting.

Canada has struggled to win the praise of civil society for its championing of the issues of sexual violence in conflict and early and forced marriage because of its positions with respect to sexual and reproductive rights, and because of funding cuts to women's rights organizations and programs at home and abroad.

As part of the 20-year review of the Programme of Action on the International Conference on Population and Development, where sexual and reproductive rights were first affirmed as human rights, Canada neglected to complete its national review process, and did not even show up at the regional review meeting held in July 2013 in Geneva. It is unclear what role, if any, Canada will play during the global population and development conference scheduled for April 2014.

At the 2010 G8 Summit, Canada promoted its Muskoka Initiative on child and maternal health, and drew criticism for excluding support and funding for safe abortion services as part of overseas development assistance under this initiative. Amnesty International's research shows that to reduce maternal mortality rates, women must have access to a full range of sexual and reproductive

services.¹³ Women in Canada have access to a full range of sexual and reproductive health services, and this should be mirrored in Canada's funding of such services overseas.

Canada found itself at odds with the international community several times in 2013 over its position on sexual and reproductive rights. At the UN Human Rights Council in June 2013, Canada drafted the annual resolution on violence against women, this year themed around sexual violence, and neglected to include language adopted at the March 2013 UN Commission on the Status of Women outlining the full range of sexual and reproductive health services that should be made available to survivors of sexual violence.¹⁴ Many of Canada's key partners, including the United States, expressed disappointment with Canada's approach. A few months later in September 2013 at the UN General Assembly, Canada called for more action on early and forced marriage, and backed a United Kingdom initiative condemning sexual violence in conflict. The following week, Canada stated publicly that it would not fund safe abortion services for rape survivors or victims of early and forced marriage, the very women whose rights Canada is purportedly trying to uphold.

III. BUSINESS, TRADE AND HUMAN RIGHTS

The economic and trade policies set by governments and the business decisions taken by companies can substantially imperil human rights protection. Amnesty International has pressed for laws holding corporations accountable for their human rights performance; and has stressed that human rights safeguards must feature centrally in trade policies and agreements. The Canadian government and the extractives industry overall have balked and have instead promoted voluntary approaches and have asserted that, in the end, greater trade and more business are always good for human rights.

For many years Amnesty International and other civil society organizations have highlighted that it is particularly crucial that effective laws and institutions be established to regulate the overseas human rights conduct of Canadian extractive corporations. Canadian mining companies, in particular, dominate the industry worldwide and now operate in every

corner of the globe, certainly not shying away from the frontlines of armed conflict, grave human rights violations and extreme poverty.

In 2010 the government opposed private member's legislation establishing human rights standards for Canadian extractive companies. A corporate social responsibility strategy

centered on voluntary participation of companies was instituted in 2009, but the work of the CSR Counsellor at the centre of that strategy has been hampered by the refusal of companies to cooperate in the complaints process.

Some court cases have been launched by victims of corporate human rights harms, but judges have generally ruled that cases should be heard in the country where the mine is located rather than in Canada. One case underway in Ontario against HudBay Minerals (in which Amnesty International has intervened¹⁵), related to its operations in Guatemala, is proceeding but is expected to be protracted. Amnesty International has pointed to human rights concerns associated with the operations of several Canadian companies in Guatemala¹⁶ as well as other countries.¹⁷ Existing non-judicial grievance mechanisms, such as Canada's National Contact Point to the Organization for Economic Cooperation and Development, have also proven to be disappointing failures.

There needs to be legislated access to Canadian courts for victims of human rights abuses arising from the overseas operations of Canadian extractive firms; as well as the creation of an extractive-sector Ombudsperson, with the power to independently investigate complaints and make recommendations.

