

**AMNESTY
INTERNATIONAL**



MATCHING INTERNATIONAL COMMITMENTS WITH NATIONAL ACTION

A HUMAN RIGHTS AGENDA FOR CANADA

December 2012

COVER: Families of Sisters in Spirit
Evening Vigil, October 2012.
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Béatrice Vaugrante, Director General of Amnesty International Canada's francophone branch, with Alex Neve, Secretary General of the English-speaking branch, at the Sisters in Spirit rally on Parliament Hill, Ottawa, October 2012.

INTRODUCTION

The Committee recommends that the State party ... take immediate steps to ensure that in law and practice, Aboriginal children have full access to government services and receive resources without discrimination¹ ...

The Committee recommends that the State party enhance its efforts to end all forms of violence against aboriginal women and girls by, inter alia, developing a coordinated and comprehensive national plan of action, in close cooperation with aboriginal women's organizations² ...

The Committee recommends that the State party, in consultation with Aboriginal peoples, implement in good faith the right to consultation and to free, prior and informed consent of Aboriginal peoples whenever their rights may be affected by projects carried out on their lands³ ...

Canada's human rights record attracted considerable UN-level attention over the course of 2012. That is not because there was a UN decision to give increased focus to Canada. It was primarily a matter of timing and circumstances. Three mandatory reviews, carried out on a periodic basis every four or five years by expert committees that are responsible for supervising the main UN human rights treaties, all happened to arise during the course of 2012. Those reviews focused on racial discrimination, the prevention of torture and the rights of children. Some years there are no such reviews; in 2012 there happened to be three. The reviews covered a range of ongoing and very serious human rights concerns in the country. As the passages above indicate, among the many concerns covered, all three committees highlighted

a range of longstanding and very serious human rights challenges facing Indigenous peoples.

A visit to Canada by a UN human rights expert responsible for examining issues related to the right to food also took place during 2012.⁴ Country visits to Canada by UN experts are carried out on an occasional basis. It is a regular part of their work. In addition, at various points in time over the past twelve months, other UN bodies, experts and officials made public comments about Canadian human rights concerns, including the housing and wider humanitarian crisis facing the Attawapiskat First Nation,⁵ violence against Indigenous women,⁶ and the concerns that arose in connection with the policing and legislative response to student protests in Quebec.⁷

1 *Concluding Observations of the Committee on the Rights of the Child: Canada*, CRC/C/CAN/CO/3-4, 5 October 2012, para. 33(d).

2 *Concluding Observations of the Committee against Torture: Canada*, CAT/C/CAN/CO/6, 25 June 2012, para. 20.

3 *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, CERD/C/CAN/CO/19-20, 9 March 2012, para. 20(a).

4 OHCHR, "Olivier De Schutter, Special Rapporteur on the Right to Food: Visit to Canada from 6 to 16 May 2012 - End-of-mission statement," 16 May 2012, Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12159&LangID=E>.

5 OHCHR, "Canada / Attawapiskat First Nation: Statement by the UN Special Rapporteur on Indigenous Peoples," 20 December 2011, Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11743&LangID=E>.

6 http://www2.ohchr.org/english/bodies/cedaw/docs/CanadaInquiry_Press_Release.pdf

7 OHCHR, "Canada: 'UN experts concerned over recent events in Quebec,'" 30 May 2012, Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12201&LangID=E>; OHCHR, "Opening statement by Navi Pillay, High Commissioner for Human Rights to the Human Rights Council 20th Special Session," 18 June 2012, Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12245&LangID=e>.

There was considerable political and media commentary about all of this UN human rights scrutiny. The Canadian government publicly rebuked and, on occasion, insulted most of the UN experts, officials and independent committees that raised these concerns and made recommendations for reform. In all instances the suggestion was that because Canada's record is not as bad as that of many other countries, Canada's record should not be internationally scrutinized. Many, including senior members of the government, characterized it as unnecessary and wasteful; arguing that UN resources should focus only on countries with more glaring human rights problems.⁸

That critique overlooks the wide-ranging and comprehensive work done within the UN human rights system in response to serious and systematic human rights violations around the world, including countries that are in the midst of current crises. It also overlooks the foundational principle of the international human rights system: universality. Rights enshrined in the Universal Declaration of Human Rights and other international instruments apply globally and equally to all people. The integrity of the system depends on all countries, including Canada, living up to those obligations and being held accountable when they fail to do so. Monitoring, reviews, missions and reports are all essential to that process.

Canada has a strong record of accepting international obligations, including by ratifying most of the major international human rights treaties. Canada also actively participates in the various review processes conducted by UN bodies and experts. However, Canada's record is less exemplary when it comes to complying with the findings and recommendations that come out of international reviews. The list of important conclusions reached and recommendations made to Canada by UN human rights experts and bodies but which have not been implemented, would now stretch for many pages. Additionally, the

implementation process is cloaked in so much secrecy that it would be virtually impossible for most Canadians to determine whether the government has any specific plans to implement any particular recommendation, or has decided to reject it.

Partially because of the complexities of federalism, partially because of a lack of political will, and partially because of a failure of leadership, concern about the growing gap between Canada's commitment to international norms on the one hand, and action to implement and live up to those norms on the other hand, has mounted considerably over the past decade. In fact UN review bodies now often focus on Canada's inadequate implementation process as itself being a serious, substantive human rights concern.⁹

In 2005, Canada led a UN human rights reform effort that led to the establishment of a groundbreaking Universal Periodic Review (UPR) process, overseen by the newly established UN Human Rights Council, through which the human rights records of all member states of the United Nations will be assessed once every four years. The UPR is unprecedented in that it marks the first time in UN history that all countries, without exception, will face international human rights scrutiny. It is also novel in that the review is carried out by other states, not by independent experts. While that often brings politics into the process, it also brings increased political pressure and leverage when it comes to expectations that states will live up to the resulting recommendations. Canada was reviewed for the first time in 2009 and will face a second round in 2013. However, Canada's record of fulfilling the agreed recommendations coming out of the first review has been constrained and undermined by the country's longstanding shortcomings when it comes to implementing international obligations.

Amnesty International's 2013 Human Rights Agenda for Canada is calling for concerted action to address this

8 *Empty Words and Double Standards: Canada's Failure to Respect and Uphold International Human Rights, Joint Submission to the United Nations Human Rights Council in Relation to the May 2013 Universal Periodic Review of Canada*, October 2012, Available at: <http://nwac.ca/sites/default/files/imce/NGO%20Coalition%20Statement%20-%20Canada%20UPR%202013%20Sept%2026%20FINAL%20ENG.pdf>.

9 Committee on the Rights of the Child (2012), the Committee against Torture (2012), the Committee on the Elimination of Discrimination against Women (2008), the Committee on the Elimination of Racial Discrimination (2007), the Committee on Economic, Social and Cultural Rights (2006) and the Human Rights Committee (2006).

deepening concern. It will require leadership. It will require political will. And it will require cooperation and coordination among federal, provincial and territorial governments. But it cannot wait any longer. The people and communities whose rights are being affected by the action and inaction of governments in Canada deserve and need action. They need assurance that Canada is ready and prepared to conform, fully, to the country's international obligations.

This does not only matter domestically. It has global resonance and consequences as well. The more effective Canada's system for overseeing and implementing international obligations, and the stronger Canada's record of compliance, the more forceful and credible Canada's efforts will be to push other countries to comply with and implement their own obligations. Better human rights implementation in Canada strengthens human rights protection in Canada and beyond.

Amnesty International, other organizations, UN bodies and parliamentary committees¹⁰ have repeatedly called on Canada to develop a better system for human rights implementation, a system that is better coordinated between levels of government, more accessible and transparent to the public and grounded in greater political accountability. But there have been no meaningful changes proposed or adopted.

The 2013 Human Rights Agenda reviews developments and concerns with respect to eight main areas: the rights of Indigenous peoples; women's human rights; corporate accountability and trade policy; the rights of refugees and migrants; Canadians subject to human rights violations abroad; economic, social and cultural rights; advocacy and dissent; and engagement with the multilateral human rights system. In each area a key recommendation is offered, reflective of a concern that has been repeatedly raised by UN experts and bodies but which remains unaddressed and unimplemented (often after many years).

Joining with over sixty other Canadian Indigenous organizations and civil society groups, Amnesty International has urged states that will be assessing Canada's record during the UN Human Rights Council's Universal Periodic Review in 2013 to call on the government to launch a process of law reform to address this longstanding, troubling human rights shortcoming.¹¹

RECOMMENDATION:

The Canadian government should launch a process of law reform, working with provincial and territorial governments, Indigenous peoples and organizations, and civil society groups, to establish a formal mechanism for transparent, effective and accountable implementation of Canada's international human rights obligations across and among all levels of government in the country.

10 *Promises to Keep: Implementing Canada's Human Rights Obligations - Report of the Standing Senate Committee on Human Rights*, December 2001, Available at: <http://www.parl.gc.ca/Content/SEN/Committee/371/huma/rep/rep02dec01-e.htm>.

11 *Empty Words and Double Standards: Canada's Failure to Respect and Uphold International Human Rights, Joint Submission to the United Nations Human Rights Council in Relation to the May 2013 Universal Periodic Review of Canada*, October 2012, Available at: <http://nwac.ca/sites/default/files/imce/NGO%20Coalition%20Statement%20-%20Canada%20UPR%202013%20Sept%2026%20FINAL%20ENG.pdf>.



Sisters in Spirit Rally on Parliament Hill, October 2012.

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THE RECORD

I. THE HUMAN RIGHTS CRISIS FACING INDIGENOUS PEOPLES

No other human rights challenge in Canada is as consistently and strenuously raised by UN experts and committees and other independent human rights bodies as the rights of Indigenous peoples. By every measure, be it respect for treaty and land rights, levels of poverty, average lifespans, violence against women and girls, dramatically disproportionate levels of arrest and incarceration, or access to government services such as housing, healthcare, education, water and child protection, Indigenous peoples across Canada continue to face a grave human rights crisis. Despite determined and courageous organizing and legal action nationally and internationally, Indigenous peoples continue to face immense obstacles in ensuring that their rights are even acknowledged, let alone protected. After more than four years of Canada's aggressive opposition to the United Nations Declaration on the Rights of Indigenous Peoples, in November 2010 the federal government finally endorsed this vital international human rights instrument. However, the government has not altered policies and practices to live up to that commitment, nor has the government worked with Indigenous peoples and organizations to develop a plan for implementing the Declaration, a step that would go far in addressing this serious human rights crisis.

