

Canada and the International Protection of Human Rights: *An Erosion of Leadership?*

An Update to Amnesty International's
Human Rights Agenda for Canada
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There is a sense that Canada is moving away from its total commitment to multilateralism and is now, I think, advancing other forms of either national or regional alliances... Canada has to work very hard to maintain what historically has been the perception internationally that it's a consensus builder and that it's a valid interlocutor to all.

-- Louise Arbour, UN High Commissioner for Human Rights
Speaking in Ottawa, October 22, 2007

A Proud History as Global Human Rights Champion

Amnesty International is concerned that remarkable Canadian leadership in the struggle to shore up human rights protection around the world, a proud record built up over many decades, has recently begun to slip.

Canada and Canadians have worked hard to protect human rights, globally. There are countless examples.

- John Humphrey's involvement in drafting the Universal Declaration of Human Rights almost sixty years ago.
- Lester Pearson's Nobel Peace Prize in 1957 for advancing the concept of UN peacekeeping.
- Flora MacDonald's insistence that the world respond to the Indochinese refugee crisis in the 1970's.
- Joe Clark's principled stand against apartheid in the 1980's.
- Romeo Dallaire's heroic struggle to push the world to respond to Rwanda's genocide.
- Lloyd Axworthy's efforts in securing a ban on landmines and the establishment of the International Criminal Court.
- Louise Arbour's current determined work as UN High Commissioner for Human Rights.

In each instance, Canadians have made crucial contributions to the cause of global human rights protection. Sometimes in very visible and high profile ways and at other times quietly behind the scenes, Canada has frequently played a pivotal role in developing the laws and institutions that make up the international system for protecting human rights.

Protecting human rights should, without question, be one of the world community's top priorities. But over the decades, human rights have consistently been sacrificed to other imperatives. Political, trade, military and security agendas have all too often come first. The human cost has been immense. On every continent, civilians have been killed in the midst of armed conflict. Women are targets of widespread violence and discrimination all over the world. Governments fail to accord people their crucial rights to adequate food, shelter and health-care. And in recent years, hard won rights such as the protection against torture are at risk in the 'war on terror'.

Clearly Canada's principled, yet pragmatic, leadership has been sorely needed. Canada has maintained a strong commitment to multilateralism and has relationships and influence stemming from involvement in organizations as diverse as the United Nations, the Commonwealth and the Francophonie, the Organization of American States and the Asia-Pacific Economic Cooperation forum. As such, working with a variety of countries

from regions across the world over many decades Canada has been able to stand up for strong international and regional responses to human rights concerns, be it with respect to situations in particular countries or the need for improvements to the international system.

Not Perfect, But Recognized Leadership

Certainly Canada's international record has not been perfect. For example, in 1997 Canada, along with many other governments, chose to adopt a policy of raising concerns about China's human rights record only through private diplomatic channels. Amnesty International and other organizations were disappointed that there was no commitment to maintaining a balance between such quiet efforts and more visible forms of public pressure. Instead it seemed apparent that Canada and other governments had made a conscious decision to prefer trade over human rights in their relationships with China.

Canada, along with many other western governments, has also generally resisted efforts to strengthen international recognition of economic, social and cultural rights. Notably, Canada has consistently opposed an initiative within the UN human rights system to develop a process for individuals to make international-level complaints about violations of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights. Individuals have been able to make such complaints with respect to the rights in the International Covenant on Civil and Political Rights for more than thirty years.

Amnesty International has also frequently expressed concern that Canada fails to ensure dependable domestic compliance with its international human rights obligations. Important recommendations made by UN human rights bodies, for instance, remain unimplemented. Responsibility for overseeing compliance rests primarily with a secretive committee of federal, provincial and territorial officials who do not report publicly and do not allow any external participation in their meetings or deliberations. Such an opaque and unaccountable process most certainly fails to serve as a positive model to other countries.

Overall, Canada has earned and maintained a reputation for leadership, a reputation that serves Canada well when nations are negotiating thorny human rights issues. Amnesty International is concerned that recent positions adopted by Canada risk undermining this leadership.

An Erosion in Leadership?

There have been a number of developments over the past two years that lead Amnesty International to be concerned that Canada's position as a global human rights champion may be slipping. Those include Canada's approach to:

- the human rights of Indigenous Peoples;
- strengthening the UN human rights system;
- the death penalty; and
- consistently raising concerns about human rights violations in other countries.