The failure to adopt human rights standards for Canadian companies is exacerbated by a failure to anchor Canada's trade policies in a strong human rights framework. Canada continues to make it a top priority to adopt and

pursue bilateral and multilateral free trade agreements without due diligence with regard to human rights obligations, including the recommendation of UN experts, civil society organizations and Members of Parliament to carry out an independent, impartial, comprehensive and transparent human rights impact assessment that takes into consideration input from vulnerable sectors of the population such as Indigenous peoples, women, workers and peasant farmers, so as to surface and address any potential problems. This is a particularly troubling omission given that recent deals have been negotiated with countries which have widespread, troubling human rights records, such as Colombia¹⁸ and Honduras.¹⁹

The agreement with Colombia includes a requirement for yearly reports assessing the human rights impact of the deal. The 2012 report did not include any human rights assessment. While the government filed a report in 2013, it interpreted the reporting requirement in a way that excludes any consideration of possible impacts of Canadian extractive companies operating in Colombia. The 2013 report also failed to acknowledge, much less assess, some of the most pressing human rights concerns associated with increasing trade and investment in Colombia, notably the crisis for Indigenous nations, more than a third of which are struggling against the imminent threat of cultural and physical eradication, even as they face a further influx of mining, oil and gas companies in their territories.

IV. HUMAN RIGHTS AT THE BORDER

In the 2012 Human Rights Agenda, Amnesty International highlighted numerous human rights concerns associated with extensive changes to refugee law and policy in Canada, noting that many of the recent reforms 'sacrifice fairness, violate rights and are punitive in nature.' Those changes took effect in 2013:

- Provisions allowing for the designation of 'irregular arrivals'—leading to mandatory detention with infrequent reviews, denial of access to the Refugee Appeal Division, and

onerous delays in family reunification—have been in place for one year.²⁰

- 37 countries have been listed as ‘designated countries of origin’ meaning that refugee claimants from those countries are denied access to the Refugee Appeal Division. The list includes Mexico, which Amnesty International has described as facing ‘spiraling human rights violations’;²¹ Israel (excluding Gaza and the West Bank);²² and several countries in which Amnesty International has documented serious human rights violations against Roma people.²³
- The Faster Removal of Foreign Criminal Act²⁴ entered into force in June 2013, significantly expanding the range of individuals who will not be allowed to access appeal procedures or humanitarian reviews if they are ordered deported from Canada.

Throughout 2013, concerns deepened about the impact of sweeping cuts announced in June 2012 to the program that funds health services for refugee claimants and refugees in Canada. Notably, at the close of their annual meeting in October 2013, Provincial and Territorial Ministers of Health called on the federal government to reverse the cuts.

“Ministers expressed serious concern over the health of refugees in the wake of the federal government’s cuts to the Interim Federal Health Program... [S]ome vulnerable patients in need of care have found it difficult to access adequate treatment... Ministers will remind the

federal government of its responsibility under the Geneva Convention on the Status of Refugees and call on them to reverse the decision to reduce refugee health coverage.”²⁵

Canada’s refugee and immigration laws continue to include national security related provisions that contravene international human rights norms. Individuals can be removed from Canada to situations where they face a serious risk of being tortured. UN experts have repeatedly called on Canada to incorporate the absolute ban on deportations to a risk of torture in Canadian law.²⁶ Canada’s immigration security certificate process, through which people facing removal from Canada are denied access to the bulk of evidence and witnesses against them, has also been frequently criticized by UN experts.²⁷ The Supreme Court of Canada will rule on the security certificate process in early 2014.²⁸

Canada’s program for resettlement of refugees from Syria is shamefully inadequate. In July the government announced plans to resettle 1300 Syrian refugees by the end of 2014; only 200 through government resettlement.²⁹ The rest would be resettled through private sponsorship. In the first eight months of 2013, only 9 government-assisted Syrian refugees arrived in Canada. More than 2 million refugees have fled Syria. There are pressing needs to resettle vulnerable refugees from neighbouring Jordan, Lebanon, Turkey and Iraq. Amnesty International, the Canadian Council for Refugees and other organizations have pressed Canada to boost the numbers of Syrian refugees who will be resettled to Canada.

V. CANADIANS ABROAD

Increasingly, Canadians can and do experience serious human rights violations in other countries. In some particularly troubling cases Canadian officials bear some responsibility for the violations. In other cases, the Canadian government has failed to take up the case with the seriousness the human rights situation demands. Other times foreign governments appear

unmoved and disinterested by Canadian diplomacy. Inconsistencies in Canada's approach give rise to concerns about discrimination and the perception that human rights take a back seat to commercial and other interests.

Omar Khadr was transferred from Guantánamo Bay to Canada in September 2012 and is currently being held at the maximum security Edmonton Institution. The government refuses to acknowledge that Omar Khadr was a child soldier at the time of the July 2002 incident that is the basis of his conviction. The government has opposed Omar Khadr's application for transfer to a detention centre where he could access programming consistent with his status as a child soldier. The Supreme Court of Canada has twice concluded that Canadian officials have violated Omar Khadr's rights. Those human rights violations have never been remedied.

