

Human Rights for All: No Exceptions

A Human Rights Agenda For Canada

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Police burn Q'eqchi Mayan village during land dispute.

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The Guantánamo detention centre.

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Introduction:

Human Rights for All: No Exceptions

... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ...

More than sixty years ago, in proclaiming the Charter of the United Nations, governments were clear. They firmly believed that protecting fundamental human rights was a cornerstone for peace and security in the world. Women and men, small and large nations: the message was straightforward but profound - human rights are essential and belong to one and all. "Promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" is one of the primary purposes of the United Nations.

Six decades of further development of international human rights laws have reinforced this message. No one's rights matter more or less than anyone else's and they apply to everyone, regardless of gender or wealth; age or ethnicity; political views or sexual orientation; nationality or religious beliefs. Nothing conveys this message more clearly than the Universal Declaration of Human

Rights, adopted in 1948 which explicitly lays out the "equal and inalienable rights of all members of the human family."

Governments had it right. They committed themselves to a tremendous vision of equal rights for all, but they have fallen far short. They promised that there would be no exceptions, but ever since, human rights protection has, sadly, been full of exceptions. Human rights are protected: *except* for women; *except* for Indigenous peoples; *except* when security concerns arise; *except* for refugees; *except* when trade and investment is on the line. Far too often, human rights protection has been more about the exception than the rule.

Canada has played an important role in both developing and strengthening the international human rights system and backed that up with important laws and institutions for the protection of human rights within Canada. But there is more that Canada must do to ensure that when it comes to human rights protection, there are no exceptions.

Amnesty International's *2006 Human Rights Agenda for Canada* lays out a range of vital

recommendations for action by governments in Canada, across a wide variety of areas:

- counter-terrorism
- the rights of Indigenous peoples
- women's human rights
- refugee protection
- human rights and the economy
- strengthening the international human rights system.

The Agenda draws attention to pressing human rights challenges in Canada and around the world where Canada can and should make a difference. It is time for Canada to demonstrate that when it comes to human rights, there are no exceptions.

No Security Without Human Rights

Over the five years since the September 11th terrorist attacks, governments have pursued counter-terrorism strategies that undermine basic human rights standards. Far too frequently they lead to grave human rights violations. In the name of improving security, wars have been launched, torture has been excused, and untold thousands of people have been locked up without charge or trial. Such policies not only lead to grave injustices, but deepen the inequities and grievances that increase levels of global insecurity.

Amnesty International has called on governments around the world – including Canada – to ensure that the approach they take to security fully conforms to international human rights standards. Security and human rights can never be a question of one or the other. Both the security and human rights of all peoples must be fully protected.

1. In foreign jails

Over the past four years, a number of Canadian citizens have been arrested and imprisoned abroad, in Syria and Egypt, because of Canadian national security investigations. They have been held without charge or trial and without access to lawyers. They have

had very limited family visits and restricted consular assistance. All have experienced severe torture. In all of these cases, it appears that Canadian law enforcement and security agencies have played a significant role and may be responsible for these grave human rights abuses.

Best known is the case of Maher Arar, who was arrested in the United States in September 2002, subjected to extraordinary rendition and secretly sent to Syria. He was held there for close to a year in abysmal prison conditions and tortured. He was released and returned to Canada in October 2003. Public outrage led the government to convene a public inquiry into his case. The inquiry, led by Justice Dennis O'Connor, released its report in September 2006. The report vindicates Mr. Arar and finds extensive fault across a number of government departments and agencies. The government has yet to respond to the report, and has provided no details on implementing its recommendations.

Sadly, Mr. Arar's case is not alone. Three other Canadian citizens – Abdullah Almalki, Ahmad El-Maati and Muayyed Nureddin

– were also detained and tortured abroad. There are serious concerns about the complicity of Canadian agencies in what happened to them. In November 2005, the UN Human Rights Committee called on the government to launch an independent and public review of these cases.¹ In the Arar report, Justice O'Connor also recommends that there be an independent and credible review of these cases. The government has indicated that there will be a review, but has provided no details as to the type of review or when it will take place.

- The government should provide a detailed response to the report from the public inquiry into the case of Maher Arar, including a timetable for implementation of the report's recommendations.
- The government should institute, with no further delay, an independent and credible review of the cases of Abdullah Almalki, Ahmad El-Maati and Muayyed Nureddin.

¹ *Concluding observations of the Human Rights Committee: Canada*, CCPR/C/CAN/CO/5, 20 April 2006, para. 16.



DETAINED IN ALGERIA

Mr. B., a Canadian citizen of Algerian origin, returned to Algeria for a friend's wedding in September 2000. There, he was arrested and released the same day, but was re-arrested in January 2002, accused of belonging to a suspected international terrorist organization. The man accused in this affair testified in July 2005 that Mr. B. had nothing to do with the events in question. The prosecutor urged that the case be reheard and the court agreed. Mr. B, however, remained in detention. He was released in March 2006 during an amnesty for political prisoners but was re-arrested in April allegedly due to pressure from a third country.

Prior to leaving for Algeria, Mr. B. had been interrogated by the Canadian Security Intelligence Service (CSIS). His brother claims that CSIS agents have told him that Mr. B. is no longer of interest. A representative of the Canadian consulate in Algiers was in court in July 2005, but it appears that there has been no further contact and Mr. B. remains in detention. Detainees held on terrorism-related charges are at grave risk of torture in Algeria. Amnesty International's inquiries to the Canadian government for information as to what Canada is doing to help Mr. B. have, for the most part, gone unanswered.

2. In the immigration system

Non-citizens in Canada face serious human rights violations under the immigration security certificate process. Three Muslim Arab men – Mahmoud Jaballah, Mohamad Mahjoub and Hassan Almrei – are currently imprisoned in Canada under security certificates. Two others – Adil Charkaoui and Mohamed Harkat – have been released on very restrictive bail conditions. Their cases have been proceeding slowly through the courts while they challenge decisions to deport them to Algeria, Egypt, Morocco and Syria, where they are almost certain to be tortured.

Immigration security certificates fail to meet the basic international standards for fair trials. Individuals are unable to mount an effective defence as they are denied access to much of the evidence against them. They have no opportunity to cross-examine key witnesses, the source of accusations against them. Judges reviewing the certificates are only allowed to determine whether the decision to issue them was reasonable. If so, deportation can go ahead. The Supreme Court of Canada is expected to rule in the coming weeks on appeals brought by Almrei, Charkaoui and Harkat.

- The government should ensure that the immigration security certificate process is reformed to meet international standards governing fair trials.

3. On the battlefield

There are more than 2,000 Canadian troops in Afghanistan, as part of the UN-authorized International Assistance Stabilization Force. Over the past year, with intensified fighting

in southern Afghanistan, Canadian casualties have mounted and there has been considerable public debate about Canada's role in the country. Much of the discussion has centred on whether Canadian troops should remain there and for how long. It is also crucial to consider whether Canadian policies are contributing to human rights violations in Afghanistan.

Torture and ill-treatment, and substandard, inhuman conditions in prisons have long been matters of serious concern in Afghanistan. Amnesty International has urged the Canadian government to reconsider the decision arranged with the Afghan government in December 2005, to transfer anyone detained during military operations, into Afghan custody. Many of those handed over will almost certainly be tortured and ill-treated. Continuing such transfers, given the likelihood of serious human rights violations, is a breach of Canada's international human rights obligations.

- The government should stop handing battlefield detainees over to Afghan officials. Instead they should work with the government of Afghanistan to develop detention facilities that comply with international law and assist with long-term reform of Afghanistan's justice and penal systems.