In raising these concerns, Amnesty International does not suggest that Canada has joined the ranks of countries that regularly and consistently flout and undermine international human rights standards. Rather, this report stresses how important Canada's leadership has been to the cause of global human rights protection. But leadership can easily begin to erode. This report highlights a number of concerns about political decisions that have resulted in a failure of that crucial human rights leadership.

The Rights of Indigenous Peoples

Without a doubt Canada's most pressing, longstanding domestic human rights challenge is the protection of the rights of Indigenous peoples. Sadly, that reflects a wider global reality as well. Worldwide, Indigenous peoples are among the most marginalized members of society and experience a wide range of very serious human rights violations on a daily basis. Strengthening the protection of their rights has been a protracted and difficult process within the UN human rights system, a process that began more than two decades ago with efforts to develop a long overdue Declaration on the Rights of Indigenous Peoples.

Given the serious nature of this concern both nationally and internationally, it has been particularly important that Canada demonstrate a firm commitment to developing strong international standards. Over the long negotiation process, Indigenous peoples' organizations and human rights groups often expressed frustration that Canadian government positions on critical issues such as land rights and self-determination frequently lagged behind the precedents set by Canadian courts and that Canada was not providing sufficiently principled and forward-looking leadership to the international community. Fortunately, however, Canada eventually emerged as a vital champion of the Declaration, working closely with Indigenous peoples' organizations to find common ground with states and remove obstacles to completion of the Declaration.

More than two decades of hopes and difficult negotiations came to a head in 2006. The UN Working Group on the Draft Declaration had met for the last time and a final text was at long last ready for adoption. The text had been supported by Indigenous peoples' organizations worldwide, and by independent experts within the UN. It was endorsed by Canada's House of Commons Committee on Aboriginal Affairs. As an Access to Information request subsequently showed, the government was also being urged to support the Declaration by senior officials and legal advisors in the Departments of Foreign Affairs and Indian Affairs.

In June 2006, the Declaration came before the first session of the new Human Rights Council, a body which had replaced the UN Commission on Human Rights. Canada had put itself forward as one of 47 states to sit on the new Council and was expected to provide leadership on the body it had helped create. However, shortly before this crucial inaugural session of the Council it became apparent that Canada's approach to the Declaration had changed completely. No longer a champion, Canada had become implacably and inexplicably opposed to the Declaration. Canada forced the Council to vote on the Declaration rather than adopt it by consensus and, with Russia, was one of only two states to vote against it.

The change occurred without consultation with Indigenous organizations and experts who had been actively involved in the Declaration process. Only days after government MPs abstained from the Aboriginal Affairs Committee vote in support of the Declaration, claiming they needed more time to consider it, then Indian Affairs Minister Jim Prentice stood up in the House of Commons to denounce the Declaration as inconsistent with "the Canadian Charter of Rights... our Constitution... the National Defence Act...our treaties and....with all of the policies under which we have negotiated land claims for 100 years."

This was an extraordinary claim, especially given that the Declaration is a source of guidance and interpretation rather than a law in its own right and that Canadian officials had played a central role in its drafting. No substantiation of these claims has ever been provided. Three months later, the government released a position paper on the Declaration that offered notably vague objections. For example, the paper says that when it comes to recognition of land rights, "interpretive uses of the Draft Declaration could go beyond the current state of Canadian law" or "be interpreted to provide for a different balance" of rights than that established to date in the evolving interpretation of the Constitution. What is being described in these hypothetical examples is not an incompatibility with Canadian law, but a UN Declaration doing its intended purpose of helping encourage more progressive interpretation of the rights of a long marginalized and disadvantaged group.

What was perhaps most disappointing, however, was the fact that the Canadian government chose not only to oppose the Declaration itself but also mounted a concerted effort -- alongside the US, Australian and New Zealand governments -- to discourage other governments from supporting this much needed human rights instrument. Despite the overwhelming show of support for the Declaration at the

Human Rights Council, these four states continued to raise objections when the Declaration came before the UN General Assembly in the fall of 2006. These efforts were temporarily successful. A number of states which had not closely followed the development of the Declaration over the years brought forward a motion to postpone final adoption of the Declaration for a year so that there could be further consultation.

Over the intervening year, Canada was at the forefront of urging the UN to undertake wholesale renegotiation of key provisions of the Declaration, a process that would have greatly delayed adoption and would likely have resulted in a greatly weakened text. In doing so, Canada aligned itself with states with poor records of supporting the UN human rights system and with histories of brutal repression of Indigenous rights advocates. In June 2007, Canada joined with six other countries including Colombia to call for the redrafting of 16 articles covering such themes as self-determination, land rights, and education.