Important recommendations made in 2006 at the conclusion of the Commission of Inquiry into the case of Maher Arar, headed by Ontario Court of Appeal Justice Dennis O'Connor, have been ignored or remain unimplemented. With respect to Canada's intelligence relations with other countries, Justice O'Connor recommended that "information should never be provided to a foreign country where there is a credible risk that it will cause or contribute to the use of torture."³⁰ However, a Ministerial Direction to the Canadian Security Intelligence Service (CSIS)³¹, the Royal Canadian Mounted Police (RCMP) and the Canadian Border Services Agency (CBSA) allows for information to be shared with a foreign country even when there is a substantial risk it would lead to torture. The Ministerial Direction also allows, in exceptional circumstances, for those agencies to make use of information that was likely derived through torture. The UN Committee against Torture has called on Canada to revise the Ministerial Direction and bring it into conformity with international norms.³²

Justice O'Connor also recommended a new approach to ensuring proper review of agencies

involved in national security activities.³³ He proposed creating a body with enhanced powers for review of the RCMP; establishing independent review of the national security activities of CBSA, Citizenship and Immigration Canada, Transport Canada, the Financial Transactions and Reports Analysis Centre of Canada and Foreign Affairs and International Trade Canada; and ensuring an integrated approach to reviewing the national security activities of all of these agencies, as well as CSIS and the Communications Security Establishment. These recommendations for more thorough, effective and integrated review of national security activities have not been adopted.

In 2008 a judicial inquiry headed by former Supreme Court of Canada Justice Frank Iacobucci found that Canadian officials bore some responsibility for serious human rights violations experienced by Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin.³⁴ Yet the Canadian government has forced the three men into protracted litigation rather than provide an official apology and compensation. The UN Committee against Torture raised this as a priority concern in a May 2012 review. The government refused to provide any further information because "these matters are currently the subject of litigation before the Canadian courts."³⁵

Canadians who have experienced human rights violations in other countries are unable to sue those governments for compensation in Canadian courts. The State Immunity Act bars such lawsuits. That will be challenged in an appeal to the Supreme Court of Canada in March 2014 in a case stemming from the 2003 detention, torture and death in Iranian custody of Zahra Kazemi. Amnesty International will be intervening in the case.

In some cases the Canadian government has been clear and forceful at senior levels, demanding that a wrongfully imprisoned Canadian be freed or that concerns about torture and ill-treatment be addressed. In September, Hamid Ghassemi-Shall was freed from more than five years of imprisonment and the possibility of execution in Iran.³⁶ In October Tarek Loubani and John Greyson were freed after close to two months of unlawful imprisonment in Egypt.³⁷

In other cases, Canada's efforts have been more muted. Despite assurances the

government is taking action, there has been no visible indication of Canada's advocacy on behalf of Huseyin Celil or Bashir Makhtal, serving life sentences in China and Ethiopia respectively after blatantly unfair trials. Canadian efforts to support the clemency bid of Ronald Smith, on death row in Montana, can be described as reluctant at best. And Canada's demands on behalf of Paul Ruzyccki and Alexandre Paul, who are among the group of Greenpeace protesters imprisoned and now free on bail in Russia, have been noticeably less forceful than other governments advocating for their nationals.³⁸

VI. IMPOVERISHED HUMAN RIGHTS

Concern continues to deepen that Canada views important economic, social and cultural rights such as the right to housing as second-class rights, not susceptible to the same level of enforcement as civil and political rights such as freedom of expression and fair trial rights.

During the 2013 Universal Periodic Review Canada rejected recommendations to adopt national action plans or national strategies to tackle three important and pressing economic, social and cultural rights concerns: poverty, homelessness and inadequate housing, and food insecurity.

The government has steadfastly refused to adopt a national human rights based housing strategy. In February, the government opposed and defeated private member's legislation which called upon the Minister responsible for the Canada Mortgage and Housing Corporation to "establish a national housing strategy designed to respect, protect, promote and fulfill the right to adequate housing as guaranteed under international human rights treaties ratified by Canada."³⁹

The government has also opposed efforts to advance protection of the right to adequate housing in court. Amnesty International has intervened in a court case launched in Ontario, seeking a ruling that the federal and Ontario governments be required to develop and implement strategies to reduce and eliminate

homelessness and inadequate housing. The two governments argued that the case should not proceed as the rights asserted are not proper matters for judicial consideration.