Equality

Canadian government law, policy and practice frequently fail to ensure equal access to essential government services for Indigenous communities in comparison to other people in Canada. Significant underfunding of First Nations child protection agencies operating on reserves is the subject of a human rights complaint currently before the Canadian Human Rights Tribunal. The federal government has argued that the Canadian Human Rights Act cannot be applied to inequalities in services between First Nations children under federal jurisdiction and the general population under provincial jurisdiction, because two different jurisdictions are involved. The government's position was rejected by the Federal Court¹² but the case is currently before the Federal Court of Appeal. The government's position

essentially guts the equality rights of First Nations people under the Human Rights Act of any meaning.

Similarly, the fundamental right to water within First Nations communities continues to be cavalierly disregarded across the country. A recent assessment found problems in the majority of First Nations water and sewage systems, with 39% of systems having major deficiencies that potentially threaten human health and the environment.¹³ While a government-appointed panel has highlighted the necessity of providing adequate resources to ensure that "the quality of First Nations water and wastewater is at least as good as that in similar communities,"¹⁴ the government response has been to introduce new legislation¹⁵ to regulate First Nations water without adequate measures to eliminate the gap in resources.

12 *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445.

13 Neegan Burnside Ltd., *National Assessment of First Nations Water and Wastewater Systems – National Rollup Report*, Department of Indian Affairs and Northern Development, April 2011, pp. i, ii.

14 Harry Swain, Stan Louttit and Steve Hruddy, *Report of the Expert Panel on Safe Drinking Water for First Nations*, Department of Indian Affairs and Northern Development, November 2006, p. 50.

15 *Bill S-8, Safe Drinking Water for First Nations Act*, Available at: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&Bill=S8&Parl=41&Ses=1>.

Land and Life

There continue to be major deficiencies in the recognition and protection of the land and resource rights of Indigenous peoples, across the country. Safeguarding these rights is at the heart of ensuring the physical and cultural well-being and often the very survival of Indigenous peoples. Indigenous peoples in Canada have played a crucial role in advancing recognition of land rights in the international human rights system. A complaint brought by the Lubicon Cree in Alberta led the UN Human Rights Committee to issue one of its first rulings recognizing that the failure to recognize and uphold Indigenous land rights was a violation of internationally protected human rights. That was in 1990. Since then, the situation of the Lubicon Cree, and the broader failure of governments in Canada to protect and restore Indigenous peoples' access to, use and control of lands, territories and resources, has been the subject of repeated criticism by UN treaty bodies and special rapporteurs.

Today, the safeguarding of Indigenous peoples' land rights is even more critical given the unprecedented scale of resource development being currently promoted by federal, provincial and territorial governments. Much of this development is taking place on lands where the inherent and Treaty rights of Indigenous peoples are the subject of longstanding, unresolved negotiations and litigation. The Inter-American Commission on Human Rights has recently found that the processes for resolving such disputes are too onerous and protracted to meet international standards of justice.¹⁶

In one of the largest and most contentious resource development projects currently under review in Canada,

the Canadian company Enbridge has proposed building a massive pipeline connecting the Alberta oil sands to the British Columbia coast.¹⁷ The pipeline is intended to carry a daily average of 525,000 barrels of oil sands bitumen, oil and industrial chemicals to a proposed facility in Kitimat, B.C. where the bitumen and oil would be loaded onto tankers for likely export to Asia. The pipeline would also carry industrial chemicals to the oil sands for the extraction and transport of bitumen.¹⁸ Approval of the project would lead to pipeline construction across roughly 1000 rivers and streams in the traditional territories of Indigenous peoples in Alberta and British Columbia; the transport of bitumen, oil and industrial chemicals over these territories and through coastal waters vital to other Indigenous nations; and ultimately contribute to increased demand for oil sands extraction on Indigenous territories in Alberta. In December 2011, 61 First Nations with territory in the largest watershed on the proposed pipeline route issued a declaration denouncing Northern Gateway as a "grave threat" to "our laws, traditions, values and our inherent rights as Indigenous peoples."¹⁹

The Northern Gateway pipeline is only one of the major projects under consideration in northern and central British Columbia: industry has brought forward proposals for 27 new mines, in addition to 11 mines currently in operation in the region.²⁰ A similar intensification of resource extraction is being spurred on by governments in other provinces and territories. In northern Quebec, in a region where there are already seven mines currently operating, an additional 23 projects are in development under the province's Plan Nord. This includes the Lac Otefnuk iron mine, which is potentially the largest mining project in Canadian history.²¹ The Quebec

16 Inter-American Commission on Human Rights, Report No 105/09, *Petition 592-07 – Hul'qumi'num Treaty Group*, 30 October 2009, Available at: <http://www.cidh.oas.org/annualrep/2009eng/Canada592.07eng.htm>.

17 Enbridge Northern Gateway LP, Enbridge Northern Gateway Project Sec 52 Application, Volume 1: Overview and General Information May 2010.

18 Enbridge Northern Gateway LP, Enbridge Northern Gateway Project Sec 52 Application, Volume 1: Overview and General Information, May 2010, p. 1.

19 Save the Fraser Gathering of Nations, "Save the Fraser Declaration," November 2011, Available at: <http://www.savethefraser.ca/>.

20 Northern Health British Columbia, *Understanding the State of Industrial Camps in Northern BC: A Background Paper*, Version 1, 17 October 2012, Available at: http://northernhealth.ca/Portals/0/About/NH_Reports/documents/2012%2010%2017_Ind_Camps_Backgrounder_P1V1Comb.pdf.

21 Conseil du statut de la femme, *Opinion - Women and Plan Nord: For Equality in Northern Development*, October 2012, pp. 39-40, Available at: <http://www.csf.gouv.qc.ca/modules/fichierspublications/fichier-29-1679.pdf>.

government has committed to spending more than \$1.7 billion by 2017 on roads, power lines and other infrastructure to support Plan Nord.²²

One of the primary forms of interim protection in Canada is the constitutional duty of consultation and accommodation. The federal government has said that environmental review processes are a central part of the consultation process. At the same time, the federal government has revised the Canadian Environmental Assessment Act to restrict the scope and authority of such reviews. Public comments by federal ministers about the contentious Northern Gateway pipeline proposal have also raised concerns that the assessment process could have little impact on pre-determined government positions.

Particularly problematic is the failure of governments in Canada to recognize that Indigenous peoples have an internationally-protected right of free, prior and informed consent in respect to economic projects and other developments that stand to impact significantly on the enjoyment of their rights. The most recent federal guidelines on the duty of consultation and accommodation make the unjustifiable claim that the affirmation of the right of free, prior and informed consent in the UN Declaration on the Rights of Indigenous Peoples has no significance for Canada's domestic obligations.

Justice in the Face of Protest

For several decades, throughout Canada, there have been numerous instances in which Indigenous peoples have felt compelled to engage in various forms of protest in defence of their rights, in particular their land and resource rights. The protests have reflected deep frustration at the slow progress and intransigence they have faced in having their rights recognized and protected through official government and court processes.

Some protests have become contentious locally, as they have involved blockades of highways, roads, parks and other public locations.

A wide range of police forces – national, provincial and local – have become involved in responding to these protests; some have become the subject of various court proceedings. 2012 marked the fifth anniversary of the release of the report of the Ipperwash Inquiry, a judicial inquiry in the province of Ontario that examined the circumstances surrounding the 1995 police killing of Indigenous rights protestor Dudley George at Ipperwash Provincial Park. Key recommendations from the Inquiry remain unimplemented, such as the need for an independent evaluation of the framework that governs Ontario Provincial Police responses to aboriginal protest situations. Since the federal government did not participate in the Inquiry, it has not taken up recommendations which could be of broad application and value nationwide. The failure to fully implement the Inquiry recommendations in Ontario, and to build on these recommendations in other jurisdictions, is of important concern given the potential for conflict arising from the ongoing push for resource development on Indigenous lands.²³

²² Conseil du statut de la femme, *Opinion - Women and Plan Nord: For Equality in Northern Development*, October 2012, p. 21, Available at: <http://www.csf.gouv.qc.ca/modules/fichierspublications/fichier-29-1679.pdf>.

²³ *Concluding Observations of the Committee against Torture: Canada*, CAT/C/CAN/CO/6, 25 June 2012, para. 22.



Families of Sisters in Spirit Evening Vigil, October 2012.

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II. WOMEN'S HUMAN RIGHTS

In recent years, not only has there been a failure to make progress in addressing serious and longstanding violations of women's human rights, including alarming levels of violence and entrenched economic inequality; there has also been a series of policy and funding decisions which have undermined efforts to protect women's human rights.

Rates of Violence

There has been little or no progress in reducing violence against women and girls across Canada. Rates of physical and sexual assault against women have remained unchanged for several decades, while fewer and fewer of those crimes are being reported to the police. Furthermore, since publishing its groundbreaking survey on violence against women two decades ago, the Government of Canada has moved backwards, collecting less and less information about violence against women and girls.

For instance, the most recent data collected and published on violence against women does not include any

data on violence against women in the northern territories or Nunavut.²⁴ According to the last publication of data on violence against Inuit women, those women experienced rates of violence at 14 times the national average, and only an estimated 29 per cent of spousal abuse cases were reported.²⁵ Because police in Canada do not consistently record or report whether or not the victims of violent crime are Indigenous, there are no reliable, comprehensive statistics on the rate of violence faced by Indigenous women in Canada.²⁶ However, a 2004 Canadian government survey, in which Indigenous women reported rates of domestic violence and sexual assault three and a half times higher than non-Indigenous women, is consistent

24 Tina Mahoney, "Women and the Criminal Justice System," *Women in Canada: A Gender-Based Statistical Report*, Statistics Canada, 2011.

25 Statistics Canada, *Measuring Violence Against Women: Statistical Trends*, 2006.

26 Statistics Canada, "Violent Victimization of Aboriginal Women in the Canadian Provinces, 2009," Shannon Brennan, 17 May 2011.

with other studies and the testimony of frontline organizations.²⁷ As of March 2010, the Native Women's Association of Canada (NWAC) had documented 582 cases of Indigenous women and girls who had been murdered in the last three decades, or who remained missing after many years.²⁸

Stolen Sisters: Indigenous Women, Violence and Discrimination

The scale and gravity of violence against Indigenous women in Canada has attracted repeated concern and a series of recommendations from various UN human rights experts and bodies. In 2008, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) called on Canada to “develop a specific and integrated plan” addressing the conditions faced by Indigenous women, and women from disadvantaged minorities, “including poverty, poor health, inadequate housing, low school-completion rates, low employment rates, low income and high rates of violence....”²⁹ In 2011, CEDAW confirmed its intention to conduct an investigation into violence against Indigenous women in Canada, in response to a complaint filed by NWAC and the Canadian Feminist Alliance for International Action.³⁰

Canada has, in fact, been an important voice at the United Nations in supporting General Assembly resolutions which call on all governments to work “in partnership with all relevant stakeholders” to develop a “systematic, comprehensive, multi-sectoral and sustained approach” to ending violence against women, including through the development of national action plans that are “adequately supported and facilitated by strong institutional mechanisms and financing.”³¹

In recent years, the federal government has announced various initiatives and programs with respect to violence against Indigenous women. While many of these initiatives are welcome, they do not constitute a coordinated strategy and, taken together, still fall short of the comprehensive action needed to address what is, by any measure, one of the most serious human rights problems in the country. The Minister responsible for the Status of Women, who should bear much responsibility for spearheading the development of a comprehensive national response to violence against Indigenous women, has indicated that she does not see the need for a national plan of action, commenting that various levels of government are “putting in place — and have already put in place — very good concrete measures to deal with this issue.”³²

Beginning with the release of our Stolen Sisters report in 2004,³³ Amnesty International has stood alongside a wide range of organizations including NWAC, in repeatedly urging the government to adopt a comprehensive, coordinated national plan of action in keeping with the scale and severity of the violence faced by First Nations, Inuit and Métis women in Canada.

