

CANADA

SUBMISSION TO THE PRE-
SESSIONAL WORKING
GROUP OF THE UN
COMMITTEE ON
ECONOMIC, SOCIAL AND
CULTURAL RIGHTS

55 SESSION, 9 – 13 MARCH 2015

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in 2015 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2015

Index:IOR 40/2015.006
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact copyright@amnesty.org

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

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

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

**AMNESTY
INTERNATIONAL**



CONTENTS

- I. EXECUTIVE SUMMARY4
- II. HUMAN RIGHTS IMPLEMENTATION4
- III. INDIGENOUS PEOPLES6
 - VIOLENCE AGAINST INDIGENOUS WOMEN (Arts. 2, 12)6
 - DISCRIMINATION AGAINST FIRST NATIONS CHILDREN (Arts. 2, 9, 10).....9
 - INDIGENOUS LAND RIGHTS (Arts. 1, 6, 11, 12, 15)12
 - ENVIRONMENTAL DESTRUCTION AT GRASSY NARROWS FIRST NATION (Arts. 1, 6, 11, 12, 15)16
 - LACK OF ACCESS TO WATER (Arts. 2, 11, 12)18
 - SHOAL LAKE #40: LACK OF ACCESS TO A RANGE OF ESC Rights (Arts. 2, 6, 11, 12, 13)19
- IV. REFUGEE AND MIGRANT RIGHTS21
 - DENIAL OF SOCIAL ASSISTANCE (Arts. 2, 9, 11)21
 - REFUGEE AND MIGRANT HEALTH (Arts. 2, 12)21
- V. VIOLENCE AGAINST WOMEN (Arts. 2, 10, 12).....23
- VI. SOLITARY CONFINEMENT (Art. 12)25
- VII. FAILURE TO ADOPT A NATIONAL HUMAN RIGHTS-BASED HOUSING STRATEGY (Art. 11).....27
- VIII. DISCRIMINATION ON THE BASIS OF GENDER IDENTITY (Art. 2)28
- IX. CORPORATE ACCOUNTABILITY, TRADE, AND HUMAN RIGHTS (Arts. 1, 7, 11, 12)30

I. EXECUTIVE SUMMARY

Amnesty International submits this briefing to the United Nations (UN) Committee on Economic, Social and Cultural Rights (the Committee) in advance of the preparation of the List of Issues for the review of the periodic report of Canada, at the 54th Session of the Pre-Sessional Working Group from 9 to 13 March 2014.

In this document, Amnesty International sets out its concerns about the implementation of the *International Covenant on Social, Economic and Cultural Rights (ICESCR)* by Canada, including but not limited to, Canada's inadequate implementation of its international human rights obligations, the rights of Indigenous peoples, the rights of migrants and refugees, women, prisoners, the homeless, transgendered persons, and individuals abroad who come into contact with Canadian transnational corporations.

II. HUMAN RIGHTS IMPLEMENTATION

Canada's approach to implementing its international human rights obligations suffers from longstanding inadequacy. This concern has been raised repeatedly by UN treaty monitoring bodies, including this Committee, which in 2006 expressed concern that most of its recommendations in relation to Canada's second and third periodic reports in 1993 and 1998, respectively, had not been implemented.¹ The Committee noted that Canada had failed to address

[t]he lack of legal redress available to individuals when governments fail to implement the Covenant, resulting from the insufficient coverage in domestic legislation of economic, social and cultural rights, as spelled out in the Covenant; the lack of effective enforcement mechanisms for these rights; the practice of governments of urging upon their courts an interpretation of the Canadian Charter of Rights and Freedoms denying protection of Covenant rights, and the inadequate availability of civil legal aid, particularly for economic, social and cultural rights[.]²

In 2013, eighty-two countries made recommendations for human rights reform during Canada's second Universal Periodic Review (UPR) at the Human Rights Council.³ Many

¹ United Nations Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights*, 36th Sess, UN Doc E/C.12/CAN/CO/4 (22 May 2006) at para 11 [CESCR *Concluding Observations*, 2006].

² *Ibid* at para 11(a).