Despite these efforts, the Declaration was ultimately and convincingly adopted by the General Assembly on September 13, 2007 with 143 states voting in favour, 4 against and 11 abstentions. In the end, only the United States, Australia and New Zealand joined Canada in opposition.

Once again, however, the ringing endorsement of the international community has not stopped Canada's efforts to undermine the Declaration. In a resolution adopted by the Human Rights Council in September 2007, renewing the mandate of the UN's Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, Canada insisted on adding wording that limits his mandate with respect to the new Declaration. Through the addition of the relatively innocuous words "where appropriate" Canada made it clear that the Special Rapporteur should not have jurisdiction to promote the Declaration in countries which had voted against its adoption. That view was later endorsed by the United States in a statement before the Third Committee of the UN General Assembly in October 2007:

[I]n renewing the mandate of the Special Rapporteur in September, the Human Rights Council had made clear that he was only supposed to promote the Declaration "where appropriate". That meant that the Special Rapporteur had no mandate to promote the Declaration in States that had voted against its adoption at the General Assembly.

This position attempts to set a very dangerous precedent for UN human rights protection. Declarations are not binding international legal instruments in the way that ratified treaties are. They are aspirational statements of international standards that are meant to guide and inspire governments. The proposition that governments can opt out of that spirit of aspiration by simply voting against a Declaration, resolution or other similar document, even when an overwhelming majority of states have supported the new standards, dramatically undercuts the integrity of the international human rights system.

How can reform be encouraged if it is left in the hands of individual governments to decide when they will or will not attempt to improve their record? It is impossible to recall a similar example of Canada taking such a harmful position on the basic principles of global human rights protection.

Building a Stronger UN Human Rights System

Human rights issues have long been among the most divisive and polarized matters discussed within the United Nations. Powerful governments have easily escaped criticism. States have intensively lobbied and traded favours with each other in order to avoid censure. Some countries, notably Israel, have received an enormous amount of UN attention. Others, with human rights problems of equal or greater concern, have rarely been discussed.

Given that the international human rights system relies on countries holding each other accountable as peers, the potential for politics to trump human rights has always been immense. Nowhere was this of greater concern than with the UN's pre-eminent human rights body, the Commission on Human Rights, established in 1947. Over close to six decades, the Commission advanced tremendously important work in drafting new human rights treaties, declarations and other standards and set up a crucial system of human rights experts empowered to investigate and report on human rights concerns around the world. However, when it came to holding individual governments accountable for protecting human rights, the Commission was notoriously politicized and had a mixed record at best.

There was great optimism and anticipation in 2005, therefore, when governments marked the sixtieth anniversary of the founding of the United Nations by adopting a comprehensive package of UN reforms which included a decision to replace the Commission on Human Rights with a new UN Human Rights Council. The Council would have higher status within the UN system, as a subsidiary body of the General Assembly, and it would meet throughout the year. The intention and hope was that the Council would become a body in which human rights concerns in all countries would be more uniformly addressed.

Canada played a leading role in the difficult negotiations that followed, leading to final agreement in March 2006 to create the new Council. In particular, Canada became and remains a determined champion of a new process of "universal periodic review" which would ensure, for the first time, that the human rights record of every member state of the United Nations would be reviewed at regular intervals.

The Council held its first session in June 2006. Its agenda over the first year was almost entirely focused on developing new rules and processes for carrying out its work. While procedural, these discussions were nonetheless contentious. Governments obviously recognized that more effective machinery would enable the Council to be more forceful in pressing states about their human rights failings. While several governments, including Canada, worked to ensure that the Council's new institutions would be as strong as they could be, others resisted and sought ways to weaken or undermine the new body.

It all came down to June 18, 2007 and the final hours of the Council's year-long institution-building mandate. The President of the Council had proposed a lengthy and complex package and was urging members of the Council to adopt it by consensus. The package was a very delicate balance of competing interests and positions. Few, if any, governments were pleased with all of it. Most recognized, however, that the only alternative to accepting the package would be further lengthy and difficult negotiations with no assurance at all of a better outcome. Failure to adopt the package would severely compromise the ability of the Council to finally begin its substantive work after this initial year of focus on procedure.

Part of the package was a proposed new standing agenda to guide the Council's work. Only one country was singled out by name as a permanent ongoing agenda item – Israel. The previous Commission on Human Rights had adopted a similar approach. This had led to one-sided attention to the human rights situation in Israel and the Occupied Palestinian Territory and a clear imbalance in the attention given to Israel vis-à-vis other very pressing situations. Canada was, rightfully, opposed to this approach.