Economic Insecurity

One factor which leads to the vulnerability of women to intimate partner violence is the continuing economic inequality faced by many women in Canada, particularly women living in poverty and women engaged in part-time and temporary work. The Canadian gender pay gap is the fifth largest among the 34 countries within the Organization of Economic Co-operation and Development. Women with full-time jobs earn 23% less than men,³⁴ and 27% of working women work part-time, compared

27 Jodi-Anne Brzozowski, Andrea Taylor-Butts and Sara Johnson, “Victimization and Offending among the Aboriginal Population in Canada,” *Juristat*, Vol. 26, no. 3, Canadian Centre for Justice Statistics, 2006.

28 Native Women's Association of Canada, *What their Voices Tell Us: Research Findings from the Sisters in Spirit Initiative*, 31 March 2010, p. i, Available at: http://www.nwac.ca/sites/default/files/reports/2010_NWAC_SIS_Report_EN.pdf.

29 *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Canada*, CEDAW/C/CAN/CO/7, 7 November 2008.

30 “CEDAW Committee press release clarifying status of request / inquiry,” 16 December 2011, Available at: <http://opcedaw.wordpress.com/inquiries/all-inquiries/>.

31 UN General Assembly, *Intensification of Efforts to Eliminate All Forms of Violence Against Women*, 30 January 2007, A/RES/61/143; UN General Assembly, *Intensification of Efforts to Eliminate All Forms of Violence Against Women*, 30 January 2009, A/RES/63/155.

32 The Canadian Press, “No Action Plan on Missing Aboriginal Women,” 5 July 2011, Available at: <http://www.cbc.ca/news/politics/story/2011/07/05/pol-ambrose-women.html>.

33 Amnesty International, *Canada: Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada*, AMR 20/003/2004, 3 October 2004.

34 Vincent Ferrao, “Paid Work - Women in Canada: A Gender-Based Statistical Report,” Statistics Canada, 2010; Statistics Canada, “Full-Time and Part-Time Employment by Sex and Age Group,” CANSIMtable: 282-0002, 24 January 2011.

to 12% of working men.³⁵ The gender pay gap has remained nearly unchanged over thirty years. Furthermore, 8.1% of women live in households with moderate or severe food insecurity, compared to 6.1% of men.³⁶ Lone-parent households have the highest rates of food insecurity in Canada (at 22.1%) and 82% of all lone-parent households are headed by women.³⁷

These are all matters that have been highlighted repeatedly by the UN Committee on the Elimination of Discrimination against Women. In its 2008 review of Canada's record, the Committee expressed concern about the "predominance of women in part-time work," the "persistence of significant job segregation, with women taking up low-paid, traditional jobs," "the continuing employment rate gap between men and women," "the fact that poverty is widespread among women, in particular Aboriginal women, minority women and single mothers," and "the impact of the lack of affordable child-care and affordable housing on low-income women with families."³⁸ The challenges are clear. The longstanding failure to take up these issues in a serious and concerted manner is inexcusable.

The Rights of Women Prisoners

For close to twenty years it has been apparent that action is needed to better protect the rights of women held in federal prisons in Canada. Wide public concern about the harsh and heavy-handed response of corrections officials to a riot at the Prison for Women in Kingston, Ontario, in 1994 led to a public inquiry conducted by Madam Justice Louise Arbour, who was at that time a justice of the Ontario Court of Appeal. She found that women prisoners had been subjected to cruel, inhumane and degrading treatment,³⁹ in violation of the Charter of Rights, and made a series of

recommendations for comprehensive reform; notably that an independent oversight body for federally-sentenced women prisoners be established, including a process for independent adjudication of involuntary segregation decisions. Concerns about the human rights of women prisoners held in federal prisons, particularly Indigenous women and those with mental health issues, have been taken up by the UN Human Rights Committee⁴⁰ and the Canadian Human Rights Commission.⁴¹ Those bodies have also called on Canada to establish an independent oversight body.

A recent report by the International Human Rights Program at the University of Toronto found that Canada's treatment of federally-sentenced female prisoners with mental health issues violates its obligations under international law. Amongst the abuses it records are: the disproportionate use of segregation and institutional transfers to deal with federally-sentenced female prisoners with serious mental health issues; the over-classification of Aboriginal women as maximum security; the absence of legislatively-mandated judicial review of prolonged administrative segregation and repeated institutional transfers.⁴²

The urgency of these recommendations has been dramatically underscored through the deeply troubling revelations about the treatment of Ashley Smith. Her case has come to public attention through the video released at the Coroner's Inquest into the circumstances leading to her death while in detention at the Grand Valley Institution for Women in October 2007 at the age of nineteen. Ashley Smith had been transferred among eight different detention centres in four provinces over an eight-month span in 2007. There are wide-ranging and very serious human rights concerns that have come

35 Statistics Canada, "Full-Time and Part-Time Employment by Sex and Age Group," CANSIMtable: 282-0002, 24 January 2011.

36 Statistics Canada, "Household Food Insecurity, 2007-2008," Canadian Community Health Survey.

37 Statistics Canada, Table 111-0011 - Family Characteristics, by Family Type, Family Composition and Characteristics of Parents, CANSIM (database).

38 *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Canada*, CEDAW/C/CAN/CO/7, 7 November 2008, paras. 37, 39.

39 Louise Arbour, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, Public Works and Government Services Canada, 1996.

40 *Concluding Observations of the Human Rights Committee: Canada*, CCPR/C/CAN/CO/5, 20 April 2006, para. 18.

41 Canadian Human Rights Commission, *Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, December 2003.

42 Elizabeth Bingham and Rebecca Sutton, *Cruel, Inhuman and Degrading? Canada's Treatment of Federally-Sentenced Women with Mental Health Issues*, University of Toronto Faculty of Law, 2012.

to light, including her physical treatment while being transported between detention centres, extensive time spent in segregation, the use of Tasers and pepper spray against her, and failure to respond to the behavior that resulted in her death, despite the fact that she was on suicide watch and was under video surveillance. If there had been a reliable and effective independent oversight body in place, it might not have been necessary to have these matters dealt with through a Coroner's Inquest. If such a body had been established years ago, before Ashley Smith's tragic death, policies and practices that led to or contributed to her mistreatment and ultimate suicide might have already been identified as being problematic and might have been changed long before she was taken into custody.

Losing Ground

In the face of ongoing and serious human rights concerns, such as those highlighted above, what is needed is more concerted and coordinated action by governments across Canada – with leadership from the federal government – to strengthen efforts to protect women's human rights and ensure equality. In fact, government action and federal leadership are long-overdue, transcending party politics and having been a serious concern across many federal governments over the decades. Over the past six years, unfortunately, federal government policy has deepened gender inequality.

In 2006 the word "equality" was removed from the mandate of Status of Women Canada, an extraordinary move that sent a disturbing message that working towards women's equality would no longer be a government priority. This was followed by a dramatic reduction in resources for Status of Women Canada, including a 43% budget cut, closure of 12 out of 16 regional offices

and the lay-off of approximately 50% of the agency's staff.⁴³ At the same time, the level and nature of support provided to the work of nongovernmental organizations and researchers studying and striving to address women's inequality in Canada were significantly changed and curtailed. The criteria for receipt of funding from Status of Women Canada were changed to preclude support for research and advocacy.⁴⁴

As a result, there are few national equality-seeking women's organizations left in Canada. Organizations such as the National Association of Women and the Law, and the Women's Legal Education and Action Fund have been significantly diminished by the change to the mandate of Status of Women and the increasingly narrow interpretation of the kinds of activities that can be undertaken by organizations with charitable status. One of the only national women's organizations monitoring women's human rights in Canada, the Feminist Alliance for International Action, has now closed its doors as a result of these changes.

These setbacks have been noted internationally. The UN Committee on the Elimination of Discrimination against Women has called on Canada to carry out an assessment of the impact of the closure of the Status of Women Canada offices, in particular on access to services by Aboriginal and rural women.⁴⁵ The Committee has also urged Canada to consider revising funding guidelines so that "NGOs that carry out ... lobbying, research and advocacy work are once again able to receive funding from the Women's Programme."⁴⁶ Research, advocacy and lobbying are central to any effort to defend human rights; defending women's human rights in Canada is no exception.

43 "Tories shutting Status of Women Offices," CBC News, 30 November 2006, Available at: <http://www.cbc.ca/news/canada/story/2006/11/29/status-women.html>.

44 "Tories to Cut Off Funding for Women's Lobby Groups," CBC News, 5 October 2006, Available at: <http://www.cbc.ca/news/canada/story/2006/10/04/tory-funding.html>.

45 *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Canada*, CEDAW/C/CAN/CO/7, 7 November 2008, para. 26.

46 *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Canada*, CEDAW/C/CAN/CO/7, 7 November 2008, para. 28.

III. BUSINESS, TRADE AND HUMAN RIGHTS

In recent years it has become abundantly clear that the world of commerce has far-reaching impacts on human rights. Be it through the operations of individual companies, large or small; or the playing field that is laid out through wide-sweeping trade deals – business gone awry can contribute to grave human rights violations, while responsible and sustainable business practices may play a role in human rights protection. As recognition of the extent of the integral relationship among corporate activities, trade policy and human rights protection grows, so does the challenge of adopting concrete laws, policies and other measures to ensure that human rights are not sold short when companies and governments do business.