³ United Nations Human Rights Council, Report of the Working Group on the Universal Periodic Review: Canada – Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, 24th Sess, UN Doc

countries focused on the inadequate protection and fulfilment of the ESC rights of Canada's Indigenous communities.⁴ The Canadian government's response was to accept the recommendations that were already being implemented by federal, provincial or territorial governments of their own initiative, but to reject recommendations outside of its already established agenda.⁵ Canada's response to the UPR compounds a growing tendency to disengage from the UN whenever it is the subject of international human rights scrutiny.⁶

The Canadian government did, however, accept missions to Canada by the Inter-American Commission on Human Rights, the UN Committee on the Elimination of Discrimination against Women, and the UN Special Rapporteur on the rights of indigenous peoples in the second half of 2013.⁷ The UN Special Rapporteur's report of his visit was published in July 2014⁸ and the Inter-American Commission's report was released on 12 January 2015.⁹

The Special Rapporteur on the human rights of migrants, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the sale of children, prostitution and child pornography, and the Special Rapporteur on the rights of freedom of

A/HRC/24/11/Add.1, (17 September 2013) at para 3.

⁴ *Ibid* at paras 14-127.

⁵ Canada's dismissal response came across particularly strongly with respect to two important human rights recommendations that were the most frequently repeated by states in the course of the Review: the staggeringly high rates of violence against Indigenous women and girls in Canada; and Canada's failure to ratify the *Optional Protocol to the Convention against Torture*.

⁶ Throughout the course of 2012 Canada criticized and derided UN Special Rapporteurs and Committees that examined or commented on Canada's human rights record. See, described in fuller detail, Amnesty International, *Empty Words and Double Standards: Canada's Failure to Respect and Uphold International Human Rights, Joint Submission to the United Nations Human Rights Council in Relation to the May 2013 Universal Periodic Review of Canada*, (October 2012) online, Amnesty International Canada: http://www.amnesty.ca/sites/default/files/upr16_ngo_coalition_submission_for_the_upr_of_canada_october_2012_eng.pdf.

⁷ Canada has also agreed to visits from the following Special Rapporteurs: The Special Rapporteur on Racism, the Special Rapporteur on Extreme Poverty, the Working Group on transnational corporations and business enterprises: See United Nations Office of the High Commissioner for Human Rights, "Country and other visits by Special Procedures Mandate Holders since 1998 A-E" online:

<<http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsA-E.aspx>> [Country Visits].

⁸ United Nations Human Rights Council, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Addendum: The Situation of indigenous peoples in Canada, 27th Sess, Un Doc A/HRC/27/52/Add.2 (4 July 2014) [Anaya Report].

⁹ Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada*, (21 December 2014) Doc. 30/14, OEA/Ser.LV/II at 12.

peaceful assembly and of association have all requested visits to Canada. It is important that Canada honours its 1999 standing invitation¹⁰ to special mandate holders and accepts these requested visits.

RECOMMENDATIONS

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- Convene a meeting of federal, provincial, and territorial ministers responsible for human rights, and to initiate a process of law, policy, and institutional reform that would ensure effective, transparent, and politically accountable implementation of Canada's international human rights obligations. Such reforms should recognize the indivisibility of human rights and ensure the protection of ESC rights under the *Canadian Charter of Rights and Freedoms*.
- Permit the visit of Special Rapporteurs who have requested to conduct missions in Canada.

III. INDIGENOUS PEOPLES

VIOLENCE AGAINST INDIGENOUS WOMEN (ARTS. 2, 12)

Indigenous women and girls in Canada face a significantly heightened risk of being subject to violence, including violence leading to death, as compared to other women and girls in the country. Amnesty International's research has repeatedly drawn attention to this grave human rights concern.¹¹ A 2014 report by the national police service, the RCMP, stated that at least 105 First Nations, Inuit and Métis women and girls are missing under suspicious circumstances or for undetermined reasons, and 1,017 Indigenous women and girls have been murdered between 1980 and 2012—a homicide rate roughly 4.5 times higher than

¹⁰ Country Visits, *supra* note 7.