An Ontario Superior Court judge agreed with the governments, concluding that "the courts are not the proper place to determine the wisdom of policy choices involved in balancing concerns for the supply of appropriate housing against the myriad of other concerns associated with the broad policy review this Application envisages... These kinds of questions do not belong in court or with the judiciary."⁴⁰

This reticence domestically has been matched globally. During the 2013 UPR Canada repeated that ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights is "not currently under consideration." The Optional Protocol allows for complaints about alleged violations of the Covenant to be brought before the UN Committee on Economic, Social and Cultural Rights. Canada has repeatedly stated it does not support the Optional Protocol's

complaint mechanism as it does not view economic, social and cultural rights as being justiciable.

Canada continues to advance positions which seek to dilute international recognition of the rights to water and sanitation. Canada no longer denies that these two crucial rights are established and recognized in international human rights instruments. However, the government has taken problematic stances on key aspects of these rights, in particular arguing that the right to water does not apply across national boundaries and has minimal implications with respect to international cooperation.

Domestically, Canada's efforts to address the woeful state of drinking water and sewage systems on many First Nations reserves fall far short of ensuring that the rights to water and sanitation can be enjoyed without discrimination. The recently adopted *Safe Drinking Water for First Nations Act* creates new regulatory requirements that are not accompanied by financial resources urgently needed to bring First Nations water and sewage systems to a level comparable to that enjoyed by non-Aboriginal communities.

Similarly, the federal government has proposed a bill on First Nations education that would impose new regulations without addressing the critical issue of federal underfunding of education for First Nations students.⁴¹

VII. FREEDOM OF EXPRESSION

Concerns have mounted rapidly in recent years that the space for active and diverse dissent in Canada is being undermined and dismantled in ways never before experienced in this country, raising concerns about protection and promotion of freedom of expression. As Amnesty International noted in the 2012 Human Rights Agenda, this includes changes to Status of Women Canada funding criteria to exclude support for research and advocacy with respect to women's human rights; ending the Court Challenges program, which had facilitated important Charter of Rights challenges from marginalized communities; and a clear pattern of punitive funding cuts and other measures that target organizations with programming that runs counter to government positions on such issues as women's equality, the rights of Palestinians and corporate social responsibility in the extractives sector.

The list continues to grow longer. An on-line list maintained by the Voices-Voix Coalition details "80 cases of individuals, organizations and public service institutions that have been muzzled, defunded, shut down or subjected to vilification."⁴² Further cases continue to be documented. David Suzuki and others have drawn attention to the fact that there is a particularly alarming pattern of targeting activists, researchers and scientists working on environmental issues in the country.⁴³

One stark example is illustrated in the Federal Privacy Commissioner's findings about extensive and intimidating government surveillance of Dr. Cindy Blackstock, a prominent Indigenous rights activist who launched the complaint about discriminatory

levels of federal funding for on-reserve child protection services, noted above at page 4. The Privacy Commissioner's report reveals that government officials monitored her personal Facebook page, tracked people who posted to her page, and sent staff to take notes on her public presentations, all in an attempt to find information that might help the government fight the discrimination complaint before the Canadian Human Rights Tribunal.⁴⁴

Amnesty International and other organizations reacted to revelations in July that the Prime Minister's Office had instructed government officials to compile "friend and enemy stakeholder" lists as part of the process of briefing new members of Cabinet. In a letter to the Prime Minister, the organizations

expressed concern that individuals or organizations that disagree with government policy would be labelled as “enemies”.⁴⁵

Concerns deepen that the space for public dissent and protest is shrinking as well. Mass arrests and other associated infringements of various human rights protections at the time of the 2010 G20 protests and the 2012 Quebec student protests remain unaddressed. Amnesty International called for public inquiries to be convened to examine the policing response to both of these protests. There has been no public inquiry into the G20 Summit police response despite 31 police officers facing disciplinary charges⁴⁶ and, in September 2013, the first criminal conviction of an officer, on charges of assault with a weapon.⁴⁷ The government of Quebec has established a commission to look into events surrounding the student protests. Amnesty International has intervened and made a submission regarding the police response to the protests. There are concerns, however, that the Commission lacks sufficient powers to compel evidence, cross-examine witnesses and carry out necessary investigations.⁴⁸