Standards: Volunteering is Not Enough

There has been considerable debate in Canada in recent years about the best approach for encouraging companies to fulfill their human rights responsibilities. The operational and investment decisions that Canadian companies make – particularly when they are active in countries with weak or non-existent laws and institutions for protecting human rights and overseeing business – may touch on virtually any of the rights enshrined in international law. A company's security arrangements with private or military forces, royalty payments to a government notorious for violating human rights, hiring practices in a country where women face entrenched discrimination, benefits from the eviction or displacement of communities to make way for mines and other large-scale developments, arrangements for dealing with toxic waste and pollution from company operations, and approach to obtaining the free, prior and informed consent of Indigenous peoples before embarking on projects on their lands all carry what can potentially be a very heavy human rights toll. It is vital that companies not only be encouraged, but required, to perform due diligence and conduct business in a manner that minimizes the likelihood of contributing to human rights violations.

The government and most companies argue that the best approach continues to be the plethora of voluntary codes, guidelines and policies that have sprung up over the past decade. Companies, industry associations, watchdog groups and intergovernmental agencies have all developed human rights frameworks that companies are, in turn, urged to follow. There are so many in existence now, in fact, that many companies refer to it having become burdensome and confusing to keep up. The notion that voluntarism will do the trick when it comes to protecting human rights misses the mark. Voluntarism has never been sufficient in the human rights world. That is why over many decades international level treaties and national level constitutions and laws have been put in place to back up the

good intentions professed by governments when it comes to protecting human rights. As a minimum requirement, all companies should respect all human rights, regardless of the sector, country or context in which they operate. Human rights are too important to be left only to hope and crossed fingers; the force of law and obligation is crucial.

A troubling example that illustrates these failures is that of Guatemala. In an effort to increase economic development after decades of devastating internal armed conflict, the Guatemalan state has awarded over 400 licenses to mining companies in Guatemala, many of which have been secured by foreign companies and listed on the Toronto Stock Exchange. Hundreds more licences are pending. There is widespread opposition to extractives industries in Guatemala, from local communities, Indigenous and environmental organisations, and the international community. Concerns centre on four main issues: the lack of consultation with affected communities by both government and the companies and in particular, the failure to uphold the right of free, prior, informed consent of affected Indigenous communities; environmental damage and the resulting negative impacts on livelihoods; attacks against human rights defenders and Indigenous community leaders; and the manner in which companies acquire land. One case that sparked international concern was the June 2012 shooting and serious wounding of activist Telma Yolanda Oueli in response to her opposition to a gold mine, which until September 2012 was owned by a Canadian company. At the time of writing of this document, no one has been held responsible for this attack. The numbers of human rights defenders facing threats, attacks, sexual violence and killings for their opposition to extractives industries in the country is thought to be increasing.

In 2010, Canada came close to adopting a legal framework that would have governed the human rights accountability of Canadian extractive companies operating abroad, when private member's legislation, Bill C-300, was narrowly defeated by six votes in the House of Commons. Bill C-300 focused

on the extractive sector in particular, recognizing both the enormous number and clout of Canadian mining, oil and gas companies active around the world, and the very serious human rights violations often associated with extractive developments.⁴⁷ The need for Canadian legislation that establishes a clear and binding human rights framework to govern the operations of Canadian companies abroad grows more urgent with every revelation of human rights concerns associated with Canadian mines, oil wells and gas fields worldwide.⁴⁸ In March 2012, the UN Committee for the Elimination of Racial Discrimination expressed its concern that Canada has failed to adopt such legislation, and recommended that Canada, “take measures to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of the rights of indigenous peoples in territories outside Canada, and hold them accountable.”⁴⁹

The obstacles faced by victims of human rights violations in cases involving companies operating in states with weak governance or judicial systems are considerable. Victims who have exhausted all means of remedy in their own countries or are highly unlikely to obtain effective remedy in their own courts are turning to Canadian courts to seek judgements against Canadian parent companies for human rights violations committed by their subsidiaries. However, to date, none of the cases against Canadian mining companies brought before Canada’s courts have succeeded past preliminary stages. The dismissal of these cases without the opportunity for a full examination of the facts constitutes a failure to provide effective oversight and enforcement of Canada’s international human rights obligations. There is growing concern that some companies registered in Canada are benefitting from their multinational jurisdictional presence and thus evading justice for human rights violations committed in their overseas operations. Canada’s legal system has not yet evolved to ensure that companies comply with international human rights obligations. The result is an accountability gap that has yet to be closed.

Human Rights: Not to be traded away

Given that there are no binding legal standards that govern the human rights conduct of Canadian companies when they operate overseas, the trade and investment agreements and policies within which companies operate become even more important. Yet governments rarely if ever incorporate human rights safeguards into trade deals, and generally refuse to assess deals rigorously to identify and address any human rights shortcomings.

Canada is actively pursuing free trade deals with countries around the globe. Already in place are agreements with the United States, Mexico, Israel, Chile, Jordan, Peru, Costa Rica, Iceland, Liechtenstein, Norway, Switzerland and Colombia. Free trade agreements have been concluded but are not yet in force with Honduras and Panama. And there are active negotiations underway with dozens of other countries, including multilateral deals with the European Union, the Caribbean Community, the Andean Community, the Central America Four and, most recently, the Trans-Pacific Partnership.⁵⁰ There are very serious and ongoing human rights concerns in many of the countries involved, often associated with the very economic sectors that would be at the heart of boosted trade. However, the agreements do not include provisions to address those concerns. None of the agreements have been subject to independent human rights impact assessments prior to or after coming into force. Canada has declined to put in place a policy of subjecting all trade deals to such assessments, which would ideally be carried out before they are concluded and at regular intervals after they are in force.

The free trade deal with Colombia, in force since August 2011, is a telling example, particularly, although not exclusively, with respect to the rights of Indigenous peoples in that country. Indigenous peoples in Colombia face a human rights emergency. The Constitutional Court of Colombia has concluded that at least one third of the country’s Indigenous nations are threatened with “cultural or

47 The Canadian Centre for the Study of Resource Conflict, *Corporate Social Responsibility: Movements and Footprints of Canadian Mining and Exploration Firms in the Developing World*, October 2009, Commissioned by the Prospectors and Developers Association of Canada.

48 See for example, Amnesty International Canada, “Guatemala: Lives and Livelihoods at Stake in Mining Conflict,” 21 June 2012, Available at: <http://www.amnesty.ca/news/news-item/guatemala-lives-and-livelihoods-at-stake-in-mining-conflict>; Amnesty International Canada, “Quebec court decision in Kilwa Massacre DRC Case Denies Right to Remedy for Victims of Corporate Human Rights Abuses,” 1 February 2012, Available at: <http://www.amnesty.ca/news/news-item/quebec-court-decision-in-kilwa-massacre-drc-case-denies-right-to-remedy-for-victims-o>.

49 *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, CERD/C/CAN/CO/19-20, 9 March 2012, para. 14.

50 Foreign Affairs and International Trade Canada, *Negotiations and Agreements*, Available at: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/index.aspx?lang=en&view=d>.

physical extermination.” The UN Special Rapporteur on the rights of indigenous peoples has called for a visit by the UN Special Adviser on Prevention of Genocide, calling the situation for Indigenous peoples in Colombia “serious, critical and profoundly worrying.” He and other respected experts have expressed concern over the role played by the imposition of development projects in Indigenous territory, particularly resource extraction projects. In the face of widespread concern over how the Canada-Colombia trade pact might exacerbate the situation, the Canadian government agreed to a last-minute amendment that requires an annual report assessing human rights impacts. However, the reports are not independent; they are to be prepared by the governments themselves, and there is no requirement for action in the event that negative impacts are reported. The 2012 report prepared by the Canadian government was devoid of any assessment of human rights impacts on Indigenous peoples or other sectors of the population, as the government was of the view that there was not yet enough information available to do so.

Canada is also party to Foreign Investment Protection Agreements (FIPAs) with 24 countries and has concluded negotiations with eight countries, including China. Negotiations are ongoing with twelve other countries.⁵¹ These agreements lay out a comprehensive framework for safeguarding the rights of investors in the countries concerned. But as with free trade agreements, FIPAs do not include provisions that acknowledge and address human rights considerations that may arise when, for instance, an investment project and valid domestic human rights considerations conflict. As well, there is no policy or practice of subjecting FIPAs to independent human rights impact assessments, before and after their entry into force. The recent FIPA with China, concluded in February 2012, concluded in February 2012, tabled in the House of Commons in November, but as of 12 December not yet ratified and in force - has brought these concerns to the fore given China’s record of widespread and systematic human rights violations. The agreement has numerous provisions dealing with intellectual property rights, which are broken down to include copyright and

related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders’ rights, rights in geographical indications and industrial design rights. There are also provisions dealing with property rights and creditors’ rights. There is no reference to human rights anywhere in the agreement.⁵²

Human Rights and Business: A Two-Way Street

Most of the debate about corporate accountability for human rights has focused on concerns associated with the operations of Canadian companies in other countries. Recent developments have highlighted, however, that this concern flows in both directions and that Canadian law and policy do not adequately address human rights concerns that arise when foreign companies invest in Canadian companies. The case that has attracted considerable public attention is the takeover of the Calgary-based energy giant Nexen Inc. by the Chinese government owned China National Offshore Oil Corporation (CNOOC). Nexen has, over the past decade, developed a reputation for leadership with respect to the human rights responsibilities of companies. CNOOC, to the contrary, has faced allegations of contributing to or benefiting from human rights violations in Myanmar (Burma) and Tibet and with respect to Falun Gong practitioners working for the company. Additionally, of course, CNOOC is owned by the Chinese government, which continues to have a deeply worrying human rights record.

Amnesty International joined with five other organizations in urging the government to put human rights considerations at the centre of its assessment of the proposed takeover. The approval of the takeover, announced on 7 December, 2012, did not, however, include any assessment of the serious human rights implications of the deal. There is nothing in Canadian law or policy that explicitly requires that human rights be taken into account when the government decides whether to approve a foreign takeover of a Canadian company, including by a state owned entity.⁵³ Changes to those foreign investment rules, also announced on 7 December, 2012 did not include any human rights considerations.

51 Foreign Affairs and International Trade Canada, *Negotiations and Agreements*, Available at: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/index.aspx?lang=en&view=d>.

52 Agreement Between the Government of Canada and the Government of the People’s Republic of China for the Promotion and Reciprocal Protection of Investments, Available at: <http://www.amnesty.ca/news/news-item/canadian-coalition-on-human-rights-in-china-letter-to-the-honourable-christian-paradi>.

53 Canadian Coalition on Human Rights in China, Letter to The Honourable Christian Paradis, 16 August 2012, Available at: <http://www.amnesty.ca/media2010.php?DocID=1886>.



Bill C-31 demonstration on Parliament Hill, March 2012.