¹¹ Amnesty International, *Stolen Sisters – A human rights response to violence and discrimination against Indigenous women in Canada*, AMR 20/003/2004, October, 2004; Amnesty International, *No More Stolen Sisters: The need for a comprehensive response to discrimination and violence against Indigenous women in Canada*, AMR 20/012/2009, September 2009; Amnesty International, *Canada: Summary of Recommendations from Amnesty International Briefing to the UN Committee on the Elimination of Racial Discrimination*, AMR 20/003/2012, February, 2012; Amnesty International, *Canada: Briefing to the UN Committee against Torture*, AMR 20/004/2012, May 2012; Amnesty International, *Violence against Indigenous women and girls in Canada: A summary of Amnesty International's concerns*, August 2013.

that of all other women in Canada. These figures are consistent with the disproportionate rate of violence revealed in prior research, including the work of the Native Women's Association of Canada.¹²

UN treaty bodies, including the Human Rights Committee,¹³ the Committee against Torture,¹⁴ the Committee on the Elimination of Discrimination against Women,¹⁵ the Committee on the Elimination of Racial Discrimination,¹⁶ the Committee on the Rights of the Child and this Committee;¹⁷ as well as Special Procedures mandate holders,¹⁸ including the Special Rapporteur on the Rights of Indigenous Peoples James Anaya;¹⁹ have all expressed concern about violence and discrimination experienced by Indigenous women and girls, and

¹² Native Women's Association of Canada, "Fact Sheet: Violence Against Aboriginal Women" online: < http://www.nwac.ca/files/download/NWAC_3E_Toolkit_e_0.pdf>. See also Amnesty International, *Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada* (London, Amnesty International, 2004) online: < <http://www.amnesty.org/en/library/asset/AMR20/001/2004/en/48f05a31-d589-11dd-bb24-1fb85fe8fa05/amr200012004en.pdf>>.

¹³ UN Human Rights Committee *Concluding Observations*, 2006, *supra* note 1.

¹⁴ United Nations Committee against Torture, *Concluding Observations of the Committee against Torture: Canada*, 48th Sess, UN Doc CAT/C/CAN/CO/6 (25 June 2012) at para 20 [UN Committee against Torture *Concluding Observations*, 2012].

¹⁵ United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada*, 42nd Sess, UN Doc CEDAW/C/CAN/CO/7 (7 November 2008).

¹⁶ United Nations Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*, 70th Sess, UN Doc CERD/C/CAN/CO/18, (25 May 2007) [CERD *Concluding Observations*, 2007]; United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, 80th Sess, UN Doc CERD/C/CAN/CO/19-20 (4 April 2012) at para 17 [UN Committee on the Elimination of Racial Discrimination *Concluding Observations*, 2012].

¹⁷ United Nations Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Canada*, 61st Sess, UN Doc CRC/C/CAN/CO/3-4 (5 October 2012) at para. 47; CESCR *Concluding Observations*, 2006 *supra* note 1 at paras 11(d), 17.

¹⁸ See United Nations Commission on Human Rights, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum: Mission to Canada, 61st Sess, UN Doc E/CN.4/2005/88/Add.3 (2 December 2004) [Stavenhagen Report]; See also United Nations Commission on Human Rights, Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Addendum: Mission to Canada, 60th Sess, UN Doc E/CN.4/2004/18/Add.2 (1 March 2004).

¹⁹ Anaya Report, *supra* note 8.

have made recommendations to the Canadian government for reform.

These UN bodies and experts, and also Indigenous women's organizations across Canada, have all called for a comprehensive, coordinated national plan of action, including a nationwide inquiry, and improvements in data collection on violence against Indigenous women. Most recently, on 12 January 2015, the Inter-American Commission on Human Rights issued a report on missing and murdered Indigenous women in British Columbia. The Commission found that

indigenous women and girls constitute one of the most disadvantaged groups in Canada. Poverty, inadequate housing, economic and social relegation, among other factors, contribute to their increased vulnerability to violence. In addition, prevalent attitudes of discrimination – mainly relating to gender and race – and the longstanding stereotypes to which they have been subjected, exacerbate their vulnerability.²⁰