In the closing hours of the negotiations, China was insisting on changes that would have practically neutralized the Council's ability to address individual country situations. In these circumstances, it was difficult to determine whether Canada was, on the basis of the concern about the Israeli agenda item, prepared to break consensus. At the last minute, the President of the Council announced that there was agreement on a final text for the package. Canada's objections were not noted. The next day, the newly elected President of the Council called on the Council to proceed with implementation of the package as if it had been adopted the day before. Canada pressed for a vote as to whether there had been a valid decision taken or not. All members of the Council other than Canada agreed that a decision had been taken and that the package had been adopted.

Amnesty International agreed with Canada's position that it was inappropriate to single out Israel (or any other state) on the Council's agenda in this way. We were concerned, however, that Canada did not appear to have a strategy as to how to deal with the possibility of the institution-building package not being adopted and the Council being left without the necessary processes and structure to do its work.

In the aftermath, Amnesty International is concerned that this episode has contributed to an already-substantial perception among Council members and observers that

Canada has become increasingly one-sided in its approach to the always fractious issue of how to handle the situation in Israel and the Occupied Palestinian Territories. This perception in turn appears to have impaired Canada's ability to play its traditional honest-broker role within UN human rights bodies.

Abolishing the Death Penalty

Canada's firm opposition to the death penalty is well-established. No one has been executed in Canada since 1962. The death penalty was abolished in Canada in 1976 for all but a few offences under the National Defence Act. Then in 1998 those last vestiges of capital punishment were removed from Canadian law. Canada formalized its international level commitment to unconditional abolition of the death penalty when it signed on to the Second Optional Protocol to the International Covenant on Civil and Political Rights in November 2005.

Alongside this strong domestic record against use of the death penalty, Canada has long demonstrated important international leadership in encouraging other governments to follow suit. This included strong support for a series of resolutions against the death penalty that came before the UN Commission on Human Rights between 1998 and 2005, before that body was disbanded in 2006. In the past, Canada consistently demonstrated its support not only by voting in favour of these resolutions but by going a step further and actively co-sponsoring them, as a signal to other states of the depth of Canada's commitment.

The trend the world over is clearly in favour of restricting and abolishing use of the death penalty. More and more states are doing so. Recognizing this momentum, a group of ten governments decided to bring a resolution before this year's UN General Assembly, calling for a global moratorium on use of the death penalty. Despite the momentum, there are still a number of governments that vociferously resist international efforts to curtail capital punishment. It was crucial, therefore, that as many governments as possible demonstrate their clear support for the initiative by agreeing to co-sponsor the resolution.

Eighty-seven governments did decide to co-sponsor this resolution. Canada did not. Canada did vote in favour of the resolution itself, when it came before the General Assembly's Third Committee on November 15 and is expected to do similarly when the resolution comes before the General Assembly in plenary in December 2007. However, the decision to step back from the previous leadership demonstrated by Canada on this issue, and to do so at such a critical time, has conveyed a troubling message that has been noted by other governments.

This change in policy at the UN came at the same time as a worrying reversal of another death penalty related policy. In November, the government indicated that it would no longer seek clemency on behalf of Canadian citizens who have been sentenced to death abroad following a fair trial in a democratic country. This too conveys a very troubling international message that Canada's well-established position of absolute opposition to the death penalty is wavering. This reversal has been sharply criticized internationally including by UN High Commissioner for Human Rights Louise Arbour and by Terry Davies, the Secretary General of the Council of Europe.

A Consistent International Voice?

It is a considerable challenge to encourage governments to consistently put human rights concerns at the centre of their bilateral dealings with other governments. Official statements promise that human rights will always be a foreign policy cornerstone. But in practice, other imperatives often get in the way. Human rights are soft-pedaled because of interests in boosting trade and investment. Human rights are pushed to the side because of military or security interests. Human rights violations are overlooked when a government is seen as an ideological ally; and are more likely to be criticized when ideologies clash. The bottom line is that arbitrary and inconsistent approaches to human rights undermine protection.