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IV. REFUGEES AND MIGRANTS

One of the most active fronts for law and policy reform in Canada in recent years has been in the area of citizenship, immigration and refugee protection. In fact, the pace of reform has been so fast that reforms to some statutory provisions have been enacted even before the earlier provisions, themselves reforms, had entered into force. The tension between fairness and compassion on the one hand; and enforcement and expeditiousness on the other, strikes to the heart of the reforms. There has also been a worrying tendency to play different groups of refugees against each other, such as those selected overseas and those who travel to Canada and make claims here; and treating refugee claimants differently according to their country of origin. Amnesty International is concerned that many of the recent reforms sacrifice fairness, violate rights and are punitive in nature.

Unequal Access to Justice and Arbitrary Detention

Reforms to the Immigration and Refugee Protection Act enacted earlier in 2012,⁵⁴ included the long-overdue step of establishing a Refugee Appeal Division, with jurisdiction to hear appeals on the merits from decisions denying refugee status. An appeal hearing had been part of 2001 reforms to the refugee determination system, but had not been enacted for more than ten years.

However, alongside this welcome development, other reforms are discriminatory and have legalized arbitrary

detention. Two groups of refugee claimants and migrants in particular, have been singled out, one on the basis of how they arrive in Canada and the other on the basis of their national origin. Coming in the wake of arrivals in British Columbia of two ships carrying Sri Lanka refugee claimants in 2009 and 2010, the legislation allows groups of migrants, including refugee claimants, to be designated as “irregular arrivals.”⁵⁵ It is apparent, for example, that groups arriving in Canada by ship are intended to be among those subject to designation. The

⁵⁴ Bill C-31, *An Act to amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act, the Marine Transportation Security Act and the Department of Citizenship and Immigration Act*, Available at: <http://parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5697417>.

⁵⁵ The first such designation of five groups of “irregular arrivals” was announced on 5 December 2012. *Minister of Public Safety makes first designation of irregular arrival under Protecting Canada’s Immigration System Act*, <http://www.publicsafety.gc.ca/media/nr/2012/nr20121205-eng.aspx>

legislation also provides for the designation of groups of refugee claimants who are nationals of countries that are considered to be “safe countries of origin.”

The consequences of designation are significant. Those who are deemed to be irregular arrivals are subject to mandatory detention and are not given access to a detention review for two weeks and then, only once every six months. The decision to detain is not based on any individual assessment, but simply the fact that the person came to Canada as part of an “irregular arrival.” And the negative repercussions and punishment continue beyond imprisonment. “Irregular arrivals” who are later accepted as refugees are barred from travelling outside Canada for five years and are unable to apply to be reunited with spouses and minor children for that same period of time. Individuals from so-called “safe countries,” while not mandatorily detained, are subject to the tight timelines of a fast-tracked refugee claim process, and both “irregular arrivals” and those from so-called “safe countries of origin” are denied access to an appeal before the new Refugee Appeal Division⁵⁶. UN human rights committees specialized in racial discrimination and combating torture both expressed concern about these discriminatory and punitive provisions when reviewing Canada’s human rights record earlier this year.⁵⁷

Insecurity and Injustice

Concerns remain that Canada’s immigration laws fall far short of international human rights requirements when it comes to dealing with cases of permanent residents, refugees, refugee claimants and other non-citizens who are alleged to pose a threat to national security. Over the past fifteen years, Amnesty International, numerous UN human rights experts and bodies, and the courts

have repeatedly called on Canada to rectify these serious shortcomings.

Nonetheless, despite unequivocally clear international legal requirements to never deport anyone to a country where they would face a serious risk of torture, Canadian law continues to allow deportation to torture if a person poses a risk to national security. The UN Human Rights Committee and the UN Committee against Torture, have each pressed Canada to change this on five occasions now – in 1999,⁵⁸ 2001,⁵⁹ 2005,⁶⁰ 2006,⁶¹ and 2012⁶² – but the government has refused to comply.

This troubling shortcoming has also come up in individual cases which have been the subject of international scrutiny. In July 2006 Canada deported Bachan Singh Sogi to India despite two requests from the Committee against Torture to suspend the deportation while his case was being reviewed. After several reviews and court rulings over a period of several years, Mr. Singh’s deportation had been ordered in May 2006 on the basis both that the government did not consider him to be at risk of torture and that he posed a threat to national security in Canada. There are credible reports that he was in fact imprisoned, beaten and subjected to ill-treatment upon his return to India. In a November 2007 decision the Committee against Torture criticized Canada for justifying the deportation, in part, on the basis that Mr. Singh constituted a threat to Canada’s security. The Committee also criticized Canada for disregarding the Committee’s two requests to suspend deportation pending review of the case.⁶³ Concerns about this case were again raised with Canada during the Committee’s review of Canada’s record earlier this year.⁶⁴ In a similar case from 2011, Canada attempted to deport a Somali

⁵⁶ The initial list of designated countries of origin was slated to be announced by the government on 15 December, 2012.

⁵⁷ *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, CERD/C/CAN/CO/19-20, 9 March 2012, para. 15; *Concluding Observations of the Committee against Torture: Canada*, CAT/C/CAN/CO/6, 25 June 2012, para. 13.

⁵⁸ *Concluding Observations of the Human Rights Committee: Canada*, CCPR/C/79/Add.105, 7 April 1999, para. 13.

⁵⁹ *Report of the Committee against Torture*, A/56/44, 12 October 2001, para. 59.

⁶⁰ *Conclusions and Recommendations of the Committee against Torture: Canada*, CAT/C/CR/34/CAN, 7 July 2005, para. 5.

⁶¹ *Concluding Observations of the Human Rights Committee: Canada*, CCPR/C/CAN/CO/5, 20 April 2006, para. 15.

⁶² *Conclusions and Recommendations of the Committee against Torture: Canada*, CAT/C/CAN/CO/6, 25 June 2012, para. 9.

⁶³ Decisions of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Communication No. 297/2006, Canada*, CAT/C/39/D/297/2006, 29 November 2007, paras. 10.2, 10.11.

⁶⁴ *Concluding Observations of the Committee against Torture: Canada*, CAT/C/CAN/CO/6, 25 June 2012, para. 10.

national – Jama Warsame – notwithstanding the Human Rights Committee’s finding that doing so would violate his right to life and to be free from torture.⁶⁵ The deportation was not successful, as Mr. Warsame managed to make a refugee claim while in transit in the Netherlands.

The possibility of deportations to torture is of double concern in cases involving immigration security certificates. Security certificates can be issued against non-citizens deemed to pose security threats to Canada, as a means of facilitating removal. The security certificate process is highly secretive, and the individual who is the subject of the certificate is denied access to much of the key evidence and witnesses, including the ability to cross-examine. In 2008, in response to a Supreme Court of Canada ruling, the process was reformed to introduce a Special Advocate, who does not represent the individual concerned but is to look out for his or her interests. The Special Advocate is allowed access to all of the evidence, but once they have seen the secret evidence they are barred from having any further contact with the individual concerned, unless they obtain exceptional permission from a judge. This substantially limits their ability to test and probe the evidence in a meaningful way. Numerous UN experts and bodies, including most recently the Committee against Torture, have called on Canada to bring the security certificate process in line with international fair trial standards.⁶⁶ In 2013 the Supreme Court of Canada will be hearing an appeal that once again challenges the unfairness of the security certificate process, in the case of Mohamed Harkat.

Faster Removal

In June the government introduced Bill C-43, the Faster Removal of Foreign Criminals Act. The Bill significantly expands the range of individuals who will not be allowed to access appeal procedures or humanitarian reviews if they are ordered deported from Canada. The categories of individuals affected include convicted and accused criminals, and individuals found to pose security threats

or to have been responsible for serious human rights violations. Many individuals in these categories already face restrictions in appealing deportation orders or seeking humanitarian relief. The scope of exclusion is significantly expanded, for instance, from individuals who have been sentenced to a prison term of at least two years, to the much lower threshold of six months, encompassing criminal offences that are certainly not serious and do not pose a threat to public safety.

The proposed changes in Bill C-43 leave no process for addressing valid and compelling human rights concerns associated with deportation, including the rights of children who may be separated from parents, and risk and hardship in the individual’s country of nationality. There is also no independent assessment of the severity of the offence and whether the individual does pose a risk to the public. Many of the individuals affected have spent the vast majority of their lives in Canada, another factor that can only be taken into account through an appeal or humanitarian relief. At its core, Bill C-43 is discriminatory when it comes to the fundamental imperative of ensuring equal access to justice. Allowing an appeal or a humanitarian review of a deportation order is not a matter of delaying deportations; it is about ensuring that deportations go ahead in conformity with human rights standards. Canadian immigration and refugee law and policy must respond to concerns about public safety and national security. Canadian immigration and refugee law and policy must also live up to Canada’s international human rights obligations. Bill C-43 strikes the wrong balance.

Playing Politics with Refugee Health

Earlier in 2012, the government made sweeping cuts to the program that funds health services for refugee claimants and refugees in Canada, known as the Interim Federal Health Program. The changes introduce a troubling dimension of discrimination with respect to accessing many crucial health services. Most refugees, except for those coming to Canada through government sponsorship, will no longer be eligible for medication

65 Decisions of the Human Rights Committee, *Communication No. 1959/2010, Jama Warsame v. Canada*, CCPR/C/102/D/1959/2010, 21 July 2011, para. 9.

66 *Conclusions Observations of the Committee against Torture: Canada*, CAT/C/CAN/CO/6, 25 June 2012, para. 12.

coverage or vision or dental care. Health coverage will be limited to what is termed “urgent or essential care” and will no longer extend to treatment that would be considered to be preventative in nature. Refugee claimants coming from countries that are designated as “safe countries of origin” will not even be covered for urgent or essential care. They will only receive coverage for conditions that pose a risk to public health or public security. Access to health care and prescription medication has been downloaded to the provinces, but in some provinces refugees must wait 4-6 weeks before they can access provincial social assistance benefits. This puts at risk the lives of refugees who require essential medicines and other health services.⁶⁷

Some MPs have sent out messages in their ridings boasting about the cuts, such as a pamphlet circulated by Saskatchewan MP Kelly Block entitled, “Ending Unfair Benefits for Refugee Claimants.” Medical professionals and medical associations, including the Canadian Medical Association, the Canadian Nurses Association and the Canadian Dental Association,⁶⁸ have all raised serious health-related concerns about the cuts and have urged the government to reinstate funding. The cuts violate Canada’s obligations under the International Covenant on Economic, Social and Cultural Rights, to which Canada has been a party for more than 35 years, which guarantees protection of the right to the “highest attainable standard of physical and mental health” and requires rights such as health care to be upheld without discrimination. International law also requires and expects states to progressively improve and strengthen protection of rights such as health care. Cutting services for refugee claimants based on their

nationality, regardless of their health care needs, does precisely the opposite.