The Commission stressed that “addressing violence against indigenous women is not sufficient unless the underlying factors of racial and gender discrimination that originate and exacerbate the violence are also comprehensively addressed[,]” and called for a “national coordinated response to address the social and economic factors that prevent indigenous women from enjoying their social, economic, cultural, civil and political rights, the violation of which constitutes a root cause of their exposure to higher risks of violence.”²¹

In March 2014, a Parliamentary Committee Report vaguely called for “further examination” of the causes of the violence, and how it can be best prevented, without giving any indication of how or when such examination would take place, and ignoring concrete proposals presented by Indigenous women's organizations and families of missing and murdered women.²² Meanwhile, Prime Minister Harper, in the wake of the death of 15-year old Aboriginal girl Tina Fontaine in August 2014, refused to call an inquiry into this epidemic of violence, stating that it should be viewed as simply “crime” and not a “sociological phenomenon.”²³ In an interview in December, the Prime Minister said a public inquiry into violence against Indigenous women and girls was “not high on our radar.”

²⁰ Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada*, (21 December 2014) Doc. 30/14, OEA/Ser.LN/II at 12.

²¹ *Ibid* at 13.

²² Canada, Special Committee on Violence Against Indigenous Women, *Invisible Women: A Report on Missing and Murdered Indigenous Women in Canada*, 2nd Sess, 41st Parl, (March 2014) (Chair: Stella Ambler) online: <<http://www.parl.gc.ca/content/hoc/Committee/412/IWFA/Reports/RP6469851/IWFArp01/IWFArp01-e.pdf>>.

²³ See Alex Boutillier, “Native teen's slaying a 'crime,' not a 'sociological phenomenon,' Stephen Harper says” *The Star* (21 August 2014) online:

<http://www.thestar.com/news/canada/2014/08/21/native_teens_slaying_a_crime_not_a_sociological_phenomenon_stephen_harper_says.html>.

It is concerning that prior to the release of the 2014 RCMP report, the state had not previously attempted to compile national data on the numbers of missing and murdered Indigenous women and girls. Furthermore, crucial gaps remain in the data released by the RCMP due to lack of clear policies and standards for recording the Indigenous identities of victims of crime.

RECOMMENDATION

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- Establish an independent public inquiry to examine violence against Indigenous women and girls with a view to developing and implementing a comprehensive national plan of action to address factors putting Indigenous women and girls at risk, and to ensure appropriate and unbiased responses from police and the justice system;

DISCRIMINATION AGAINST FIRST NATIONS CHILDREN (ARTS. 2, 9, 10)

Under the Constitutional division of powers, the federal government bears the responsibility of funding services on First Nations reserves that in other communities would generally be funded by the provincial and territorial governments. However, the federal government's funding of children and family services in First Nations communities is at least 22 percent less per child than what provincial governments dedicate for child protection services in other, predominantly non-Indigenous communities.²⁴ This is despite often greater needs²⁵ and the higher costs of delivering services in small and remote First Nations communities. This underfunding has created a crisis situation for First Nations children and their families. The persistent underfunding has limited the child and family services available in many First Nations communities to the point that the removal of children and their families, meant to be strictly a last resort, has become the only option available when families are not able to provide adequate care.²⁶ In 2006, this Committee expressed concern that Aboriginal families "are overrepresented in families whose children are relinquished to foster care."²⁷ Today, the

²⁴ Marlyn Bennett, "Canadian Aboriginal Welfare Crisis Demands Action" (2007) Adoptalk 4 online: <<http://www.fncaringsociety.ca/sites/default/files/docs/Bennett-Adoptalk-07.pdf>>.

²⁵ Deplorable socioeconomic conditions on reserves, including poverty, poor housing, and often lack of access to clean water impact children in the areas of health, education, criminal justice, and addictions: See Fred Wien, Cindy Blackstock, John Loxley and Nico Trocmè, "Keeping First Nations children at home: A few Federal policy changes could make a big difference" (2007) 3:1 First Peoples Child and Family Review 10.

²⁶ For a detailed overview of First Nations child welfare services, see Assembly of First Nations, *Kiskisik Awasisak: Remember the Children: Understanding the Overrepresentation of First Nations Children in the Child Welfare System* (2011) online: <<http://www.fncaringsociety.com/sites/default/files/docs/FNCIS-2008-report.pdf>>.