There have been some notable recent shifts in Canada's human rights diplomacy. Perhaps most notably, the government has adopted a stronger stand in raising human rights concerns with the Chinese government. Since a 1997 policy shift, Canada has refrained from any public or multilateral efforts to press China to improve its human rights record. Instead, concerns have been raised only through private exchanges and dialogue. The current government has adopted a new approach. A number of issues have been raised in high profile ways, including by officially receiving the Dalai Lama in a recent visit to Canada and in pressing the case of Huseyin Celil, a Canadian citizen of Uyghur origin, who is currently serving a life sentence in a prison in China's western Xinjiang region. Amnesty International has urged that the government go further and adopt a comprehensive strategy for raising human rights in Canada's relationship with China which adopts a blend of public and private initiatives and ensures coherence across the entire range of dealings between the two countries.

The government has been more forceful and outspoken with respect to human rights concerns in other countries where Canada's voice had traditionally been more muted. Prime Minister Harper raised human rights when he met with Russian President Vladimir Putin at the 2007 G8 Summit. He also pressed for more concerted action with respect to Cuba's human rights record when he met with Caribbean leaders in Barbados in July 2007.

There have also been continued strong statements with respect to countries that have traditionally been the subject of considerable criticism by Canada. Canada has again, for example, brought a resolution before the current session of the UN General Assembly, with respect to grave human rights concerns in Iran. The government also strongly condemned the crackdown on peaceful demonstrations in Myanmar (Burma) in September and October 2007.

Does the outspokenness on these pressing concerns herald a new approach; a determination forcefully and consistently to raise human rights concerns with all countries? Unfortunately not. Amnesty International is concerned that Canada's voice has been notably less forceful with respect to a number of serious situations.

- Political attention to grave human rights crises in Africa appears to have diminished considerably. Canadian political leadership and concerted, high-profile action to address the continuing regional catastrophe in Darfur, Chad and the Central African Republic has waned. Tragedies elsewhere on the continent, including in Somalia, Zimbabwe, the Democratic Republic of Congo, do not attract senior level attention.
- Canada continues to refuse to speak out publicly against the US-run detention facility at Guantánamo Bay. In particular the Canadian government has not intervened on behalf of Omar Khadr, a Canadian citizen who has been imprisoned there for over five years. Mr. Khadr was only fifteen years of age when he was apprehended by US forces in Afghanistan. His case, like others at Guantánamo Bay, involves a range of serious human rights concerns, including the failure to treat him as a juvenile offender or child soldier.
- Canadian statements have appeared to downplay human rights violations by Israeli forces. This was most publicly typified in Prime Minister Harper's characterization of Israel's military operations in southern Lebanon during the summer of 2006 as a "measured response." Canada's traditional position has been to criticize abuses attributable to all parties to conflict in the region. If the government comes to be viewed as partisan on this thorny issue, Canada's stature and influence within UN human rights circles, be it with regard to this particular issue or others, risks being considerably diminished.
- Grave and widespread human rights violations continue to be a daily reality in Colombia. Despite evidence that paramilitary groups continue to operate and commit human rights violations with the acquiescence of or in collusion with Colombian security forces, Prime Minister Harper has publicly supported the seriously-flawed demobilization process and has congratulated President Uribe and his government for the "tremendous progress against the vicious cycle of conflict, violence ..." In a visit to Colombia in July 2007, the Prime Minister also indicated that human rights concerns will not dampen Canada's interest in negotiating a new free trade deal with the Colombian government.

- In Afghanistan, concerns about the serious possibility that battlefield detainees apprehended by Canadian soldiers have been subjected to torture or ill-treatment after being transferred into Afghan custody have been consistently deflected and downplayed by the government. Reports from a wide variety of credible sources, including the government's own diplomats, have documented the common use of torture in Afghanistan. The government has responded to questions about this by suggesting that critics are supporters of the Taliban and are disloyal to Canadian troops. Concrete proposals for reform remain unaddressed and prisoners continue to be transferred into Afghan prisons.
- There is an uneven response at senior levels to the plight of Canadian citizens facing human rights violations in foreign jails. Government action on the case of Huseyin Celil, sentenced earlier this year to a life term in China, referred to earlier, has been strong. But that has not been the case with others. The plight of Omar Khadr, noted above, is one clear example. The cases of two other Canadian citizens, Bashir Makhtal, currently detained without charge or trial in Ethiopia; and Mohamed el-Attar, sentenced to a fifteen-year prison sentence on charges of espionage in Egypt do not appear vigorously to have been taken up at senior levels within the government. All of these cases involve serious concerns about torture or ill-treatment, arbitrary detention and fair trials.

Conclusion

The world needs Canada's leadership in shoring up human rights protection. The world has benefited considerably from that leadership in the past. Leadership cannot however rely only on previous accolades. It requires ongoing and consistent effort and commitment.