Given the potential for conflict around resource development on Indigenous lands, as highlighted by recent anti-fracking protests at the Elsipogtog First Nation in New Brunswick, Amnesty International remains concerned that police services in Canada have either not adopted or fully implemented appropriate

policies and procedures to prevent unnecessary and excessive use of force in response to Indigenous land rights demonstrations and other assertions of Indigenous rights.⁴⁹

The Office of the UN High Commissioner for Human Rights has recommended to states, as best practice, that they work with civil society to develop plans of action for implementation of the 1998 UN Declaration on Human Rights Defenders.⁵⁰ Given the mounting concerns about the various measures targeting and undermining the work and campaigns of human rights activists, advocates and protesters, it has become increasingly evident that there is need in Canada for such a plan of action.

Freedom of expression also plays an important, often central, role in upholding other rights and freedoms. Amnesty International has expressed serious concern that the Quebec government’s proposed Charter of Values threatens to undermine both freedom of expression and freedom of religion. The organization has highlighted that some provisions of Bill 60, the *Charter affirming the values of State secularism and religious neutrality and of equality between women and men and providing a framework for accommodation requests*,⁵¹ contravene various international human rights norms and could substantially undermine diversity and women’s equality.⁵²

VIII. CANADA ON THE WORLD STAGE

Canada has enjoyed a strong reputation on the world stage, honed and fostered over decades, as a human rights champion. That has been evident multilaterally, where Canada has led many key human rights initiatives within the United Nations, the Commonwealth and other international and regional bodies. It has also been the case bilaterally, where concern for human rights has figured prominently in Canada’s development programs and diplomatic priorities.

The government stresses that these values continue to guide Canadian foreign policy. Foreign Affairs Minister John Baird, recently

noted that “human rights, freedom, democracy and the rule of law are core Canadian values

that this government is proud to uphold and celebrate.”⁵³

There are countries where this remains the case. Canada has taken strong positions with respect to human rights in countries such as Iran⁵⁴ and Sri Lanka;⁵⁵ while at the same time having increasing difficulty in attracting support for those positions from other countries.⁵⁶ Canada’s reputation for human rights leadership has been significantly undermined by an unwavering refusal to countenance any international criticism of Israel’s human rights record. As a result Canada is now perceived as being firmly partisan with respect to what remains one of the world’s most serious, and polarizing, human rights situations.

Canada has set foreign policy priorities that address pressing global human rights concerns. The establishment of the Office for Religious Freedom stands to make important contributions to addressing instances of religious persecution around the world. And the priority attention given in Canada’s foreign policy to ending the practice of early forced marriage, addressing sexual violence in conflict and confronting the criminalization of homosexuality is very welcome. As noted above, at page 5, Canada’s reputation more widely as a leader with respect to women’s human rights has been undermined by a refusal to defend a strong sexual and reproductive rights agenda and adequately fund organizations and programs that promote gender equality.

Overall, however, concern has rapidly mounted in recent years that Canada’s reputation as a human rights leader has faded precipitously, strained by inconsistencies, and by obstructive positions that have set back rather than advanced human rights protection.

Canadian leadership has been diminished in areas where it was well-established and highly successful. Canada is, for instance,

deservedly lauded for having led the groundbreaking international negotiations that resulted in the Ottawa Treaty banning landmines and the Rome Statute establishing the International Criminal Court. But Canada has all but abandoned any sense of leadership in those two crucial areas: the impact of arms and weapons on human rights, and the campaign for international justice.