²⁷ CESCR *Concluding Observations*, *supra* note 1 at para 24.

continued failure to adequately assist these families through culturally appropriate counselling and our family services has led to more First Nations children being taken away from their families today than at the height of the residential school era in the 1940 and 50s.²⁸

In 2007, the Assembly of First Nations and the First Nations Child and Family Caring Society filed a complaint before the Canadian Human Rights Tribunal that the underfunding of child welfare services for children living on reserves is discriminatory under the *Canadian Human Rights Act*.²⁹ In March 2013, the Federal Court of Appeal rejected the government's position that it should be shielded from complaints of discrimination because the actions of the federal government should not be compared to those of provincial governments (which are responsible for all other child welfare services in Canada other than those provided to First Nations children living on reserves).³⁰ The case was heard by the Tribunal on its merits in October 2014. The Tribunal has not yet rendered its decision.

RECOMMENDATION

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- Work with First Nations to eliminate the gap in funding for First Nations child and family services and ensure equitable access to culturally appropriate programmes and support services within families and communities.

FIRST NATIONS EDUCATION (Arts 2, 13 and 14)

As with child and family services, the federal government significantly underfunds schools in First Nations reserves when compared to provincial funding of schools in predominantly non-Indigenous communities³¹. The Canadian Centre for Policy Alternatives estimates that the accumulated funding shortfall between 1996 and 2014 amounted to more than \$3 billion³².

²⁸ See "First Nations children still taken from parents: Analysis finds more First Nations children in care than at height of residential school system" *CBC News* (2 August 2011) online: < <http://www.cbc.ca/news/politics/first-nations-children-still-taken-from-parents-1.1065255> >.

²⁹ RSC 1985, c H-6.

³⁰ *Canada (Attorney General) v Canadian Human Rights Commission*, 2013 FCA 75.

³¹ First Nations Child and Family Caring Society. *Jordan & Shannen: First Nations children demand that the Canadian Government stop racially discriminating against them*. Submission to the UN Committee on the Rights of the Child. 28 January 2011.

³² Canadian Centre for Policy Alternatives. *Striking a Better Balance: Alternative Federal Budget 2014*. Pp. 80-81.
https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/02/AFB2014_MainDocument.pdf.

Inadequate and inequitable funding of First Nations schools has directly contributed to lower educational achievement and deprived First Nations students of the kind of language and cultural skills training needed to help undo the harms inflicted by colonial policies and programmes such as the residential schools system³³.

Last year, the federal government announced plans to significantly increase funding for First Nations schools and school programmes beginning in 2016³⁴. However, the funding commitment was conditional on First Nations support for proposed legislation known as the *First Nations Control of First Nations Education Act*³⁵.

The proposed act would establish a framework under which First Nations could administer their own schools. However, despite the name of the proposed act, the ultimate control over these schools would not rest with First Nations, but with the federal Minister of Indian Affairs and Northern Development who could, at her or his discretion, override First Nations decisions and replace the structures that they establish. Even existing agreements under which First Nations already administer their own schools, such as in British Columbia, would only be temporarily sheltered from the powers conferred on the Minister by this legislation.

The proposed act has been widely rejected by First Nations as failing to respect their inherent rights, including the right of self-government, and as imposing a single national model of school administration and accountability in place of the more regional approach considered necessary to respect the diversity of First Nations cultures, histories and needs³⁶. In 2012, a federally-appointed panel on First Nations education called on the government to work with

³³ Scott Haldane, George E. Lafond and Caroline Krause. *Nurturing the Learning Spirit of First Nation Students: The Report of the National Panel on First Nation Elementary and Secondary Education for Students on Reserve*. 2012.

http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-EDU/STAGING/texte-text/nat_panel_final_report_1373997803969_eng.pdf.

³⁴ Treasury Board of Canada. Canada's Economic Action Plan - First Nations Education Act." <http://actionplan.gc.ca/en/initiative/first-nations-education-act>.