Overseas Protection

Historically Canada has had a robust refugee resettlement program which includes a commitment to facilitate both government and private sponsorship of refugees. Under the government resettlement program, for example, Canada has committed to resettle Bhutanese refugees out of Nepal and refugees from Iraq. The government has pledged to resettle as many as 14,500 refugees a year, from a variety of countries, by 2013.⁶⁹

It can take up to 5- 8 years to process applications of privately sponsored refugees in some regions. The government introduced measures to reduce these processing times, by placing caps on the number of refugees whom private groups are allowed to sponsor.⁷⁰ Refugees who arrive in Canada under the private sponsorship program will receive limited support under the Interim Federal Health Program. According to the provisions of the sponsorship undertaking, these refugees are not permitted to access provincial social assistance benefits for the first year they are in Canada. This leaves private sponsors responsible for covering all costs of living, including the health care needs of individuals and families they sponsor. The added responsibility of covering the medical needs for sponsored refugees threatens to undermine the private sponsorship of refugees program, as few groups are able to commit to covering these costs.⁷¹ Furthermore, recent government-sponsored refugee resettlement results have fallen short of government commitments.⁷²

67 Canadian Doctors for Refugee Care, Available at: <http://www.doctorsforrefugeecare.ca/>

68 Letter to Minister of Citizenship and Immigration Jason Kenney, from Canadian Association of Optometrists, Canadian Medical Association, Canadian Nurses Association, Canadian Association of Social Workers, Canadian Dental Association, Canadian Pharmacists Association, College of Family Physicians of Canada, and Royal College of Physicians and Surgeons of Canada, 18 May 2012, Available at: <http://www.pharmacists.ca/cpha-ca/assets/File/cpha-on-the-issues/SuppBenefitsKenneyEN.pdf>.

69 Citizenship and Immigration Canada, Available at: <http://www.cic.gc.ca/english/refugees/canada.asp>.

70 United Church Observer, February 2012, Available at: <http://www.ucobserver.org/features/2012/02/bottleneck/>; Canada Gazette, *Regulations Amending the Immigration and Refugee Protection Regulations*, 9 June 2012, Available at: <http://www.gazette.gc.ca/rp-pr/p1/2012/2012-06-09/html/reg1-eng.html>.

71 Citizenship and Immigration Canada, Available at: <http://www.cic.gc.ca/english/refugees/outside/arriving-healthcare.asp>; Winnipeg Free Press, 23 July 2012, Available at: <http://www.winnipegfreepress.com/local/health-benefit-cut-for-refugees-spurs-lawsuit-160105565.html>.

72 Citizenship and Immigration Canada, “Annual Report to Parliament on Migration,” 31 October 2012, Available at: <http://www.cic.gc.ca/english/resources/publications/annual-report-2012/section2.asp>.



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Demonstrators in Toronto in 2008 call for Omar Khadr to be brought back to Canada. The former child combatant was transferred from Guantánamo Bay to a maximum-security prison in Ontario, on September 29, 2012, more than ten years after US forces captured him on a battlefield in Afghanistan.

V. STANDING UP FOR CANADIANS ABROAD

Over the past decade, an increasing number of cases have attracted public attention involving Canadians detained abroad in circumstances where they have been at risk of serious human rights violations. Some, such as the cases of Maher Arar and Omar Khadr, have been very high profile. In many cases it has since been confirmed that detained Canadians have indeed been subject to torture and other grave abuses, in such countries as Syria, Egypt, Sudan and Iran. In a worrying number of cases it is also now clear that the actions of Canadian officials substantially contributed to the violations experienced. Despite considerable public attention and the findings of two judicial inquiries and numerous court rulings, there are still major concerns about the positions taken at the political level with respect to these cases. Not all Canadians are treated equally, be it with respect to the certainty that the Canadian government will actively advocate for their rights to be protected, or with respect to providing redress when it is clear that Canada was in the wrong.

As this Human Rights Agenda is being finalized, Amnesty International is deeply concerned about the situation of a number of Canadian citizens and permanent resident held around the world. Bashir Makhtal and Huseyin Celil have been sentenced to life prison terms in Ethiopia and China respectively, after deeply unfair trials and amidst grave concerns about their treatment in detention. Canadian entreaties on their behalf are ignored and rebuffed. Canadians face the possibility of execution as well. Ron Smith is on death row in Montana, and Canadian efforts to support his bid for clemency have been less than heartfelt. Hamid Ghassemi-Shall and Saeed Malekpour, citizen and permanent resident, face the terrifying prospect of execution after deeply unfair trials in Iran, where the pace of executions has ramped up dramatically over the past year.

Equal Rights? Equal Citizenship?

No case more starkly highlights the concern that the government does not respond equally to the plight of all Canadians detained in foreign countries and facing the

risk of grave human rights violations than that of Omar Khadr. Apprehended by US military forces in July 2002 when he was only 15 years old, following a firefight in Af-

ghanistan, Omar Khadr was later transferred to the notorious US prison camp at Guantánamo Bay, Cuba, where he was held for close to ten years. Omar Khadr endured the many human rights violations that all Guantánamo prisoners have experienced, including lengthy detention without charge or trial, lack of consular access and family visits, unfair legal proceedings and credible allegations of torture and ill-treatment. Additionally, US authorities steadfastly refused to recognize that Omar Khadr was a child when he was captured and was entitled to be treated in accordance with international human rights standards relating to child soldiers.

From a Canadian perspective what is particularly troubling is the consistent refusal of Canadian governments, spanning a period of ten years, to take any meaningful action on Omar Khadr's behalf. This became particularly pointed in the last few years of his incarceration. Various Canadian court rulings, including at the level of the Supreme Court of Canada, had found that earlier interrogations of Omar Khadr at Guantánamo Bay by Canadian intelligence officers were in violation of his rights; and that those violations needed to be remedied.⁷³ Lower level courts had ruled that the appropriate remedy would be to seek his repatriation to Canada.⁷⁴ Numerous UN human rights experts also called on Canada to intervene on Omar Khadr's behalf.⁷⁵ The government adamantly refused to do so, arguing repeatedly that Omar Khadr faced serious charges and the Military Commission trial he faced should run its course.

Ultimately Omar Khadr entered into a plea agreement in October 2010, pleading guilty to the charges against him and receiving an eight-year prison sentence. He was to serve one more year at Guantánamo Bay, after which US officials indicated he would be eligible for transfer to a Canadian prison. At the time, the Canadian government told the US government that it would be inclined to favourably consider a transfer request.⁷⁶ However, it

was nearly one year after Omar Khadr became eligible for transfer that Canada finally approved his request and he was transferred to a Canadian prison, meaning that by the time he left Guantánamo Bay on 29 September, 2012 he had been held there for very close to a full decade, well over one-third of his life. And during that entire time, the Canadian government had taken no meaningful political-level action to defend his rights.

Omar Khadr's case comes in the wake of other cases where it has been well-established that Canadian officials failed, and very often adamantly refused, to take decisive action on behalf of Canadian citizens who were at risk of torture and other abuses. This has included Maher Arar, Abdullah Almalki and Muayyed Nureddin in Syria; Ahmad Abou Elmaati in Syria and Egypt; and Abousfian Abdelrazik in Sudan. Judicial inquiries and court decisions have, in fact, highlighted that rather than assist them, Canadian action made their situations worse.

Arab and Muslim communities in Canada have understandably come to worry that their rights as citizens might not be protected as equally as the rights of other citizens. Canadian law needs to be reformed to enshrine a right to consular assistance and to explicitly guarantee equal protection.

Where is Justice?

These deep concerns do not end with the lesser levels of protection and assistance some Canadians receive while detained in conditions where they risk serious human rights violations. Canadian citizens who have been detained and subjected to torture and other abuses abroad have found it increasingly difficult, in fact impossible, to seek justice for the violations they have experienced, once they have been released and returned to Canada.

Canadian law bars citizens from bringing lawsuits against their foreign torturers in Canadian courts. Canada's State

⁷³ *Canada (Prime Minister) v. Khadr*, 2010 SCC 3.

⁷⁴ *Canada (Prime Minister) v. Khadr*, 2009 FCA 246.

⁷⁵ *Concluding Observations of the Committee against Torture: Canada*, CAT/C/CAN/CO/6, 25 June 2012, para. 16.

⁷⁶ "Memorandum for Michael L. Bruhn, Executive Sec'y Dept. of Def., from United States Dept. of Defense," 24 October 2010, Available at: <http://www.cbc.ca/news/pdf/khadr-papers.pdf>.

Immunity Act does allow foreign governments to be sued for matters arising from “commercial activities”⁷⁷ but provides no such exception for such grave concerns as war crimes, crimes against humanity and torture. As such, efforts by Canadian citizens to sue such governments as Iran and Syria for damages arising from torture have been thrown out of court. The Canadian government regularly takes the side of the foreign government in such cases.⁷⁸

It has been equally difficult for Canadians to obtain redress from the Canadian government when it is clear that Canadian officials have contributed to the human rights violations they have endured. Maher Arar did obtain an official apology and compensation. His case has become the exception.

Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, whose cases were the subject of a judicial inquiry conducted by former Supreme Court of Canada Justice Frank Iacobucci, find themselves locked in protracted and contentious litigation in an effort to obtain redress. Commissioner Iacobucci catalogued numerous ways that the actions of Canadian officials contributed to the torture and unlawful imprisonment these three men experienced in Syria and, in Mr. Abou-Elmaati’s case, also in Egypt.⁷⁹

Aboufian Abdelrazik, whose imprisonment and torture and other hardship in Sudan have been in part put squarely at the feet of the Canadian government in a Federal Court ruling,⁸⁰ similarly faces the prospect of a lengthy court battle for compensation.

It is not clear what will happen in Omar Khadr’s case. A January 2010 Supreme Court of Canada judgement unanimously found that Canadian officials were responsible for violations of his rights under the Charter. The Court made it clear that those violations needed to be remedied but did not specify what the remedy should be.⁷⁹ Nearly three years later, no remedy has yet been offered.

Expensive, time-consuming court proceedings are not the way to ensure that survivors of torture and other human rights violations receive the redress to which they are entitled.

77 *State Immunity Act*, R.S.C., 1985, c. S-18, art. 5.

78 For instance, the Canadian government recently supported the Iranian government’s argument that the State Immunity Act shielded Iran from a lawsuit brought in the Quebec courts by the Estate of Zahra Kazemi. Ms. Kazemi was a Canadian-Iranian photojournalist who was imprisoned, raped and tortured in an Iranian jail, and died from her injuries, in 2003. The Quebec Court of Appeal ruled in favour of Iran and Canada and dismissed the lawsuit. Ms. Kazemi’s Estate and her son have sought leave to appeal to the Supreme Court of Canada. *Islamic Republic of Iran c. Hashemi*, 2012 QCCA 1449, Available at: <http://canlii.ca/en/qc/qcca/doc/2012/2012qcca1449/2012qcca1449.pdf>.