4. In the skies

One particularly insidious aspect of US counter-terrorism practice has been the use of what is known as "extraordinary rendition". Terrorism suspects are transferred secretly from one country to another, outside of any legal process. They are held in undisclosed

locations, where serious human rights violations, including torture, are common. As more information has come to light about this practice, there has been increased focus on the planes used to ferry these prisoners around the world. Apparently, the planes involved have used airports and airstrips in many countries. There are reports that some of the planes have landed in Newfoundland, northern Ontario and Nunavut on at least 75 occasions. Canadian officials have refused to disclose details on the nature of these flights and have not announced safeguards to ensure that Canadian airports and airspace are not used for flights to torture.

- The government should launch a public investigation into allegations that foreign planes involved in activities that violate international human rights standards have made use of Canadian airports and airstrips; and should immediately put in place measures to guard against such a possibility.

5. In Parliament

In the weeks following the September 11th attacks Parliament rushed to adopt new anti-terrorism legislation. Numerous concerns were raised that the need for the legislation was not clear and that many of the provisions directly infringed on essential human rights, particularly with respect to fair trials. The Anti-Terrorism Act mandated that a review of its provisions take place three

years after the Act came into force. That review was initiated in December 2004, with review committees struck in both the House of Commons and the Senate.

Two years later, the House of Commons Committee has issued an interim report, recommending (with dissent) that controversial provisions dealing with investigative hearings and preventative arrest be renewed. There has been no other report from either committee. Important concerns have not been addressed. They include:

- the inclusion of political, religious and ideological motivation in the definition of terrorism,²
 - secrecy in legal proceedings,³
 - lack of fairness in procedures for publicly designating groups or individuals as being engaged in terrorist activities.
- The government should press the parliamentary committees that have reviewed the Anti-Terrorism Act to release their reports without further delay and should move to reform the Act to bring it into conformity with international human rights standards.

² In his October 24, 2006 decision in the case of *Her Majesty the Queen and Mohammed Khawaja*, Ontario Superior Court judge, Mr. Justice Rutherford, struck down the "political, religious or ideological motivation" element of the definition as contravening the Charter of Rights. It is not yet known whether the government will appeal. Amnesty International has called on the government not to appeal the decision and to reconsider the remaining definition of terrorism and its relationship to conventional criminal law offences.

³ In another recent Ontario Superior Court case, *O'Neill v. Canada (Attorney General)*, Justice Lynn Ratushny struck down provisions of the Security of Information Act dealing with leaks of secret information as contravening the Charter of Rights. The government has indicated it will not appeal the decision.



AT GUANTÁNAMO BAY

Globally, the most infamous example of human rights being ignored and violated in the name of security is the US-run detention camp at Guantánamo Bay, Cuba. As the fifth anniversary of detainees first arriving at the camp looms, it continues to be a place beyond the reach of law. Hundreds of detainees have been held without charge, trial, access to legal counsel, or any idea as to when or if their imprisonment will end. They have experienced serious ill-treatment and torture. Approximately 435 remain in detention at this time. Several hundred have been transferred to other countries or been released. A handful of detainees are to face trials before military commissions, despite widespread criticism of those proceedings. Over the past five years, countless numbers of detainees have attempted suicide. In June 2006 three detainees did commit suicide.

A Canadian citizen, Omar Khadr, is among those held at Guantánamo. Khadr was a minor at the time he was apprehended by US forces in Afghanistan, but US authorities have refused to deal with his case in keeping with US and international standards on juvenile justice.

Amnesty International has called on the US government to close Guantánamo Bay, as have UN human rights experts. Two decisions of the US Supreme Court have forced the US government to change their approach to Guantánamo prisoners. Rather than getting better, the situation appears to be worsening.

Recent passage of the Military Commissions Act means that prisoners designated as "enemy combatants" will be barred from accessing the legal remedy of *habeas corpus*. The fundamental rights of a Canadian citizen are at stake, as are the fundamental rights of over four hundred prisoners. The integrity of international legal standards on human rights and the laws of war are at stake. Yet the Canadian government's voice has been notably silent. It is time for the government to speak out and demand that Guantánamo Bay be closed.

The Human Rights of Indigenous Peoples Must be Protected

Canada must now work out fair and lasting terms of coexistence with Aboriginal people... Canada's claim to be a fair and enlightened society depends on it.⁴

It has been ten years since the Royal Commission on Aboriginal Peoples (RCAP) called for comprehensive reforms to achieve a just accommodation with the values, needs and rights of Indigenous peoples in Canada. The report was the culmination of more than 178 days of hearings across Canada and more than 350 research projects. Yet, most of its recommendations remain unimplemented.

Despite a clear duty under international and domestic law to protect and promote the human rights of Indigenous peoples, governments in Canada have time and again failed to undertake the fundamental policy reforms necessary to fulfill this obligation. Numerous high level reports (such as the Royal Commission, provincial justice inquiries, United Nations human rights treaty body recommendations and the report of the UN Special Rapporteur on the situation of the human rights and fundamental freedoms of Indigenous people) constitute an

unfinished agenda for upholding the human rights of Indigenous peoples.

1. In land and treaty disputes

RCAP estimated that since Confederation two-thirds of the lands in the possession of Indigenous peoples – lands essential to Indigenous peoples' enjoyment of their basic human rights -- have been "whittled away" through appropriation, theft, encroachment, and the environmental consequences of policies and activities imposed on Indigenous peoples without their consent. According to RCAP, this has been a central factor behind pervasive problems of impoverishment, ill-health and social stress afflicting Indigenous communities across Canada. The Commission urged immediate government action to ensure fair and timely resolution of the hundreds of outstanding disputes over Indigenous land and resources, warning that:

Without adequate lands and resources, Aboriginal nations will be unable to build their communities and structure the employment opportunities necessary to achieve self-sufficiency. Currently on the margins of Canadian society, they will be

pushed to the edge of economic, cultural and political extinction. The government must act forcefully, generously and swiftly to assure the economic, cultural and political survival of Aboriginal nations.

Despite these urgings, little progress has been made over the past decade to resolve the vast majority of outstanding Indigenous land and resource disputes in Canada. In the report of his 2004 mission to Canada, the U.N. Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, noted:

Métis land claims have not been dealt with in any significant way, except partially in Alberta, leaving the Métis without a land and resource base and with no way of settling their grievances at the national level. Some Aboriginal nations have not received any land allocations and there have been few mechanisms to allow for the extension of the land and resource base of First Nations as their populations and needs grow. In other cases, the lands concerned are being denuded of natural

⁴ Royal Commission on Aboriginal Peoples. *People to People, Nation to Nation: Highlights from the Report of the Royal Commission on Aboriginal Peoples*. 1996.

*resources before Aboriginal claims are recognized and can be addressed... Their inherent right over natural resources is in many instances not recognized by the various orders of government and frequently the authorities apply other laws and statutes that limit the exercise of such Aboriginal rights.*⁵

The numerous outstanding disputes over Indigenous lands and territories reflect the extensive systemic barriers faced by Indigenous peoples in the assertion of their rights, including the adversarial role the federal government plays in the negotiation of treaties and the resolution of land and treaty disputes and the continued failure of federal and provincial authorities to adequately integrate critical international standards for the protection of Indigenous rights into domestic law and policy.

- The government should collaborate with Indigenous peoples in developing impartial and expert mechanisms to resolve land and treaty disputes in an integrated and streamlined manner taking full account of all rights protected in national and international law.
- All governments in Canada should enact policies consistent with international human rights standards, which require that unless the affected peoples give

their consent, activities that could jeopardize the rights of Indigenous peoples will not be permitted on disputed land until title is fairly resolved.