³⁵ Minister of Aboriginal Affairs and Northern Development. Bill C-33, *An Act to establish a framework to enable First Nations control of elementary and secondary education and to provide for related funding and to make related amendments to the Indian Act and consequential amendments to other Acts (First Nations Control of First Nations Education Act)*, 2nd Session, Forty-first Parliament. http://www.parl.gc.ca/content/hoc/Bills/412/Government/C-33/C-33_1/C-33_1.PDF;

See also, Canadian Press. "How the First Nations education act fell apart in matter of months." 11 May 2014. <http://www.cbc.ca/news/politics/how-the-first-nations-education-act-fell-apart-in-matter-of-months-1.2639378>.

³⁶ For example, First Nations Education Steering Committee. 9 April 2014. Letter to Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development. http://www.fnesc.ca/wordpress/wp-content/uploads/2012/12/April-9_2014-Letter-to-Minister-Valcourt-Re-Canadas-Proposal-for-National-First-Nations-Education-Legislation.pdf.

First Nations to develop legislation that would provide sustained, equitable funding; ensure accountability of all partners – including the federal and provincial governments as well as First Nations – and which would have a clear mandate to uphold First Nations children’s rights to education, language and culture³⁷. The proposed legislation makes limited reference to these rights.

RECOMMENDATIONS

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- Take immediate measures to eliminate inequities in funding for education for First Nations children and youth on reserves; and
- Collaborate with First Nations to enact legislation that fosters on-reserve educational systems consistent with preserving the best interests of the child, protecting and restoring Indigenous languages and cultures, honouring treaty rights, and respecting the inherent rights of self-government and self-determination.

INDIGENOUS LAND RIGHTS (ARTS. 1, 6, 11, 12, 15)

UN treaty bodies, experts, and other international and regional human rights mechanisms have on several occasions commented that disputes over Indigenous peoples’ ownership of and rights to control and benefit from their traditional lands remain persistently unresolved, and called on the Canadian government to take concrete and urgent steps to restore and respect Indigenous peoples rights to their lands, territories and resources.³⁸ In 2006, the Committee called on Canada to “re-examine its policies and practices towards the inherent rights and titles of Aboriginal peoples, to ensure that policies and practices do not result in extinguishment of those rights and titles.”³⁹ In 2009, in a complaint brought by the Hulqumi’num Treaty Group before the Inter-American Commission on Human Rights regarding their decades of failed efforts to obtain redress for the historic, unilateral appropriation of

³⁷ Scott Haldane, George E. Lafond and Caroline Krause. *Nurturing the Learning Spirit of First Nation Students: The Report of the National Panel on First Nation Elementary and Secondary Education for Students on Reserve*. 2012.

http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-EDU/STAGING/texte-text/nat_panel_final_report_1373997803969_eng.pdf.

³⁸ United Nations Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN Doc E/C.12/1/Add/31 (10 December 1998) [CESCR Concluding Observations, 1998]; United Nations Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, UN Doc CCPR/C/79/Add.105 (7 April 1999) [UN Human Rights Committee *Concluding Observations*, 1999]; Stavenhagen Report, *supra* note 18; Anaya Report, *supra* note 8 at para 78.

³⁹ CESCR *Concluding Observations*, 2006, *supra* note 1 at para 37.

much of their traditional territory, the Commission found that the available mechanisms to provide redress for land rights violations in Canada are too slow and too onerous to meet international standards of justice.⁴⁰

As noted by the Human Rights Committee in 1999 when issuing its concluding observations on Canada, “the right to self-determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence.”⁴¹ Failure to respect and uphold Indigenous peoples’ lands rights can profoundly impair the ability of Indigenous individuals and families to enjoyment of their rights to an adequate standard of living, the highest attainable standard of health, to participate in the cultural life of their community, and to gain their living through the pursuit of traditional occupations such as hunting, trapping and fishing.