On 2 April 2013 governments adopted a new Arms Trade Treaty which will bring sorely needed human rights rules to the global trade in arms and weapons. Canada did not demonstrate any of the leadership that was on display with respect to the landmines treaty. Canada did vote in favour of adoption of the new treaty. Canada did not, however, convey clear and strong support for the treaty by co-sponsoring the resolution adopting its text. 108 states did co-sponsor that resolution, including the United States which had previously been wary of supporting the initiative. Eight months since its adoption the treaty has now been signed by 115 countries, including the United States and a long list of Canada’s closest allies, and has been officially ratified by eight countries.⁵⁷ Canada has only indicated that it intends to carry out consultations with respect to ratifying the treaty, and has highlighted concern that the treaty not impact on the rights of Canadian hunters and farmers to own guns.⁵⁸

Recent positions taken with respect to the International Criminal Court have also been troubling and baffling. For instance, Canada refused to sign on to a Swiss-led plea to the UN Security Council urging that the crisis in Syria be referred to the International Criminal Court. The Swiss initiative was supported by sixty countries, including most of Canada’s closest allies.⁵⁹ At an important November 2013 meeting of countries that have ratified the Rome Statute, Canada stood alone in insisting that there be no increase in the budget for the International Criminal Court,

despite wide recognition from other states that an increase is essential.

There is also very deep concern that Canadian foreign policy has now expressly become singularly focused on advancing Canada's economic interests. On 27 November 2013 the government announced a new international trade strategy, the Global Markets Action Plan: The Blueprint for Creating Jobs and Opportunities for Canadians. The new approach explicitly establishes Canada's commercial interests as the overriding foreign policy goal for the country, through what is termed "economic diplomacy".⁶⁰ There is no reference in the Plan to human rights or to any broader humanitarian imperatives. Minister of International Trade Ed Fast put it bluntly:

In short, this new plan will play to our strengths and ensure that all of Canada's diplomatic assets are harnessed to support the pursuit of commercial success by Canadian companies and investors.⁶¹

This shift comes in the wake of decisions made both with respect to foreign policy and international development assistance to align Canada's programming with the needs and activities of the Canadian extractive sector. Unfortunately, as noted above at page 6, that has not been matched by support for strong laws and policies to hold Canadian extractive companies accountable for their human rights performance.

The shift also underscores the growing concern that the commitment to assess the human rights impact of Canada's new trade deal with Colombia has not been taken seriously; and that Canada is consequently not taking advantage of this economic relationship to address such serious human rights concerns as the crisis facing Indigenous peoples in Colombia and, worse, that Canadian economic interests could deepen those grave human rights problems. The subjugation of human

rights concerns to economic interests has in fact become apparent in Canada's relationship with many countries, including China and Malaysia.⁶² It also brings into sharp focus the declining attention directed towards Africa, where Canada has reduced its diplomatic presence and cut development assistance.⁶³

Positions taken by Canada with respect to a wide range of other issues have further eroded Canada's human rights reputation. In 2010 Canada did reverse its earlier forceful opposition to the UN General Assembly's adoption in 2007 of the Declaration on the Rights of Indigenous Peoples. However, Canada continually asserts within UN settings that the Declaration is only aspirational and has no legal effect in Canada.⁶⁴ Canada has refused to co-sponsor an important resolution at the UN General Assembly in 2007, 2008, 2010 and 2012, calling for a global moratorium on executions. While Canada has voted in favour of the resolution it is the only firmly abolitionist country in the world not to co-sponsor. 91 countries co-sponsored the resolution in 2012. Canada was one of only 20 countries to vote for the resolution but not co-sponsor it.⁶⁵

Canada's level of engagement with and respect shown to the international human rights system has also slipped considerably. Concerns about the approach Canada took to the 2013 Universal Periodic Review of its human rights record are noted in the Introduction, at page 2. The inexplicable failure to ratify the Optional Protocol to the UN Convention against Torture is also noted. That failure is symptomatic of a wider disinterest in ratifying important UN human rights treaties. The present government has ratified only one human rights treaty, the Convention on the Rights of Persons Living with Disabilities, in March 2010. In addition to the Optional Protocol to the Torture Convention, other treaties dealing with enforced disappearances and migrant workers, as well as treaties providing complaints processes with respect to

economic, social and cultural rights, children's rights and the rights of persons living with disabilities all remain unratified.

Several times in 2012 Ministers sharply criticized and even personally insulted, UN human rights experts reviewing or speaking out about Canada's human rights record.⁶⁶ Particularly worrying was the frequent suggestion that the UN human rights system should not scrutinize Canada's record because other countries face more serious human rights challenges; effectively dismissing the core concept of universality that underpins the international human rights system. Canada did allow missions to the country by three international human rights bodies or experts in 2013 – the Inter-American Commission on

Human Rights, the UN Committee on the Elimination of Discrimination against Women and the UN Special Rapporteur on the Rights of Indigenous Peoples—all of whom were investigating concerns related to the protection of the rights of Indigenous peoples in Canada. The reports stemming from those three visits have not yet been released and there has therefore not yet been any official reaction by the Canadian government.