In 1990, the Human Rights Committee issued a detailed report documenting serious violations of the rights of the Lubicon Cree, stemming from a decades-old failure to enter into an agreement with the Lubicon regarding their land rights in northern Alberta while allowing resource exploitation to proceed on disputed lands. The Committee called on the government to ensure a prompt and just settlement of the dispute.⁶ Sixteen years later the dispute remains unresolved, resource extraction has expanded exponentially, and there have been no negotiations between the government and the Lubicon for three years. Last year, the Human Rights Committee called on Canada to make every effort to resume negotiations.⁷

- The government must make it a high priority to negotiate a just settlement of the land rights dispute with the Lubicon Cree that ensures full protection of the rights of the Lubicon Cree under national and international law.

2. For Indigenous children

RCAP highlights that the forced removal of Indigenous children from their families and communities to attend residential schools

has had disastrous consequences for the stability of Indigenous communities. It has been estimated that there are now three times the number of Indigenous children being removed from their families than at the peak of the residential school era.⁸

Removal of children from their families is sometimes necessary to guarantee their health and safety. However it is preferable, whenever possible, to ensure children's welfare within their culture and community to help foster a sense of identity, belonging and selfworth.

In 2000, the federal government acknowledged that chronic under-funding of child and family services in Indigenous communities means that Indigenous communities were often denied access to services that could provide for Indigenous children's welfare while keeping them within their families and communities.⁹ Of particular concern was the lack of adequate funding for preventative and early intervention programs that could address emerging problems before removing children from their families would be necessary.

In 2000, the average federal funding for Indigenous child and family services was 22% lower per child than what provincial governments provided for non-Indigenous children. This is despite the higher costs

⁵ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum: Mission to Canada. 2 December 2004. E/CN.4/2005/88/Add.3.

⁶ Views of the Human Rights Committee, Communication No. 167/1984: Canada, Submitted by Chief Bernard Ominayak and the Lubicon Lake Band, CCPR/C/38/D/167/1984, 10 May 1990.

⁷ *Concluding observations of the Human Rights Committee: Canada*, CCPR/C/CAN/CO/5, 20 April 2006, para. 9.

⁸ First Nations Child and Family Caring Society of Canada. UNCRD Day of General Discussion: Children without Parental Care - The Chance to Make a Difference for this Generation of Indigenous Children: Learning from the Lived Experience of First Nations Children in the Child Welfare System in Canada. 16 August 2005. www.fncfcs.com

⁹ First Nations Child and Family Services Joint National Policy Review, June 2000.

of providing services in small and remote communities, the ongoing impacts of the residential school experience on the stability of Indigenous communities, and the higher levels of poverty experienced by Indigenous communities. Indigenous child welfare organizations believe the gap has grown even larger since 2000, due in part to the failure to adjust spending for inflation.

The federal government has acknowledged that Indigenous children are four to six times more likely than non-Indigenous children to be removed from their families and placed in the care of the state,¹⁰ while a recent independent study of three provinces found that First Nations children with status under the Indian Act were fifteen times more likely than other children to be removed from their families.¹¹ Critically, the vast majority of Indigenous children are removed from their families not because of abuse, but because of neglect, often as a consequence of poverty.¹²

- **The government should act immediately to end the disparity in funding for Indigenous child and family services; and ensure that the best interests of Indigenous children are protected by effective preventative and early intervention programs.**

3. At the United Nations

The United Nations Declaration on the Rights of Indigenous Peoples has been under development for more than two decades. On June 29, 2006 the newly created UN Human Rights Council adopted the Declaration by a vote of the overwhelming majority of its members. At time of writing, the Declaration is under consideration by the UN General Assembly.

Canada has been one of the few states to actively oppose the adoption of the Declaration. At the Human Rights Council, Canada called for the vote on the Declaration and was one of only two Council members to vote against the Declaration. (Russia was the other.) Canadian officials announced that they would continue to oppose the Declaration when it came before the General Assembly.

Amnesty International representatives attended the UN Working Group and witnessed the constructive role Canada played in the final negotiation of the Declaration text. It was deeply disappointing, therefore, when Canada dramatically reversed its position on the Declaration at the moment when momentum had been built for its adoption. In opposing the Declaration in the Human Rights Council and the General Assembly Canadian officials have resurrected spurious arguments against the Declaration that they

had refuted in the Working Group only a few months earlier. Of particular concern is the fact that Canada changed its position without consultation with Indigenous peoples' organizations in Canada, despite the clear implications for their rights.

- **The government should return to dialogue with Indigenous peoples organizations with the intent of promoting the UN Declaration on the Rights of Indigenous Peoples in Canada and abroad, including by working to ensure that Canadian law, policy and practice conforms to its provisions and spirit.**

¹⁰ "Building a Brighter Future for Urban Aboriginal Children: Report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities," June 2003.

¹¹ The First Nations Child and Family Caring Society of Canada. *Wen:de - We are coming to the light of day*. October 2005. p. 44. www.fncfcs.com

¹² *Wen:de*, p. 14.



INDIGENOUS PEOPLES UNDER SIEGE IN COLOMBIA

Like other Indigenous peoples in Colombia, the Embera Katío suffer persistent human rights violations that threaten their physical and cultural survival. Embera Katío communities living on the tributaries of the Upper Sinú river in the rainforests of Colombia's Caribbean coastal region have seen their lives and livelihoods devastated by the construction of a hydro-electric megaproject. The Urrá 1 dam received \$18.2 million (US) in financing assistance from a Canadian crown corporation, the Export Development Corporation (now called Export Development Canada).

The dam has had multiple environmental impacts. Among the most serious for the Embera Katío is the disappearance of fish, the mainstay of their diet, and the flooding of land on which they once grew staple food crops. Since the loss of food self-sufficiency, the Embera Katío have reported an increase in disease and infant mortality. They have also reported an increase in both mosquitoes and malaria, as once fast-running rivers were transformed into a reservoir of standing water to feed the dam.

The Embera Katío say they were never consulted about the hydro-electric megaproject that would affect their land, in violation of Indigenous rights enshrined in both international law and the Colombian constitution. Worse yet, Embera Katío leaders who have spoken out about the negative impacts of the dam have been threatened and assassinated. Kimy Pernía Domicó was "forcibly disappeared" after visiting Canada to speak out about the dam. More than five years later, no one has been brought to justice for this crime.

Meanwhile, Embera Katío communities continue to suffer hunger and illness. "Our environment used to be clean," Kimy Pernía's daughter Martha Cecilia Domicó has told Amnesty International. "Now we can no longer grow enough food to sustain us. But when we buy rice in town and try to transport it back to our communities, the army won't let us because they say we're taking it to the guerrilla." Ever present, as well, are threats of violence. The Embera Katío report being terrified by the arrival in isolated villages of soldiers and army-backed paramilitaries, while non-violent attempts by the Embera Katío to draw attention to the gravity of their situation have been met with force by the police.

Protecting the Human Rights of Women

1. The struggle to defend the human rights of women

Canada has demonstrated important global leadership, working to create much-needed international standards and institutions for the protection of women's human rights. That leadership, however, has not translated into comprehensive and progressive policies and programs to implement those international human rights standards at home. For years, government programs and policies for the protection of women's human rights in Canada, at federal and provincial levels, have been fragmented and shortsighted.

In October 2006, the government announced a decrease of close to 40% of the budget for Status of Women Canada, the federal agency charged with responsibility for promoting gender equality. The government also imposed restrictions on organizations that receive funding from Status of Women, barring activities that constitute advocacy or lobbying.

It is critical that women's human rights organizations are provided with sufficient resources to carry out their important work to address violence against women and safeguard women's equality. Amnesty International is concerned that the reduced

funding for Status of Women Canada, combined with the funding restrictions imposed on organizations, will significantly decrease the government's ability to understand and respond to barriers to the protection and promotion of women's human rights in Canada. As a result the government may fail to live up to its obligation to act with due diligence in putting in place laws, policies and programs that will adequately implement international standards protecting women's human rights.