First Nations, Inuit and Métis peoples are under increasing pressure from large-scale resource development projects and related infrastructure development on and near their traditional territories. The federal government predicts that at least 600 more major resource development projects will get underway across Canada in the next decade.⁴² Federal government claims that these projects will “translate to hundreds of thousands of jobs in every sector of the Canadian economy and in every region of the country”⁴³ fail to account for the potential impact on the traditional occupations of Indigenous peoples which remain important sources of food and livelihood for people who are otherwise marginalized in the Canadian economy. Despite concerns raised by many Indigenous peoples about the potential harmful impacts of large-scale resource development, the federal government has failed to establish sufficiently rigorous formal mechanisms and processes to ensure that Indigenous Peoples are meaningfully consulted and their rights adequately protected when such projects affect their traditional territories.⁴⁴ Despite Supreme Court rulings affirming that there are

⁴⁰ *Hul’qumi’num Treaty Group* (2009) Inter-Am Comm HR, Petition 592-07, Admissibility Report No 105-09 online: < <http://www.cidh.oas.org/annualrep/2009eng/Canada592.07eng.htm>>; See also Amnesty International, “Right to Consultation and Consent of Indigenous Peoples in the Americas” (Written statement to the 21st session of the UN Human Rights Council, 10-28 September 2012) (27 August 2012) AI Index AMR/01/007/2012 online: < <http://www.amnesty.org/ar/library/asset/AMR01/007/2012/en/879d4952-c1a6-4bbe-9c39-ce4c7ecb8522/amr010072012en.pdf>>.

⁴¹ UN Human Rights Committee *Concluding Observations*, 1999 *supra* note 38 at para 8.

⁴² Government of Canada, “Responsible Resource Development Creates Jobs for Canadians” Canada’s Economic Action Plan (19 February 2013) online: < <http://actionplan.gc.ca/en/blog/responsible-resource-development-creates-jobs>>.

⁴³ *Ibid.*

⁴⁴ Amnesty International, “*Pushed to the Edge*”: *The Land Rights of Indigenous Peoples in Canada* (September 2009), AI Index No. AMR20/02/2009 online: <<http://www.amnesty.org/en/library/info/AMR20/002/2009/en>>; Amnesty International, *Americas: Governments must stop imposing development projects on Indigenous peoples’ territories* (8 August 2012) AI Index No. AMR 01/005/2012 online: <<http://www.amnesty.org/en/library/info/AMR01/005/2012/en>>.

circumstances in which decisions should only be made with the consent of the affected Indigenous peoples,⁴⁵ the federal government has persisted in denouncing the standard of free, prior and informed consent (FPIC), as set out in the *UN Declaration on the Rights of Indigenous Peoples* and in international human rights law more broadly, and characterized this standard as irreconcilable with Canadian law.⁴⁶

The government points to environmental impact assessments as a key means for Indigenous Peoples' voices to be heard when projects are considered, even as new legislation has reduced the likelihood of projects being subject to such reviews and allowed governments to more readily override the findings of those reviews that are held.⁴⁷ As a consequence, Indigenous peoples are repeatedly forced to enter into long and expensive court cases to defend rights to live on, benefit from and determine the use of their traditional territories.

On 17 June 2014, the federal government conditionally approved the construction of the Northern Gateway Pipeline in British Columbia without the consent of affected First Nations.⁴⁸ If the project goes ahead, it would lead to pipeline construction across roughly 1000 rivers and streams in the traditional territories of Indigenous peoples in Alberta and

⁴⁵ *Delgamuukw v British Columbia*, [1997] 3 SCR 1010; *Haida Nation v British Columbia (Minister of Forests)*, [2004] SCC 73; *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44.

⁴⁶ Government of Canada, "Explanation of Vote" (World Conference of Indigenous Peoples, 22 September 2014) online: < <http://www.afn.ca/index.php/en/news-media/latest-news/canadas-statement-on-the-world-conference-on-indigenous-peoples-outcom>>.