Canadian human rights leadership can and must be restored and revitalized. There is a pressing need for a renewed commitment to ensuring that human rights protection is consistently at the very heart of Canadian foreign policy.

RECOMMENDATIONS

Amnesty International calls on the federal government, working with provincial and territorial governments and with Indigenous peoples in many instances, to take action through law reform and policy development to address the various concerns discussed in this Update. Amnesty International is highlighting, in particular, the importance of taking up the following recommendations without delay. Amnesty International calls on the federal government to:

CANADA'S UNIVERSAL PERIODIC REVIEW

- Collaborate in particular with Indigenous women's organizations to develop and adopt a comprehensive, coordinated, and adequately resourced National Action Plan to stop violence against women, including an independent public inquiry into the murders and disappearances of Indigenous women and girls. This plan must address both the social and economic inequalities that lead to increased risk of violence against Indigenous women and how the police and justice system respond.
- Ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without any further delay.
- Convene a meeting of federal, provincial and territorial ministers responsible for human rights, to initiate a process of law, policy and institutional reform that would ensure effective, transparent and politically accountable implementation of Canada's international human rights obligations.

THE HUMAN RIGHTS OF INDIGENOUS PEOPLES

- Alongside provincial and territorial governments, recognize Indigenous peoples' right of free, prior and informed consent as established in international law and fully incorporate FPIC in the permitting and approval of resource development projects in Canada and in all other laws, policies, and practices related to extractive industries at home and abroad.

GENDER RIGHTS

- As part of Canada's overseas development assistance, fund a full range of sexual and reproductive health services in keeping with international standards and in line with what is available to women and girls in Canada.
- Expedite the adoption of Bill C-279 to help ensure that the rights of transgendered Canadians are more fully protected.

BUSINESS, TRADE AND HUMAN RIGHTS

- Ensure legislated access to Canadian courts for people who have been seriously harmed by the international operations of Canadian companies.
- Establish an extractive-sector Ombudsperson with the power to independently investigate complaints and make recommendations to corporations and the Government of Canada.
- Ensure a credible, impartial, transparent human rights impact assessment is conducted of the Canada- Colombia Free Trade Agreement that considers Canadian investment in the resource extraction sector and draws on meaningful consultation with vulnerable sectors of the population, including Indigenous peoples, Afro-descendent communities, women, peasant farmers and trade unions. Commit to conducting similar human rights impact assessments of all other trade agreements.

REFUGEE PROTECTION

- Restore the cuts to the Interim Federal Health Program and ensure that funding for refugee health care in Canada is consistent with international human rights standards with respect to access to health care, non-discrimination and refugee protection.

CANADIANS ABROAD

- Adopt legislative and diplomatic measures to guarantee equal protection of the rights of Canadian citizens who experience human rights violations abroad and access to effective remedies for any such violations, including through amendments to the State Immunity Act.

POVERTY AND HUMAN RIGHTS

- In keeping with recommendations made by UN human rights experts and committees, develop human rights-based national action plans or strategies to address poverty, homelessness and food insecurity in Canada.

FREEDOM OF EXPRESSION

- Work with Indigenous peoples organizations and civil society to develop a national plan of action for implementation of the UN Declaration on Human Rights Defenders in Canada.

CANADA ON THE WORLD STAGE

- Following on from the recent Global Markets Action Plan develop an International Human Rights Action Plan which establishes genuine leadership, consistent commitment and meaningful action for human rights as a foundational dimension of Canadian foreign policy.

ENDNOTES

¹ Report of the Working Group on the Universal Periodic Review, Canada, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, UN Doc. A/HRC/24/11/Add.1, para. 3

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- ⁵⁶ Canada's public comments expressing skepticism about the recent nuclear deal brokered by world powers with Iran were seen by many as strident and isolating, out of step with allies. Very few other members of the Commonwealth joined Canada in boycotting the Commonwealth meeting in Sri Lanka, let alone in using the occasion to express concerns about the country's human rights record.
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