- **The government should restore funding to Status of Women Canada to the levels in the previous federal budget. They should also carry out a public review of the obstacles and challenges to women's substantive equality in Canada to determine future funding to Status of Women and changes required in other areas of the government. There should be no restrictions placed on the work of women's human rights defenders that impact their ability to take all steps necessary to advance, protect and promote women's human rights in Canada.**

2. When faced with violence

In early October 2006 Statistics Canada released the report, *Measuring Violence*

Against Women, which states clearly that violence against women is still a problem in Canada, particularly in the territories. While the trends in the types of violence against women are mixed, sexual assault remains one of the most under-reported crimes in the country. The report provides a worrying overview, but it is only a partial analysis. Unfortunately there has been no comprehensive survey on violence against women directly since the early 1990's. All statistical reports since then have drawn from other sources and surveys.

Violence against women, regardless of the number of women victimized, is a human rights abuse. In addition to the physical, emotional and psychological injuries and possible death that results from acts of violence against women, fear of violence and a lack of adequate redress for acts of violence severely restrict the access that many women have to fundamental human rights such as access to education, employment, safety and shelter.

The first step in addressing violence against women in Canada must be to have an up-to-date accurate picture of the nature of the violence and the response to that violence by the police and criminal justice system.

Once the problem is thoroughly defined, a comprehensive plan of action to stop violence against women can be developed that takes into account the unique experiences and vulnerabilities of particular groups of women, including Indigenous women and women living in the north.

- The federal government should work with all levels of government in Canada as well as women's equality seeking organizations to carry out a thorough study of the nature and scope of violence against women in Canada and develop a comprehensive plan of action to address the violence.

3. In prison

Amnesty International remains concerned about the exceptionally slow pace of reform in the federal corrections system with respect to protection of women's human rights, particularly Indigenous women. Serious human rights deficiencies in Canada's treatment of federally-sentenced women prisoners have been known for many years now, including through the work of Madam Justice Arbour's inquiry into the Prison for Women in 1996¹³ and the report of the Canadian Human Rights Commission.¹⁴

Several United Nations human rights bodies have asked Canada to take steps to improve policy and practice regarding the treatment of women prisoners.¹⁵ Far too many reports and reviews regarding the treatment of federally-sentenced women speak to a reluctance or difficulty in making changes to the corrections system to ensure that the rights of federally sentenced women are fully protected.

- The government should establish an independent oversight body for federally-sentenced women prisoners and a process for independent adjudication of decisions related to involuntary segregation.



JAMAICA – COMBATING IMPUNITY FOR SEXUAL VIOLENCE

Each year thousands of women and girls in Jamaica are sexually assaulted in their communities, their schools, their workplaces, their homes and in the street. The government fails to effectively prevent and investigate these abuses and punish the perpetrators.

For many women and girls in Jamaica, domestic violence includes sexual violence. Marital rape is not a statutory crime, meaning that prosecution is difficult. In addition, sexual violence spreads sexually transmitted diseases such as HIV/AIDS.

Many obstacles – in society and the justice system – prevent victims of sexual violence from accessing justice. Tackling all forms of violence in Jamaican society requires a comprehensive approach, including the control of small arms, legislative change, training of police and judges, changes to investigation and court procedures and public education initiatives.

Canada has played an important role in Jamaica by supporting the efforts of women's human rights advocates. But this changed in recent years. The presence in Canada of a significant number of people of Jamaican origin and the shared membership in the Commonwealth offer several opportunities for Canada to push for improvements in the protection of women in Jamaica. Canada must use all opportunities and avenues to pressure the Jamaican government to take concrete steps to stop sexual violence and the rampant impunity for such crimes.

¹³ Commission of Inquiry into certain events at the Prison for Women in Kingston, the Honourable Louise Arbour, 1996.

¹⁴ *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*, Canadian Human Rights Commission, December 2003.

¹⁵ *Concluding observations of the Committee on the Elimination of Discrimination Against Women: Canada*, A/58/38, January 2002, para. 361.



STOLEN SISTERS: VIOLENCE AGAINST INDIGENOUS WOMEN

We need a government that will address seriously the issues raised in the Amnesty International report.

- The Honourable Jim Prentice, Question Period, October 26, 2004

In October 2004, Amnesty International released the report, *Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada*. The report drew attention to the alarming levels of discrimination and violence experienced by Indigenous women and girls living in Canadian cities, and government failure to provide adequate protection.

Two years later, despite a number of positive initiatives at the federal, provincial and municipal levels, there is no sign of a coordinated national response to this human rights tragedy. Half-hearted and piece-meal responses to the safety and welfare of Indigenous women will not lead to equality and protection. It is time to take the lives and safety of Indigenous women and girls seriously. It is time to build on and coordinate the few positive initiatives that have been undertaken to date and establish a comprehensive plan of action to ensure that Indigenous women and girls in Canada can at long last live in safety and security.



AFGHANISTAN – WOMEN'S VOICES MUST BE HEARD

At the moment, there are more pressing issues... a civil servant has too much on his mind to deal with women's rights. It's a matter of priorities.

- Governor of Kandahar, Amnesty International interview, September 2004

This comment may be two years old but Amnesty International believes that protecting the human rights of women and girls remains a low priority in Afghanistan. Amnesty has released numerous reports on the abuses committed against women and girls in the country. Husbands, brothers and fathers are the main perpetrators of violence in the home, but the police and justice system reinforce the cycle of violence when they do not prosecute violators of women's rights, or when they fail to protect women from violence. Women who report rape may be locked up and accused of having committed crimes. Some women in difficult situations, including forced marriage, have even killed themselves to escape, while others burn themselves to death to draw attention to their plight.

Laws in Afghanistan often discriminate against women and are inadequate to protect their fundamental rights to safety and security of the person. Law enforcement agencies do not ensure that men served with court orders comply with them. In many cases, when women have sought assistance from the police after

suffering violence, the police have sent them home and accused them of ruining their family reputations.

Amnesty asks that the Canadian government to take greater steps to ensure that the voices of women are significantly present in the re-building of Afghanistan. The killing of Safiye Amajan by the Taliban on 25 September 2006 highlights the dangers facing women who stand up for human rights. Amnesty International calls on the Canadian government to work with others in Afghanistan to develop practical measures to protect women who are working for human rights, peace and reconstruction in Afghanistan.



WOMEN OF ZIMBABWE ARISE

Since Valentine's Day 2003, members of Women of Zimbabwe Arise (WOZA) have repeatedly been arbitrarily arrested and assaulted by police and then detained for days without charge in overcrowded cells. The women, some of them pregnant or with their children, have been arrested while taking part in peaceful protests in response to worsening socio-economic conditions in Zimbabwe, including skyrocketing school costs, unavailable and unaffordable basic commodities, and collapsing municipal services. More than a year after government security forces forcibly imposed the Operation Murambatsvina urban evictions campaign in May 2005, hardly any of the 700,000 victims, especially women and children, who

lost their homes and/or livelihoods have been provided with appropriate shelter or been allowed to support themselves.

The treatment of WOZA illustrates the government's increasing intolerance of peaceful public demonstrations expressing criticism of government policies. It also highlights the way in which repressive legislation is used by the police to facilitate a range of human rights violations that place Human Rights Defenders in Zimbabwe under siege.

Amnesty International Canada is part of a coalition of concerned Canadian non-governmental organizations that has been calling on the Canadian government to provide greater support for civil society in Zimbabwe, and for human rights defenders such as WOZA in particular. Such calls have gone largely unheeded. It is vital now that the government put a halt to proposed further reductions in support for civil society in Zimbabwe. Instead there should be increased Canadian support at this crucial time in the struggle by women and other human rights defenders to reassert the rule of law in Zimbabwe.