This report draws attention to a number of areas where Canada's approach to recent international human rights challenges has very regrettably undermined Canada's claim to the mantle of leadership. These unfortunate failings and shortcomings have risked setting back crucial international initiatives to protect the rights of Indigenous peoples, strengthen the UN human rights system, work towards a global moratorium on the death penalty and address grave human rights problems in a number of countries.

Every setback has wider impact as well, in diminishing the authority and influence of Canada's voice on the world stage when it comes to pressing human rights initiatives. But the millions of people around the world living the daily reality of relentless abuses of their human rights need the full force of that voice. Canada can and must do better.

AGENDA UPDATE

Amnesty International regularly proposes recommendations to strengthen Canada's domestic and international human rights record through the organization's yearly Human Rights Agenda for Canada, updates to that Agenda and a variety of other reports and statements. The following summary highlights some of the current key recommendations that Amnesty International has made to the federal government.

SECURITY AND POLICING

- Amnesty International welcomed the government's strong initial response to the report of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, including the apology and compensation provided to Mr. Arar. Amnesty International is concerned that the majority of the recommendations, including important proposals for strengthened review of Canadian agencies involved in national security investigations, remain unimplemented.
- Amnesty International welcomed the government's decision to establish the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, but was concerned that the Commission's Terms of Reference have cut off any public access to the proceedings.
- Amnesty International welcomed the Supreme Court of Canada's February 2007 decision that the immigration security certificate process is unfair and contravenes the Charter of Rights and Freedoms but was concerned that the Special Advocate model proposed by the government in response does not meet international fair trial requirements.
- Amnesty International welcomed the reviews and provincial public inquiry convened in the wake of the deaths of Robert Dziekanski on October 14, 2007 at Vancouver International Airport and Howard Hyde on November 22, 2007 in Halifax, both of whom had been subdued by a taser. Amnesty International renewed its call for a suspension of use of tasers until there is a rigorous, independent inquiry into their use and effects.

- Amnesty International continued to press Canada and other NATO states to cease transferring battlefield detainees into Afghan custody because of serious concerns about torture and ill-treatment in Afghan prisons.
- Amnesty International urged Canada to call publicly for the closure of the US-run Guantánamo Bay detention facility and request US authorities to allow Omar Khadr to be repatriated to face justice in Canada, if the evidence so warrants.

PROTECTING THE RIGHTS OF INDIGENOUS PEOPLES

- Amnesty International has called on the Canadian government to commit to upholding and promoting the UN Declaration on the Rights of Indigenous Peoples in domestic and international policy. The government should return to a constructive dialogue with Indigenous organizations and experts in Canada regarding implementation measures and should refrain from any further misleading or erroneous claims that the Declaration is incompatible with the Constitution and human rights protections in Canada.
- Amnesty International welcomed the release of the report from the provincial inquiry examining the circumstances surrounding the 1995 police killing of Dudley George at Ipperwash Provincial Park in Ontario. The report is an important contribution to understanding and advancing the human rights of Indigenous peoples in Canada. Amnesty International is encouraged by public statements by the provincial government that it intends fully to implement the report's recommendations. The Inquiry's recommendations and findings, however, are relevant across the country. Amnesty International is disappointed that the federal government chose not to participate in this important inquiry. The Canadian government should support the implementation of the recommendations in Ontario and collaborate with Indigenous peoples' organizations and provincial and territorial governments with a view to implementing all applicable recommendations nationwide.
- Amnesty International continues to be concerned about the underfunding of First Nations child welfare in that less money is spent on child welfare services for children on reserves than for other children in Canada. The reduced levels of funds deny these children services that are essential to their rights as established in international law. Of particular concern is the lack of early intervention programs that would reduce the likelihood of children being removed from their families and communities simply to meet the basic health

and social needs of those children. The government should address this disparity in funding.

- Amnesty International is concerned that at the time of writing there were no negotiations underway to resolve the ongoing land dispute between the government and the Lubicon Cree in northern Alberta. The situation has been the subject of a ruling by the UN Human Rights Committee as well as recommendations by other UN bodies and two UN Special Rapporteurs. New oil and gas developments continue to be licensed throughout the disputed territory while the Lubicon live in extreme poverty and ill-health. Amnesty International called on the federal government to commit to resuming negotiations with a sufficiently robust mandate to ensure full recognition and protection of the rights of the Lubicon Cree.