79 Frank Iacobucci, *Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin*, Government of Canada, October 2008, pp. 35-39.

80 *Abdelrazik v. Canada (Minister of Foreign Affairs)*, 2009 FC 580, para. 156.

81 *Canada (Prime Minister) v. Khadr*, 2010 SCC 3, para. 48.



Amnesty Supporters, Ottawa Folk Fest, August 2012.

VI. ALL RIGHTS MATTER:

Continuing Failure to Recognize Economic, Social and Cultural Rights

The Canadian government continues to resist efforts nationally and internationally to ensure that economic, social and cultural rights, such as the right to adequate housing and the right to water, are recognized and implemented with the same sense of legal obligation and enforcement as civil and political rights. The distinction between civil and political rights on the one hand, and economic, social and cultural rights on the other – and the assertion that the latter are not as susceptible to legal enforcement – is a troubling vestige of divisive Cold War era human rights politics. It has no basis in law and has been repeatedly criticized and rejected by UN human rights experts and monitoring bodies. But it is a position that continues to stand in the way of strong enforcement of economic, social and cultural rights within the Canadian legal system.

Nationally, this has arisen recently within the context of an Ontario court application brought by a number of individuals who are homeless or coping with inadequate housing. The application seeks a court order requiring the

federal and Ontario governments to develop and implement a rights-based strategy to reduce homelessness and inadequate housing. The federal government has responded with a motion to have the case dismissed before it is heard in full, essentially arguing that housing rights cannot and should not be enforced by the courts.

*Section 7 of the Charter does not contain a general right to housing. Nor does s. 7 impose a positive obligation on the government to provide social assistance, including housing or housing subsidies; ... Section 15 of the Charter does not contain a general right to housing. Housing is not a benefit provided by law; ... The issues raised and the relief sought in the Amended Notice of Application are not justiciable; The Amended Notice challenges economic and social policies that are essentially political matters, beyond the institutional competence of the Superior Court. It is founded on arguments that have repeatedly been considered and rejected in binding jurisprudence;*⁸²

⁸² Attorney General of Canada, Notice of Motion to Strike, 11 June 2012, Available at: <http://www.acto.ca/assets/files/cases/Notice%20of%20Motion%20to%20Strike%20-%2020R2H.pdf>.

Internationally, Canada actively opposed the development of an important new international human rights treaty, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which makes it possible for individuals to make UN-level complaints of alleged violations of economic, social and cultural rights. During negotiations, Canada maintained a position that economic, social and cultural rights are not justiciable and alleged violations should not be the subject of individual complaints. The Optional Protocol had widespread support from other countries. Canada did, in the end, join other countries in unanimously supporting the Optional Protocol when it was adopted by the UN General Assembly on 10 December, 2008 – the 60th Anniversary of the Universal Declaration of Human Rights. However, the government has made it clear that Canada has no intention at this time to consider ratifying this valuable new treaty. Four years later Canada has not ratified the Optional Protocol.

There has been progress in 2012 regarding Canada's position with respect to the crucial economic, social and cultural rights to water and sanitation. These rights do not expressly appear in the Universal Declaration of Human Rights or the International Covenant on Economic, Social and Cultural Rights. However, the pre-eminent expert UN body which has authority for overseeing respect for economic, social and cultural rights

has repeatedly stated that the rights to water and sanitation are inherently protected through a number of provisions in the International Covenant on Economic, Social and Cultural Rights. For instance, the Committee has concluded that “[t]he right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.”⁸³ Similarly, the Committee has stated that “[i]n accordance with the rights to health and adequate housing ... States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.”⁸⁴ Canada, however, refused to recognize that these essential rights exist in international law, even as UN General Assembly⁸⁵ and Human Rights Council⁸⁶ resolutions were adopted clearly affirming just that.

That opposition shifted, however, in May 2012. A variety of qualifications and conditions were attached, but the government announced that it was now “explicitly recognizing a human right to safe drinking water and basic sanitation.”⁸⁷ Serious concerns remain with respect to some of the qualifications, including the assertion that the right to water does not “encompass transboundary water issues.”⁸⁸ However, the change of position represents welcome progress.

83 Committee on Economic, Social and Cultural Rights, *General Comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2002/11, 20 January 2003, para. 3.

84 Committee on Economic, Social and Cultural Rights, *General Comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2002/11, 20 January 2003, para. 29.

85 UN General Assembly, *Resolution 64/292 - The human right to water and sanitation*, A/RES/64/292, 3 August 2010.

86 Human Rights Council, *Resolution 18/1 - The human right to safe drinking water and sanitation*, A/HRC/RES/18/1, 12 October 2011.

87 Statement by Keith Christie, Chief Negotiator for Canada, regarding the right to safe drinking water and basic sanitation during the third round of ‘informal-informal’ negotiations on the outcome document of the United Nations Conference on Sustainable Development (UNCSD or Rio+20), 29 May 2012, Available at: http://www.canadainternational.gc.ca/prmny-mponu/canada_un-canada_onu/statements-declarations/ecosoc/20120529_Christie_Water_Eau.aspx?view=d.

88 Statement by Keith Christie, Chief Negotiator for Canada, regarding the right to safe drinking water and basic sanitation during the third round of ‘informal-informal’ negotiations on the outcome document of the United Nations Conference on Sustainable Development (UNCSD or Rio+20), 29 May 2012, Available at: http://www.canadainternational.gc.ca/prmny-mponu/canada_un-canada_onu/statements-declarations/ecosoc/20120529_Christie_Water_Eau.aspx?view=d.

VII. THE SHRINKING SPACE FOR ADVOCACY AND DISSENT

Recognizing the essential value of ensuring that advocacy and dissent remains active and diverse in Canada, governments have long embraced the role they must play in supporting and facilitating diverse debate about public policy. A report by the National Advisory Council on Voluntary Action to the Government of Canada, adopted by the government in 1978, noted that it is “in the public interest that as broad a range of views as possible should be presented within debates about public policy, and that the federal government should act to ensure that views not usually heard are registered in public debates, using its administrative/legal powers, and funding if necessary, to ensure that that happens.”⁸⁹

Close to 35 years later, support for strong advocacy and diverse, including dissenting, views in debates and discussion of important public policy issues is being dramatically undermined and rapidly dismantled. This has come through a range of measures, including changing the Status of Women Canada funding criteria to exclude support for research and advocacy; ending the Court Challenges program which facilitated important Charter of Rights equality challenges from marginalized communities in Canada; and a clear pattern of punitive funding cuts 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 extractive sector. After allowing a toxic debate about support for Israeli and Palestinian human rights groups to fester between government-appointed Board members and staff at Rights & Democracy, a globally respected organization created by Parliament in 1988, the government announced earlier this year that that the agency would be shut down.⁹⁰ A valuable national and international human rights voice was silenced.

At the same time, government watchdogs and civil servants who have expressed concern or spoken out about such issues as nuclear safety, RCMP oversight, prisoner transfers in Afghanistan, the rights of veterans and the national census have been dismissed or publicly derided by senior members of the government. Valid questions and concerns posed by NGOs, opposition politicians and others about important public policy matters have often met the response of vilifying the questioner, such as suggestions that to be concerned about the torture of prisoners in Afghanistan is tantamount to supporting the Taliban; to question the recent proposed online surveillance legislation was to stand with pedophiles; or to raise questions about environmental protection and Indigenous rights in relation to the Northern Gateway pipeline is to be under the undue influence of sinister foreign activists.

It has become unequivocally clear that the government is prepared to use a variety of measures to stifle voices with which it disagrees. This has even starkly played out on the streets of Canadian cities. Legitimate, peaceful protests in Toronto in June 2010 at the time of the G8 and G20 Summits and in Montreal in the spring of 2012 as part of what was initially a student protest movement, were met with mass arrests, excessive use of force by police, and a variety of other problematic measures. Laws enacted in Ontario before the protests and in Quebec, after the protests began, raised a number of concerns about upholding freedoms of expression and assembly. The arrests in Toronto are thought to constitute the largest mass arrest in Canadian history. The crackdown in Montreal and the emergency law passed by the Quebec government attracted the attention and expressions of concern from UN human rights experts, including the High Commissioner for Human Rights, Navi Pillay.⁹¹ Amnesty International and many other organizations have called for comprehensive public inquiries to look into both of these deeply worrying situations.

⁸⁹ National Advisory Council on Voluntary Action, *People in Action: Report of the National Advisory Council on Voluntary Action to the Government of Canada*, 1977.

⁹⁰ Foreign Affairs and International Trade Canada, “Minister Baird Announces Closing of International Centre for Human Rights and Democratic Development,” 3 April 2012, Available at: <http://www.international.gc.ca/media/aff/news-communiqués/2012/04/3a.aspx?lang=eng&view=d>.

⁹¹ OHCHR, “Canada: ‘UN experts concerned over recent events in Quebec,’” 30 May 2012, Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12201&LangID=E>; OHCHR, “Opening statement by Navi Pillay, High Commissioner for Human Rights to the Human Rights Council 20th Special Session,” 18 June 2012, Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12245&LangID=e>.

VIII. CANADA, HUMAN RIGHTS AND MULTILATERALISM

Canada and individual Canadians have long been among the most dependable supporters and champions of the UN human rights system; from early days when Canadian John Humphrey played a central role in the drafting of the Universal Declaration of Human Rights through to important Canadian leadership in 2005 when the UN system was dramatically overhauled. Recognizing the many shortcomings of the UN system, including the challenges of working with governments with poor human rights records that seek to weaken and undermine international norms, Canada has strived consistently to bolster and strengthen UN human rights institutions, processes and standards.

Amnesty International has frequently reminded Canadian governments of the importance of working to strengthen the UN system through the positions taken and initiatives launched internationally; but also through determined and constructive engagement and compliance with UN processes nationally. At this time there are concerns on both fronts. Canada can and must do more to demonstrate genuine determination to support and strengthen the UN human rights system, through words and deeds globally and nationally.

At the UN: The Need for Consistent and Reliable Leadership

Canada has again shown leadership in 2012 by bringing forward the important UN General Assembly resolution dealing with Iran's abysmal human rights record. At the same time, however, Canada has once again declined to co-sponsor the General Assembly resolution calling for a global moratorium on executions. This is the fourth time this resolution has come before the General Assembly.⁹² It is anticipated that this year somewhere in the range of 90 countries will demonstrate commitment and leadership by co-sponsoring the resolution.⁹³ Canada is the only firmly abolitionist country declining to do so. It is a position that has baffled other states and UN observers; and has become increasingly uncomfortable each time the resolution comes up.