PROTECTING CAREGIVERS FROM ABUSE

"Caroline came to Canada in 2002 with her employer, who had recruited her abroad during a diplomatic mission, promising her better working conditions. Her employer began sexually harassing her as soon as she arrived. She decided to leave. Now, because she left the diplomatic mission, she no longer has any recourse to obtain relief for the abuse she suffered."

The legal standing of live-in caregivers varies a great deal. According to the *Association des aides familiales du Québec*, some women come to Canada with a tourist visa, diplomatic visa or work permit. Others have entered legally under the Live-in Caregiver Program (LICP) and lost their status during their stay for various reasons. For example, of the 20,000 to 40,000 live-in caregivers in Quebec, 90% are in an irregular situation and therefore vulnerable to abuse by their employers.

With no resources, no papers, isolated, misled about their future prospects and working conditions, they are often the victims of violence. They have no recourse to obtain justice and are helpless against the demands of traffickers and their employers. Measures must be taken to protect the rights of these workers and to provide them with fair working conditions by putting an end to the impunity

with which the employers operate. Amnesty International supports the petition of the *Association des aides familiales du Québec* for a specific exception to the Immigration and Refugee Protection Act (IRPA) in order to enable the Quebec *Commission des normes du travail* to receive complaints from migrant live-in caregivers who have been the victims of labour standards violations perpetrated while they were working without a valid work permit for reasons beyond their control. Labour standards-related rules across the country must also be changed across the country where this is necessary.

Safety for Refugees

Refugees flee in the face of human rights violations, often experiencing further violations during their escape. And increasingly, in countries of asylum, the human rights violations continue.

The tragedy of this is that ensuring the protection of refugees should be one of the most effective ways to prevent human rights violations. Instead, the treatment of refugees has become a crucial human rights concern around the world. Refugee claimants and refugees are:

- beaten, harassed and killed
- confined to camps or arbitrarily locked up in detention centres
- denied access to employment, education and social assistance
- often forced back to their home countries before it has become safe to return.

Canada is frequently considered to be one of the most generous and rights-regarding nations in the world when it comes to refugee protection. There are aspects of Canada's approach to refugee protection, that deserve praise. However, there are a number of laws, policies and practices that put the basic rights of refugees at risk.

1. At the border

Approximately one-third of the women, men

and children who travel to make refugee claims in Canada every year pass through the United States. For those coming overland from Latin America, there is no other choice. For those coming by air, flights and visa requirements often dictate flying first to the United States and then continuing on to Canada. In December 2004, a new deal was struck between the Canadian and US governments. Often termed the "safe third country agreement" it effectively bars most refugees who pass through the United States from making a refugee claim in Canada. They are instead required to make claims for asylum in the U.S.

There are, however, serious human rights concerns about the treatment of asylum-seekers in the United States. These include:

- arbitrary and indefinite detention
- harsh prison conditions
- failure to reliably provide protection to women asylum-seekers fearing gender-specific forms of persecution such as domestic violence and female genital mutilation.

Canada becomes complicit in these violations when it closes its doors to refugees and forces them to remain in the United States.

For years, Amnesty International and other organizations have pressed Canada to refrain from entering into this agreement until the US asylum system conforms to international standards. Now, with the Canadian Council for Refugees and the Canadian Council of Churches, Amnesty International is challenging the agreement in court. The Federal Court will begin hearing the case in February 2007.

- **The government should suspend the Canada/US safe third country agreement until such time as US asylum law and practice has been brought into line with international standards. At a minimum, operation of the agreement should be suspended while it is being challenged in court.**

2. In the hearing room

In 1988, Canada created the Immigration and Refugee Board (IRB), a quasi-independent administrative tribunal designed to hear and decide refugee claims. The IRB was a welcome improvement in Canada's approach to refugee determination, except for one notable flaw. While there were limited or technical bureaucratic and judicial reviews, the system did not include a full appeal on the merits of decisions turning down refugee claimants - decisions that literally could be about life or death.

To remedy this shortcoming, the new Immigration and Refugee Protection Act was passed in 2001, creating a new Refugee Appeal Division at the IRB. Changes to the refugee hearing process were also adopted, so that refugee claims would now be heard and decided by only one member of the Board, rather than two. It was generally considered that the gains of the Refugee Appeal Division would more than compensate for the change in the hearing process.

However, governments since have refused to establish the Refugee Appeal Division. A long overdue improvement to Canada's refugee system, that will safeguard fundamental rights has been ignored.

- The government should immediately establish and adequately resource the Refugee Appeal Division of the Immigration and Refugee Board.

3. When there is a risk of torture

Many refugees seek protection from torture. International law is clear: no one should be sent back to a country where there is a serious risk that they will be tortured.¹⁶ Yet Canada insists that in certain circumstances, such as national security concerns, it is permissible to do just that. Sometimes deportations go ahead on the basis of "assurances" provided by the other government that they will not torture the person concerned. In 2002, the Supreme Court of Canada made it clear that Canada should never send anyone to a country where there is a serious risk he

or she will be tortured. The Court indicated that there may be exceptional circumstances which would justify doing so, but did not define what those circumstances might be.¹⁷ Recently, a Federal Court refused to allow Mahmoud Jaballah to be deported to Egypt, where he is almost certain to be tortured, despite the government's argument that there were exceptional circumstances that should justify his deportation.¹⁸

UN human rights bodies have repeatedly called on Canada to implement the ban on deportations to torture.¹⁹ They have also asked Canada to delay deportations in some cases to allow time for a full review. Canada deported people to Iran and India in 2006 despite requests from the UN Committee against Torture to either delay or halt the deportation.²⁰ Canada has also disregarded similar requests from the UN Human Rights Committee and from the Inter-American Commission on Human Rights.²¹

- The government should amend the Immigration and Refugee Protection Act to include an absolute ban on deporting anyone to a country where they face a serious risk of being tortured.
- The government should comply with all requests from United Nations' and Organization of American States' human rights bodies to halt or delay deportation, extradition or other removal proceedings.

¹⁶ UN Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment, article 3.

¹⁷ *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3.

¹⁸ *In the Matter of Mahmoud Jaballah*, 2006 FC 1230, DES-04-01, 16 October 2006.

¹⁹ UN Human Rights Committee 1999, 2005; UN Committee against Torture 2000, 2005.

²⁰ Mostafa Dadar was deported to Iran on March 26, 2006 despite a UN Committee against Torture request that the deportation be halted. Sogi Bachan Singh was deported to India on July 2, 2006 even though the Committee had asked for a delay so that they could more fully examine the case.

²¹ Mansour Ahani was deported to Iran in 2002 and Roberto San Vicente to Venezuela in 1998, despite requests for delays from the UN Human Rights Committee and the Inter-American Commission on Human Rights respectively.



DEPORTED DESPITE RISK OF TORTURE

Sogi Bachan Singh is a Sikh from India. He claimed refugee protection in Canada in May 2001, citing persecution he suffered in that country. Even before his application for refugee status was heard, he was arrested and charged with belonging to a terrorist organization. In August 2002, he was detained based on evidence that was kept secret under section 86 of the *Immigration and Refugee Protection Act*, pursuant to a procedure that is in many ways similar to the controversial "security certificate." He was then declared inadmissible for security reasons.

After various legal proceedings and despite the intervention of Amnesty International, the Canadian Council for Refugees and other advocacy organizations, Mr. Bachan Singh was deported to India in July 2006, in spite of a *pre-removal risk assessment* by Immigration Canada establishing that he would run the "risk of torture" and "cruel and unusual treatment or punishment" if he were deported to his country of origin, and in spite of a request by the UN Committee against Torture to stay the deportation proceedings pending a review of his case.