WOMEN'S HUMAN RIGHTS

- Amnesty International remains deeply concerned about the failure to take meaningful and comprehensive action in response to the widespread violence and discrimination experienced by Indigenous women in Canada. The federal government must provide leadership in the development of protocols to ensure the effective investigation of all missing persons reports with clear recognition of the heightened risk faced by Indigenous women. These protocols should provide for sensitive relations with affected families and appropriate communication with the public.
- Amnesty International is concerned that there is no comprehensive national plan of action to address violence against women across Canada. The government should join with women's equality-seeking organizations in Canada to carry out a thorough study of the nature and scope of violence against women in Canada and develop a national plan of action.
- Amnesty International is concerned that despite recommendations from a 1996 Commission of Inquiry and from UN human rights experts, Canada has failed to establish an independent oversight body for federally-sentenced women prisoners and a process for independent adjudication of decisions related to involuntary segregation.
- Amnesty International is concerned that cuts in the funding of Status of Women Canada, coupled with new restrictions limiting the ability of organizations that receive funding from Status of Women to engage in advocacy or lobbying, undermine efforts to protect women's human rights. Previous levels of funding should be restored to Status of Women. Restrictions on advocacy activities

should be lifted. There should be 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 government.

PROTECTING REFUGEES

- Amnesty International remains concerned that Canada has not yet fully implemented its international obligation not to return anyone to a country where they would be at serious risk of torture. On October 22, 2007 Said Jaziri was deported to Tunisia, despite concerns that he was at serious risk of being tortured, On November 16, 2007 the UN Committee against Torture criticized Canada for deporting Bachan Singh Sogi to India, where he faced a serious risk of torture, on July 2, 2006. Amnesty International renewed its longstanding demand that Canadian law be amended to comply with its obligation under article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment not to return individuals to countries where they are at serious risk of being tortured.
- Amnesty International remains concerned that the December 2004 “safe third country agreement” between Canada and the United States imperils the rights of refugee claimants in the United States who intend to make refugee claims in Canada. The 2004 deal bars the majority of such claims and requires those claimants to instead make claims for asylum in the United States, where they will face a range of human rights violations associated with the US asylum process. Joining with the Canadian Council for Refugees and the Canadian Council of Churches, Amnesty International has challenged this agreement in Federal Court. A powerful November 29, 2007 Federal Court decision has concluded that the agreement contravenes the Charter of Rights and international human rights legal standards. Amnesty International urges the government not to appeal this decision and to immediately suspend operation of the safe third country agreement.
- Amnesty International is concerned that the practice of turning away or “directing back” to the United States refugee claimants who are entitled to make refugee claims in Canada exposes those individuals to human rights violations, including possible arbitrary detention in the United States. This was illustrated in an October 8, 2007 decision to “direct back” four Haitian and one Salvadoran refugee claimants. Canadian law and practice should clearly establish that “direct backs” will never be used against refugee claimants.
- Amnesty International is concerned that Canadian law puts humanitarian workers who assist refugee claimants in Canada at risk of criminal prosecution.

On September 26, 2007 Janet Hinshaw-Thomas, the director of US-based PRIME-Ecumenical Commitment to Refugees was charged under section 117 of the Immigration and Refugee Protection Act with aiding and abetting the entry into Canada of individuals without proper passports or visas, which is the usual situation for refugee claimants. The charges were later withdrawn. In the aftermath it is clear, however, that section 117 should be reformed to ensure it is not used against individuals or groups who provide humanitarian aid to refugee claimants or refugees.

- Amnesty International has pressed Canada to respond more generously to the Iraqi refugee crisis. More than 4 million Iraqis are now displaced, with 2 million living as refugees in neighbouring countries where they face considerable hardship and human rights violations. The response of Canada and other western nations to this emergency has been clearly inadequate. Canada should significantly increase the number of Iraqi refugees resettled to Canada and should press other governments to do similarly. The government should, in a regular, timely manner, report the actual number of Iraqi refugees who arrive in Canada, specifying those who have been government-sponsored and those who have been privately-sponsored.
- Amnesty International is concerned that the provisions in the 2001 Immigration and Refugee Protection Act establishing a new Refugee Appeal Division (RAD) to the Immigration and Refugee Board remain unimplemented. Bill C-280, a private member's Bill which would require the government to enact the provisions establishing the RAD, has been passed by the House of Commons and is currently before the Senate. Amnesty International urges the Senate to pass the Bill, following which the government should immediately establish and adequately resource the Refugee Appeal Division.