Canada has, unfortunately, chosen not to step up and demonstrate leadership on another very important UN file, the current negotiations to agree a crucial new treaty regulating the global arms trade. Following in the path of championing the landmines treaty, fifteen years ago, Canada could play an important role here. The proposed Arms Trade Treaty would bring human rights rules to international arms transfers. States failed to adopt a draft of the treaty after a marathon negotiating conference in July 2012 that was intended to come up with agreed text. Canada, unfortunately, was nearly invisible and did not wade in and exert positive pressure when needed.

Instead, just when it seemed a breakthrough might be within reach, Canada lined up behind the US government's position that more time was needed; thus delaying and dragging out the adoption of this sorely needed new human rights treaty.

Signing On

Another critical way of demonstrating strong commitment to the international human rights system comes through ratifying the key international human rights treaties. Canada has traditionally had a very strong record, but it has slowed noticeably in recent years. In a welcome step, Canada did ratify the Convention on the Rights of Persons with Disabilities in March 2010; and acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights dealing with abolition of the death penalty, in November 2005. But a growing number of important treaties remain untouched.

The Canadian government has made international-level pledges on two occasions to work towards ratification of the Optional Protocol to the Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, when standing for election to the UN Human Rights Council in 2006 and when going through the Council's Universal Periodic Review process in 2009.

⁹² The resolution was also adopted by the General Assembly in 2007, 2008 and 2010. Canada voted in favour of the resolution each time but declined to co-sponsor each time.

⁹³ On 19 November 2012, the UN General Assembly's Third Committee passed the 2012 resolution, which will now come before the General Assembly. 91 states co-sponsored the resolution in Third Committee, the highest number yet. Canada was not among them. Canada was among the 110 states to vote in favour of the resolution, one higher than last year. Amnesty International, *UN: Support for a moratorium on the death penalty grows*, 19 November 2012, <http://www.amnesty.ca/news/news-releases/un-support-for-a-moratorium-on-the-death-penalty-grows>

The Optional Protocol, adopted by the UN in December 2002, establishes an important international and national prison inspection scheme designed to help prevent torture. Beyond the welcome pledges, there is now a pressing need for real progress towards ratification.

The ratification of various other treaties is not even being considered. This includes Optional Protocols to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, all of which would provide vital opportunities for international-level complaints of violations of the rights enshrined in those treaties. Similarly, ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Protection of All Persons from Enforced Disappearances is not being considered. The rights of migrant workers and the ongoing and serious pattern of enforced disappearances are both very pressing human rights concerns. Canadian ratification of these treaties could go far in helping to shore up these international standards, flouted by so many states.

Living Up to Expectations

At the end of the day, the best measure of commitment to the international human rights system lies in a country's record of implementing international obligations, including the important recommendations that are offered by UN experts reviewing a country's record. Canada has long fallen far short when it comes to implementation. In fact, the country's dramatically lagging record of complying with international requirements has been noted repeatedly by all of the UN level committees that oversee treaty compliance, likely making it the most consistently noted shortcoming in Canada's approach to human rights. The Canadian government often argues that the difficulty comes from the country's federal structure and the fact that many human rights issues engage the constitutional responsibility of two levels of government: federal and

provincial/territorial. However, Canada is by no means the only federal state in the world and, furthermore, international law makes it very clear that federalism is no excuse for a failure to implement international obligations.

These concerns are not limited to UN experts. Indigenous peoples' organizations and civil society groups in Canada have repeatedly called on the Canadian government to spearhead the development of a new approach to international human rights implementation; an approach that is well-coordinated between levels of government, politically accountable and transparent and which ensures that effective remedies for human rights violations are available and accessible. Parliamentary bodies, notably the Senate Standing Committee on Human Rights, have frequently called for reform.⁹⁴ In responding to the 2009 Universal Periodic Review of Canada's record by the UN Human Rights Council, the government itself committed "to considering options for enhancing existing mechanisms and procedures related to the implementation of international human rights obligations."⁹⁵ However, there have been no substantial changes to Canadian law, policy or practice proposed or adopted since that time.

Amnesty International has joined with more than sixty other organizations in calling for law reform to address this longstanding problem.⁹⁶ Such an initiative would go far in helping ensure that the many outstanding human rights concerns noted in this Human Rights Agenda are effectively addressed. It would also offer important leadership in the face of the ongoing and crucial challenge of shoring up the international human rights system and pressing other states – all states – to comply with and implement their obligations.

Amnesty International considers this to be a lynchpin in the effort to address the many human rights concerns that are noted in this document; and also to be a proposal that would significantly strengthen the credibility and force of Canada's human rights advocacy on the global stage.

94 *Promises to Keep: Implementing Canada's Human Rights Obligations - Report of the Standing Senate Committee on Human Rights*, December 2001, Available at: <http://www.parl.gc.ca/Content/SEN/Committee/371/huma/rep/rep02dec01-e.htm>; *Children: The Silenced Citizens – Effective Implementation of Canada's International Obligations with Respect to the Rights of Children – Report of the Standing Senate Committee on Human Rights*, April 2007, Available at: <http://www.parl.gc.ca/Content/SEN/Committee/391/huma/rep/rep10apr07-e.pdf>.

95 Government of Canada, *Canada's Universal Periodic Review: Response to the Recommendations*, 2009, Available at: <http://www.pch.gc.ca/pgm/pdp-hrp/inter/101-eng.cfm>.

96 *Empty Words and Double Standards: Canada's Failure to Respect and Uphold International Human Rights, Joint Submission to the United Nations Human Rights Council in Relation to the May 2013 Universal Periodic Review of Canada*, October 2012, Available at: <http://nwac.ca/sites/default/files/imce/NGO%20Coalition%20Statement%20-%20Canada%20UPR%202013%20Sept%2026%20FINAL%20ENG.pdf>.



From left to right: Diodora Hernández, Gregoria Crisanta Pérez, and Crisanta Pérez, Maya-Mam human rights defenders from San Miguel Ixtahuacán, Guatemala, who say they have been negatively affected by Canadian-owned Goldcorp's Marlin Gold Mine.

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RECOMMENDATIONS

Principal recommendation

The Canadian government should launch a process of law reform, working with provincial and territorial governments, Indigenous peoples and organizations, and civil society groups, to establish a formal mechanism for transparent, effective and accountable implementation of Canada's international human rights obligations across and among all levels of government in the country.⁹⁷

I. The rights of Indigenous peoples

Canada should work with Indigenous peoples and organizations to develop a national plan of action to implement the United Nations Declaration on the Rights of Indigenous Peoples,⁹⁸ including clear measures for ensuring respect of the right to free, prior and informed consent.⁹⁹

Specific recommendations

Over the course of 2013, the federal government should work with provincial and territorial governments, Indigenous peoples' organizations and civil society to address the range of concerns in this Human Rights Agenda, including on an urgent basis implementing the following recommendations which have been repeatedly made to Canada by a range of UN human rights bodies and experts.

⁹⁷ The recommendation that Canada improve its approach to implementing international human rights obligations has been made repeatedly, including by: the Committee on the Rights of the Child (2012), the Committee against Torture (2012), the Committee on the Elimination of Discrimination against Women (2008), the Committee on the Elimination of Racial Discrimination (2007), the Committee on Economic, Social and Cultural Rights (2006) and the Human Rights Committee (2006).

⁹⁸ The recommendation that Canada develop a national plan of action to implement the *UN Declaration on the Rights of Indigenous Peoples* has been made by the Committee on the Elimination of Racial Discrimination (2012).

⁹⁹ The recommendation that Canada ensure that the right to free, prior and informed consent is upheld has been made by the Committee on the Elimination of Racial Discrimination (2012).

II. Women's human rights

Canada should work with Indigenous peoples and organizations to develop a national plan of action to address violence and discrimination against Indigenous women and girls in Canada.¹⁰⁰

III. Business, trade and human rights

Canada should adopt measures to hold transnational companies registered in Canada accountable for activities that have a negative impact on the protection of human rights, particularly the rights of Indigenous peoples, in other countries.¹⁰¹

IV. Refugees and migrants

Canada should reform its laws, in particular the Immigration and Refugee Protection Act, to unconditionally uphold the principle of non-refoulement set out in article 3 of the UN Convention against Torture.¹⁰²

V. Canadians detained abroad

Canada should 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.¹⁰³

VI. Economic, social and cultural rights

Canada should take all necessary steps, including concrete legislative measures, to create and ensure effective remedies for violations of economic, social and cultural rights.¹⁰⁴

VII. Advocacy and dissent

Canada should strengthen protection of the rights to freedom of expression, assembly and association in the context of protests by Indigenous communities and other public demonstrations, including by ensuring independent inquiries are initiated into concerns about human rights violations during land protests at Tyendinaga, Ontario in 2007, demonstrations at the time of the 2010 G20 Summit, and 2012 student protests in Quebec.¹⁰⁵

VIII. Multilateralism

Canada should ratify without further delay the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁰⁶

100 The recommendation that Canada adopt comprehensive, systemic measures to address violence against Indigenous women and girls, including a national plan of action has been made repeatedly, including by: the Committee against Torture (2012), the Committee on the Elimination of Racial Discrimination (2012), the Committee on the Elimination of Discrimination against Women (2008), the Human Rights Committee (2006) and the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples (2004).

101 The recommendation that Canada adopt a legal framework to hold Canadian corporations accountable for the human rights impact of their overseas operations, particularly with respect to Indigenous peoples, has been made by the Committee on the Elimination of Racial Discrimination (2012, 2007), and the Special Rapporteur on Toxic Wastes and Hazardous Products (2003).

102 The recommendation to reform Canadian law to comply with article 3 of the Convention against Torture has been made by repeatedly, including by: the Committee against Torture (2012, 2005, 1999), the Committee on the Elimination of Racial Discrimination (2012), the Human Rights Committee (2006, 1999), and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2004).

103 Recommendations with respect to equal protection and access to effective remedies for Canadian who experience human rights violations abroad have been made by the Committee on the Rights of the Child (2012), the Committee against Torture (2012, 2006) and the Human Rights Committee (2006).

104 Recommendations with respect to ensuring effective remedies in Canada for violations of economic, social and cultural rights have been made by the Committee on Economic, Social and Cultural Rights (2006, 1998, 1993) and the Special Rapporteur on Adequate Housing (2009).

105 Recommendations with respect to the policing of Indigenous protests and other public demonstrations in Canada have been made by the Committee against Torture (2012, 2005) and the Human Rights Committee (2006).

106 The recommendation that Canada ratify the Optional Protocol to the Convention against Torture has been made by the Committee against Torture (2012, 2005). Canada made a pledge to consider ratification when it stood for election to the UN Human Rights Council in 2006 and accepted the recommendation to consider ratification during the course of the Universal Periodic Review of Canada's record in 2009.

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