According to the information received, Mr. Bachan Singh was turned over to Indian authorities in Delhi and then transferred to Punjab, where he was detained and beaten at a police station. According to the research conducted by Amnesty International, it is a common practice among police in Punjab to torture detainees during questioning.

4. When trying to build a new life

Amnesty International is aware of a growing number of cases where individuals granted refugee status in Canada, have faced inordinate delays in being granted permanent resident status. Ordinarily, Amnesty International does not take a position on what type of immigrant status individuals receive in Canada. However, we are increasingly concerned that lengthy and seemingly arbitrary delays in permanent residency can have serious consequences. Delays can directly interfere with refugees' ability to enjoy a number of fundamental rights, such as the rights to family reunification, work, education and travel freely.

Many of the cases Amnesty International has noticed involve individuals labeled a "security concern". Some of the security-related provisions in Canada's immigration laws are drafted so broadly or vaguely that they include activity that is legitimate political dissent. These may be applied against certain ethnic, political or national groups.

In some cases, immigration officials refer cases to the Canadian Security Intelligence Service (CSIS) for further review. There are no regulations that obligate immigration officials to resolve these cases within a certain period of time, and no body to which complaints can be directed and concerns resolved. Complaints about the actions of CSIS can be brought before the Security Intelligence Review Committee (SIRC), but SIRC's recommendations are not binding on immigration officials. Meanwhile, people's lives are left on hold. If the security concerns

are well-founded, speed is needed to launch a criminal investigation or prosecution; if the security concerns are not well-founded, it is needed so that refugees can rebuild their lives.

- The government should introduce a right to a hearing before an independent decision-maker for individuals alleged to be ineligible for permanent resident status on security grounds. It should establish an arms-length process for dealing with complaints against immigration officials.
- The government should enact regulations setting reasonable time limits for carrying out security reviews of refugees who are seeking permanent resident status.

Human Rights are a Business Matter

Over the past decade there has been growing recognition that business has a substantial impact on human rights. Responsible business practices can help promote and protect rights. Irresponsible business practices can lead directly to grave violations of a wide range of universally protected human rights.

Government trade and investment policies that fail to consider human rights concerns make things worse. Some companies and governments have taken steps to maximize the benefit and minimize the harm that trading arrangements and company operations have on human rights protection. But there is still far to go.

1. In the boardroom

There are now a plethora of human rights codes of conduct, guidelines and other documents for businesses to apply in their operations. They provide guidance to companies and encourage responsible operations, improving human rights protection in the areas where they operate. Some apply to particular industries, others are of broad application. Some are used at the global level, while others are limited to a particular country.

What they all have in common though is that they are completely voluntary. There is no requirement that companies adopt any of these codes or guidelines. They can pick which ones to adhere to and which ones to ignore, or ignore them all if they wish. If they do sign on, there is no obligation to provide public reports detailing their compliance.

Some companies and governments have insisted that the best approach to strong human rights performance is to simply trust companies to do the right thing. However, trust has never been enough when it comes to human rights protection. Over the past six decades, governments have signed on to an impressive array of human rights declarations and treaties. It has never been considered enough to just sit back and trust them to comply.

There is nothing wrong with promoting and encouraging voluntary efforts to protect human rights. But human rights protection is far too important to be left only to goodwill and volunteers. Amnesty International calls on governments to move beyond voluntarism and develop a legal framework at both the international and national levels for the human rights responsibilities of busi-

nesses. We strongly support the work of the UN human rights system to develop international standards. It is vital that domestic standards be developed by governments. Several companies now also appear to support the need for something beyond voluntarism, highlighting that clear legal requirements would mean consistency and predictability for companies.

Now is the time for Canada to finally develop legal standards. In June 2005, the House of Commons Standing Committee on Foreign Affairs and International Trade's Sub-Committee on Human Rights and International Development issued a report on corporate responsibility within the Canadian mining and extractive sector.²² Among other recommendations, the report called on Canada to strengthen and develop new mechanisms for monitoring the activities of Canadian mining companies in developing countries. It called for clear legal norms regarding the accountability of Canadian companies for environmental and/or human rights violations.

In response, the government consulted with the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries.

²² *Mining in Developing Countries and Corporate Social Responsibility*, Standing Committee on Foreign Affairs and International Trade, Fourteenth Report, 38th Parliament, 1st Session, (June 2005).



MYANMAR – A NEED FOR BUSINESS HUMAN RIGHTS STANDARDS

Recognizing the deteriorating human rights situation in Myanmar (also known as Burma), Canada joined the United States and the European Union in placing selective economic sanctions on Myanmar. The federal government urges the Canadian business community to refrain from further investment or commercial ventures in Myanmar until improvements in the human rights situation are evident. Yet some Canadian companies continue to do business in Myanmar. Ivanhoe Mines, for example, is in a 50/50 joint venture with the Myanmar government-owned Mining Enterprise No. 1, with royalties, rents and sharing of profits paid to the military government.

Amnesty International Canada strongly believes that the Canadian government has a responsibility to ensure that Canadian companies, such as Ivanhoe Mines, respect human rights overseas in countries that have weak human rights standards and regulatory systems. Canada does not have any mandatory human rights standards for transnational companies like Ivanhoe Mines. Nor are there any monitoring mechanisms to ensure that Canadian transnational companies respect human rights. There are no legal mechanisms to hold companies accountable for human rights violations committed overseas. Canadian transnational companies cannot be allowed to contribute to deteriorating human rights conditions anywhere in the world. It is time for mandatory human rights standards for Canadian transnationals.

The report from this process and recommendations to government on law and policy are expected soon.

- The government should develop legally-binding standards on corporate social responsibility obligations, including human rights responsibilities, of Canadian companies operating in Canada and abroad.

2. In trade deals

By negotiating and enforcing trade deals, governments very much lay the groundwork for either responsible or irresponsible transnational business practices. Around the world, numerous agreements have been adopted, new deals are being finalized, and others are being negotiated. Some are bilateral deals between two governments, others involve several countries or an entire region.

Canada is currently a member of the World Trade Organization and is party to the North American Free Trade Agreement with the United States and Mexico. We have bilateral deals with Chile, Costa Rica and Israel and are currently negotiating many possible multilateral trade agreements and several other types of bilateral foreign investment protection agreements. Despite this extensive range of agreements and arrangements, the government has no clear policy recognizing that human rights are of paramount importance in trade and investment. There are no requirements that:

- human rights obligations be incorporated into these agreements
- enforcement mechanisms be established to guard against trade deals leading to human rights violations
- trade deals be subjected to rigorous hu-

man rights impact assessments

- special attention be paid to the human rights of particularly vulnerable sectors of society, including women and Indigenous peoples.

It is time to bring human rights into the very heart of Canadian trade policy. At the global level, negotiations within the World Trade Organization's Doha Development Agenda have been suspended. The impasse may provide opportunities for new approaches. Negotiations for a proposed Free Trade Area of the Americas have stalled, again opening space for a different approach. With global and hemispheric initiatives in a deadlock, Canadian officials are focusing on regional and bilateral trade deals. It is crucial that human rights become a focal part of those negotiations.

- The government should ensure that the main text of all trade and investment agreements that are negotiated or adopted by Canada includes explicit reference to the full spectrum of international human rights norms.
- The government should undertake human rights impact assessments of trade rules during negotiations and following the adoption of new trade agreements. Assessments should be public, independent and transparent and should pay particular attention to the plight of the most disadvantaged and vulnerable sectors society.

The Need for Strong Global Rules and Institutions

Ideally, all governments would take decisive action at a national level to ensure that human rights are consistently upheld and protected. The reality is very different. Governments are far too often the agents responsible for serious human rights violations, or they are unwilling or unable to take action to stop human rights abuses carried out by others. Consequently, it is vitally important that there be a strong global system that holds governments to the human rights promises they have made. This requires effective institutions that can review countries' human rights records, identify shortcomings and demand change. It also means ensuring that individuals who carry out human rights violations face justice and are held accountable for their crimes.