BUSINESS AND HUMAN RIGHTS

- Amnesty International is concerned that the government has yet to respond to the Final Report and recommendations of the government-initiated National Advisory Group to the Corporate Social Responsibility Roundtables on setting standards for Canadian extractives companies operating overseas. There are currently no national standards for Canadian companies overseas and there are concerns that companies operating in areas with weak, unenforced or non-existent human rights laws may commit or contribute to human rights violations – and get away with it. By agreeing to adopt the Advisory Group recommendations, which include mechanisms for investigating and reporting on

complaints and tying government support to compliance, Canada could become a world leader in corporate social responsibility.

- Amnesty International remains concerned that trade and investment agreements and negotiations do not refer explicitly to the full spectrum of international human rights norms and concrete mechanisms for ensuring those norms are respected. Amnesty International has urged the government to undertake human rights impact assessments of trade rules during negotiations and following the adoption of new agreements.
- Amnesty International was particularly concerned that the human rights shortcomings in Canada's trade policy were starkly illustrated in the government's approach to pressing ahead this year with plans to negotiate a new trade deal with Colombia. Amnesty International called for an approach that would ensure that human rights obligations would meaningfully be enshrined in any trade arrangement negotiated with Colombia.
- Amnesty International has, for several years, urged Canada and other governments to work towards the adoption of international level standards with respect to the human rights responsibilities of business. A draft set of norms developed within the UN human rights system has not been adopted by governments. However, a UN-level process considering issues with respect to the human rights responsibilities of business continues, overseen by the UN Special Representative of the UN Secretary General on human rights and transnational corporations and other business enterprises. Amnesty International has joined 239 other organizations, socially responsible investment firms, and individuals in an open letter to Professor Ruggie outlining our views on how he might use the remainder of his mandate to most effectively advance human rights protection in a business context. As a leading country in the global extractives sector, Canada should engage in that process with an eye to developing strong international standards regarding the human rights responsibilities of business.
- Amnesty International continues to monitor the implementation of internationally recognized Indigenous rights standards by extractives companies and the Canadian government. Several issues are at stake, the most notable being the principle of free, prior and informed consent. It is clear that across Canada resource extraction is proceeding in situations where this requirement has not been met. The federal and provincial governments must ensure full incorporation of the principle of free, prior and informed consent into law and practice, thus reducing risk and uncertainty for business and bringing Canada's land use policies into line with its national and international obligations.

CANADA AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM

- Amnesty International has called on Canada to ratify a number of important UN human rights treaties: the Optional Protocol to the UN Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.
- Amnesty International has called on Canada to ratify a number of important human rights treaties within the Organization of American States: the American Convention on Human Rights (with appropriate reservations or statements of understanding where necessary); the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (the Protocol of San Salvador); the Protocol to the American Convention on Human Rights to Abolish the Death Penalty; the Inter-American Convention to Prevent and Punish Torture; the Inter-American Convention on Forced Disappearance of Persons; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (the Convention of Belém do Pará).
- Amnesty International has called on Canada to work to significantly strengthen the protection of human rights in the context of the increasingly closer relationship among the governments of Canada, Mexico and the United States. Concerned about the lack of attention to human rights in the North American Free Trade Agreement and the Security and Prosperity Partnership among the three countries, Amnesty International has recommended that a North American Human Rights Council be established.
- Amnesty International remains deeply concerned that Canada lacks a transparent and well-coordinated intergovernmental process for overseeing proper domestic implementation of the country's international human rights obligations. There has not been a meeting of Canadian federal, provincial and territorial Ministers to discuss human rights issues since 1988. Amnesty International has called on governments to convene a Ministerial level human rights meeting and to use it as an opportunity to establish a strengthened process for overseeing implementation of Canada's international human rights obligations.
- Amnesty International continues to welcome Canada's strong international leadership at the International Criminal Court and other initiatives meant to ensure that individuals responsible for genocide, war crimes and crimes against humanity do face justice. Amnesty International has, however, called on the

government to improve its approach domestically. The government should adopt a clear policy preferring criminal prosecution or lawful extradition over deportation in cases involving accusations of crimes subject to universal jurisdiction. The government should also 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.

Cover Photos:

- 1) Prisoner at Camp Delta, Guantanamo Bay. (c) US DoD
- 2) Chrissy and Bonnie Swain drumming at Grassy Narrows. (c) Amnesty International
- 3) Lethal injection chamber (c) Dave Martin/AP/PA Photos
- 4) United Nations and Canadian Flags. (c) Amdt Husar