1. At the United Nations

In the past year, there has been a remarkable reform of the approach to human rights protection at the United Nations. After more than six decades, the UN Commission on Human Rights was disbanded. While the Commission had been responsible for a wide range of important advances in human rights, its credibility and legitimacy had more recently been criticized. Politics dominated the Commission's proceedings, with governments expending more energy to find ways to keep serious human rights concerns

off the agenda than in constructively taking action when needed.

The Commission has been replaced by a new Human Rights Council and a promise of a new era for human rights protection at the UN. The Council will meet more often. Governments have to make human rights pledges in running for election to the Council. The Council will hold universal periodic reviews that will ensure that the human rights records of all countries are examined at regular intervals.

While Canada has been a champion of this reform process, reform has not been easy. The first two sessions of the new Council earlier this year were disappointing and seemed mired in some of the worst practices of the old Commission. It is evident that if the Human Rights Council is truly going to work, governments will have to commit considerable energy and demonstrate true leadership.

- The government should make support for the UN Human Rights Council a top priority for Canada. Through concerted political leadership, it should encourage other governments to work to ensure the Council is a success.

2. At home

One crucial way that Canada can help ensure the success of the international human rights system is by demonstrating a willingness to adhere to the system and take it seriously at home. That means ratifying international human rights treaties and faithfully implementing those treaties domestically. Canada has not yet ratified two UN treaties dealing with important human rights issues: the prevention of torture; and the rights of migrant workers and their families. At home, Canada has an uneven record of complying with recommendations and requests originating with expert UN human rights bodies. There is no publicly accessible process to oversee the steps taken by the federal, provincial and territorial governments in complying with international human rights obligations. UN bodies, frustrated with the growing number of unimplemented recommendations, have frequently called on Canada to develop a new approach.

- The government should ratify the Optional Protocol to the UN Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment; and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

- The government should convene a meeting of federal, provincial and territorial ministers responsible for human rights to develop and institute a publicly accessible, intergovernmental process for overseeing domestic implementation of Canada's international human rights obligations.

3. In court

All over the world, a climate of impunity has long encouraged human rights violations to continue. People have planned genocide, orchestrated campaigns of mass rape, or ordered the systematic "disappearance" of thousands of people secure in the knowledge that they will pay no price. The world's worst crimes, mass human rights violations, have almost always gone unpunished.

Over the past year, impunity has finally begun to give way to justice. International tribunals have been established to prosecute human rights violators in the former Yugoslavia, Rwanda, Sierra Leone and Cambodia. The International Criminal Court, established in 2002, has begun its first prosecution, has issued a number of arrest warrants and is actively investigating in a number of countries. At the national level, legislatures and courts are actively taking up the legal principle of universal jurisdiction. Under this, all countries are obliged to prosecute serious international crimes such as war crimes, crimes against humanity and torture, even when the crime, the accused and the victim have no connection with that country.

Canada is a leader in international justice, and has been a particularly strong champion of the International Criminal Court. A recent media report suggests that Canada may be considering putting that leadership at risk by entering into discussions with the US government about signing a so-called bilateral immunity agreement. Under this agreement, Canada would promise to never turn over any US citizen to the International Criminal Court. These agreements have been roundly criticized as contravening international law and undermining the International Criminal Court. Canada should not, under any circumstances, enter into such an agreement with the United States.

Canada's record at home has been disappointing. Only one criminal prosecution has been started under the Crimes against Humanity and War Crimes Act since it was adopted in 2000.²³ In general, when faced with the presence of individuals who are accused of having committed serious human rights violations or acts of terrorism abroad, Canadian policy prefers deportation to prosecution. Survivors of human rights violations abroad have turned to Canadian courts to try and launch lawsuits against the governments responsible for those violations. The Canadian government has argued, however, that foreign governments are shielded from such lawsuits under the terms of Canada's State Immunity Act. The courts have upheld the government's position.²⁴ This means that lawsuits seeking compensation from foreign governments for torture have been routinely dismissed.

- The government's strong principled support for the International Criminal Court should continue and Canada should not enter into discussions with the US government about signing a "bilateral immunity agreement".
- The government should adopt a clear policy preferring criminal prosecution or lawful extradition over deportation in cases involving accusations of war crimes, crimes against humanity, torture, terrorism and other crimes subject to universal jurisdiction.
- The government should amend the State Immunity Act to clarify that it does not apply to lawsuits seeking compensation for international criminal acts that are subject to universal jurisdiction.

²³ Désiré Munyaneza was arrested in October 2005 and is set to come to trial in Montreal in March 2007.

²⁴ *Bouzari v. Iran (Islamic Republic)* (2004), 243 D.L.R.(4th) 406 (Ont. C.A.).



COMBATING TRAFFICKING IN WOMEN

The International Labour Organization (ILO) estimates that 2.45 million people are victims of trafficking worldwide. 56% of victims are women and girls who are exploited economically (debt bondage, forced household labour or forced labour in farming and remote rural areas), and 96% are exploited sexually. In the 1990s, the phenomenon increasingly affected women, with more and more women being forced to migrate to meet their needs and those of their family.

Amnesty International is concerned about the conditions in which trafficking arises. With the declining fertility rate and increased life expectancy in developed countries, the population is aging. The resulting shortage of labour is therefore being filled by immigrants from developing countries with young populations seeking employment.

Inadequate immigration policies encourage illegal immigration and the development of trafficking. States limit themselves to taking in migrants for their economic force, but are reluctant, in many cases, to guarantee them the rights set out in different international instruments on fundamental rights and social rights.

Canada is no exception to the rule; the Solicitor General of Canada estimated in 1998 that 8,000 to 16,000 people fall victim to trafficking each year. The situation of trafficking victims has improved

since last May 11; they are no longer considered criminals, but rather victims, and new assistance measures have been implemented to get them out of their illegal situation and support them in applying for permanent residence.

The rights of these men and women must be guaranteed in order to protect them from exploitation and trafficking! Canada must demonstrate a clear commitment to protecting the rights of migrant workers, men and women, by ratifying the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families!*



HAITI – A POPULATION IN DANGER

Insecurity is still the main challenge being faced by the Préval government and MINUSTAH. Gun violence, whether by armed gangs or police officers, is disrupting the lives of thousands of Haitians, starting with the most vulnerable: women and children. The prevailing impunity has made the population lose confidence in the administration of justice and the rule of law. Disarming the armed gangs and effectively controlling arms transfers is the first step in ensuring that civilians are protected. But restoring a state of law requires that both the police and legal system be reformed.

During the International Donors' Conference for Haiti in July 2006, Canada reiterated its significant financial commitment

until 2011, for the reconstruction and development of Haiti. Amnesty International is urging the Canadian authorities to allocate a substantial portion of that commitment to reinforcing a professional police force responsible for law enforcement, as well as to strengthening an independent legal system capable of countering impunity effectively. It is also asking them to join the Haitian government and civil society organizations in strongly supporting projects and initiatives that may offer youths an alternative to poverty and violence.



HUMAN RIGHTS IN CHINA: A NEW APPROACH IS NEEDED

Like other governments around the world, Canada has a strong interest in substantially boosting trade and investment with China. China's huge population, booming economy and growing middle class make the country an attractive market for Canadian companies. Similarly, China has shown increased interest in investing in Canadian natural resource companies, to secure access to the natural resources their expanding economy needs. Over recent years, Canadian political and corporate leaders have paid a great deal of attention to Canada's economic relationship with China regularly conducting high-level trade missions to China. Sadly, those missions have given limited or no attention to human rights concerns.

Human rights violations continue to be widespread throughout China. Governments argue that strengthening economic

ties with China is the best strategy to address those violations. They insist that pressing too hard for sorely needed human rights reforms will set back trade and will not lead to any change in the human rights situation.

After many years of promoting trade and soft-pedaling human rights, however, there is no noticeable improvement in human rights. If anything, the situation has deteriorated over the past decade. It is time for a new approach. It is time for Canada to commit to a human rights-based approach to its economic relationship with China. Enthusiasm for greater levels of trade and investment should never serve as an excuse for remaining silent in the face of grave human rights violations.



CHAD/DARFUR – REFUGEES FLEE IN BOTH DIRECTIONS

More than two million people are estimated to have fled their homes because of the massive human rights violations in Sudan's Darfur region over the past three years. Most of those people are living in precarious, dangerous situations in internally displaced person camps and other Darfur locations. Approximately 200,000 have fled to neighbouring Chad and are residing in refugee camps and villages in the eastern part of that country.

Over the past year, however, the conflict has followed the refugees. The *janjawid* militia, responsible for so many of the atrocities in Darfur, have crossed the Sudan/Chad border and mounted

devastating attacks in eastern Chad. It is thought that 90,000 people have been displaced within Chad and some 15,000 Chadians have fled to Darfur as a result of the attacks.

If the people who have been displaced throughout Darfur and eastern Chad are ever going to be able to return home, the violence and massive human rights violations in the region must be brought to an end. The UN Security Council has authorized an international force to restore security and provide protection to civilians in Darfur and in Chad, but the Sudanese government has refused to allow the UN to deploy. That leaves only an underequipped African Union force to provide protection in Darfur and no international force in eastern Chad. The international community, and particularly governments such as China and Russia which could bring pressure to bear on the Sudanese government, have failed to convince Sudan to allow the UN in. Unless that pressure mounts, such that Sudan agrees to the UN deployment, human rights violations will continue and the displacement crisis in Darfur and Chad will only increase.

Summary of Recommendations

No Security without Human Rights

- The government should provide a detailed response to the report from the public inquiry into the case of Maher Arar, including a timetable for implementation of the report's recommendations.
- The government should institute, with no further delay, an independent and credible review of the cases of Abdullah Almalki, Ahmad El-Maati and Muayyid Nureddin.
- The government should ensure that the immigration security certificate process is reformed to meet international standards governing fair trials.
- The government should stop handing battlefield detainees over to Afghan officials. Instead they should work with the government of Afghanistan to develop detention facilities that comply with international law and assist with long-term reform of Afghanistan's justice and penal systems.
- The government should launch a public investigation into allegations that foreign planes involved in activities that violate international human rights standards have made use of Canadian airports and airstrips; and should immediately put in place measures to guard against such a possibility.
- The government should press the parliamentary committees that have reviewed the Anti-Terrorism Act to release their reports without further delay and should move to reform the Act to bring it into conformity with international human rights standards.

The Human Rights of Indigenous Peoples Must be Protected

- The government should collaborate with Indigenous peoples in developing impartial and expert mechanisms to resolve land and treaty disputes in an integrated and streamlined manner taking full account of all rights protected in national and international law.

- All governments in Canada should enact policies consistent with international human rights standards, which require that unless the affected peoples give their consent, activities that could jeopardize the rights of Indigenous peoples will not be permitted on disputed land until title is fairly resolved.
- The government must make it a high priority to negotiate a just settlement of the land rights dispute with the Lubicon Cree that ensures full protection of the rights of the Lubicon Cree under national and international law.
- The government should act immediately to end the disparity in funding for Indigenous child and family services; and ensure that the best interests of Indigenous children are protected by effective preventative and early intervention programs.
- The government should return to dialogue with Indigenous peoples organizations with the intent of promoting the UN Declaration on the Rights of Indigenous Peoples in Canada and abroad, including by working to ensure that Canadian law, policy and practice conforms to its provisions and spirit.

Protecting the Rights of Women

- The government should restore funding to Status of Women Canada to the levels in the previous federal budget. They should also carry out a public review of the obstacles and challenges to women's substantive equality in Canada to determine future funding to Status of Women and changes required in other areas of the government. There should be no restrictions placed on the work of women's human rights defenders that impact their ability to take all steps necessary to advance, protect and promote women's human rights in Canada.
- The federal government should work with all levels of government in Canada as well as women's equality seeking organizations to carry out a thorough study of the nature and scope of violence against women in Canada and develop a comprehensive plan of action to address the violence.

- The government should establish an independent oversight body for federally-sentenced women prisoners and a process for independent adjudication of decisions related to involuntary segregation.

Safety for Refugees

- The government should suspend the Canada/US safe third country agreement until such time as US asylum law and practice has been brought into line with international standards. At a minimum, operation of the agreement should be suspended while it is being challenged in court.
- The government should immediately establish and adequately resource the Refugee Appeal Division of the Immigration and Refugee Board.
- The government should amend the Immigration and Refugee Protection Act to include an absolute ban on deporting anyone to a country where they face a serious risk of being tortured.
- The government should comply with all requests from United Nations' and Organization of American States' human rights bodies to halt or delay deportation, extradition or other removal proceedings.
- The government should introduce a right to a hearing before an independent decision-maker for individuals alleged to be ineligible for permanent resident status on security grounds. It should establish an arms-length process for dealing with complaints against immigration officials.
- The government should enact regulations setting reasonable time limits for carrying out security reviews of refugees who are seeking permanent resident status.

Human Rights are a Business Matter

- The government should develop legally-binding standards on corporate social responsibility obligations, including human rights responsibilities, of Canadian companies operating in Canada and abroad.
- The government should ensure that the main text of all trade and investment agreements that are negotiated or adopted

by Canada includes explicit reference to the full spectrum of international human rights norms.

- The government should undertake human rights impact assessments of trade rules during negotiations and following the adoption of new trade agreements. Assessments should be public, independent and transparent and should pay particular attention to the plight of the most disadvantaged and vulnerable sectors society.

The Need for Strong Global Rules and Institutions

- The government should make support for the UN Human Rights Council a top priority for Canada. Through concerted political leadership, it should encourage other governments to work to ensure the Council is a success.
- The government should ratify the Optional Protocol to the UN Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment; and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.
- The government should convene a meeting of federal, provincial and territorial ministers responsible for human rights to develop and institute a publicly accessible, intergovernmental process for overseeing domestic implementation of Canada's international human rights obligations.
- The government's strong principled support for the International Criminal Court should continue and Canada should not enter into discussions with the US government about signing a "bilateral immunity agreement".
- The government should adopt a clear policy preferring criminal prosecution or lawful extradition over deportation in cases involving accusations of war crimes, crimes against humanity, torture, terrorism and other crimes subject to universal jurisdiction.
- The government should amend the State Immunity Act to clarify that it does not apply to lawsuits seeking compensation for international criminal acts that are subject to universal jurisdiction.



Human rights belong to all people, everywhere, no exceptions. People have struggled to win these rights. Governments have said that 'human rights for all' is the law.

But today this historic achievement is under attack, and the results are shocking.

- Individuals secretly abducted and tortured by governments in the name of "security."
- Women raped or murdered while their governments do nothing.
- Indigenous peoples violently forced by governments and business interests off lands essential to their identity and survival.

By their actions, many governments, companies and leaders in society are saying that human rights do not belong to all people all the time.

This is completely unacceptable. It fuels violence and misery. It's an assault against the hard-won laws that protect human dignity and security. And it is not the kind of world Canadians want.

A leadership role for Canada

The Canadian government must play a leadership role in defending human rights at home and abroad.

This "Agenda" sets out what Amnesty International believes the Canadian government must do to ensure that human rights really are for all – no exceptions!

Find out more at noexceptions.ca.



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