⁴⁷ Bill C-38 and Bill C-45, omnibus bills adopted by the federal parliament in 2012, included a new Canadian Environmental Assessment Act and amended dozens of additional federal laws. Changes included greater government discretion over which projects would be subject to independent environmental assessment and elimination of federal assessments altogether for many types of projects. In December 2014 the Federal Court found that the government had breached its Constitutional obligations to Indigenous peoples by failing to consult prior to adopting these omnibus bills affecting significant changes to laws affecting their rights. The court declined to order any measures to address this breach. *Courtoreille v. Canada* (Aboriginal Affairs and Northern Development). 2014 FC 1244. 19 December 2014, <http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/100287/index.do>. In April 2014, the British Columbia government quietly passed two Orders in Council to amend the *Reviewable Projects Regulation*, BC Reg 370/2002, that removed the requirement of conducting an environmental assessment of new and modified natural gas processing plants and ski and all-season resorts. These amendments were enacted without any consultation with affected Indigenous peoples. As a result of subsequent protests from First Nations, the day after the amendments were passed, British Columbia Environment Minister Mary Polak acknowledged that First Nations had not been consulted, apologized, and announced that the amendments would be rescinded: See CBC News, "B.C. rescinds environmental assessment exemption" (16 April 2014) online: < <http://www.cbc.ca/news/canada/british-columbia/b-c-rescinds-environmental-assessment-exemption-1.2613053>>.

⁴⁸ See Laura Payton and Susana Mas, "Northern Gateway pipeline approved with 209 conditions" CBC News (17 June 2014) online: < <http://www.cbc.ca/news/politics/northern-gateway-pipeline-approved-with-209-conditions-1.2678285>>.

British Columbia. The decision to certify the Northern Gateway Project is currently subject to a number of applications for judicial review before the Federal Court of Appeal.

On 26 June 2014, the National Energy Board approved seismic testing in Baffin Bay and Davis Strait off of Nunavut. The Hamlet of Clyde River, on behalf of its majority Inuit population, and the Nammataq Hunters and Trappers Organization are challenging that decision before the Federal Court of Appeal, arguing that they were not adequately consulted during the project approval process, and that seismic testing significantly threatens the sea mammals on which they rely on to maintain their traditional culture and livelihood.⁴⁹

In October 2014, the federal government approved the Site C Dam project which would flood more than 80 km of the Peace River valley in northern British Columbia. An environmental impact assessment found that the flooding would “severely undermine” First Nations, Métis and non-Aboriginal use of the area for hunting, trapping, and gathering plant medicines, would make fishing unsafe for at least a generation, and would submerge burial grounds and other crucial cultural and historical sites.⁵⁰ First Nations are also challenging this project before the courts.

One positive development is worth noting. On 26 June, 2014 the Supreme Court of Canada released a landmark unanimous decision recognizing the right of the Tsilhqot’in people to own, control, and enjoy the benefits of approximately 2,000 km² of land at the heart of their traditional territory in central British Columbia.⁵¹ This decision marked the first time that a court in Canada had upheld the continued right of an Indigenous nation to own and control traditional lands claimed by the state as public lands. The decision recognized the obligation of governments to obtain the consent of Indigenous peoples in decisions over their own lands and set out a clear and rigorous test for when it would be permissible for government to override Indigenous peoples’ own decisions. It’s unclear how, if at all, governments in Canada intend to incorporate the standards set out in this decision in their laws and policies.

RECOMMENDATIONS

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- Ensure that the positions taken by government in negotiations or litigation over Indigenous land disputes are consistent with the obligation to respect,

⁴⁹ See “Clyde River supports Greenpeace petition against seismic testing” *CBC News* (9 November 2014) online: < <http://www.cbc.ca/news/canada/north/clyde-river-supports-greenpeace-petition-against-seismic-testing-1.2829154>>.

⁵⁰ See “Site C dam approved by B.C. government” *CBC News* (16 December 2014) online: < <http://www.cbc.ca/news/canada/british-columbia/site-c-dam-approved-by-b-c-government-1.2874433>>; Dirk Meissner, “B.C. government approves controversial Site C dam project” *CTV News* (16 December 2014) online: < <http://www.ctvnews.ca/canada/b-c-government-approves-controversial-site-c-dam-project-1.2150796>>.

⁵¹ *Tsilhqot’in Nation v British Columbia*, 2014 SCC 44.

protect and fulfil the rights of Indigenous peoples under Canadian and international law; and

- Recognize the right of free, prior and informed consent of Indigenous Peoples and fully incorporate FPIC in all laws, policies, and practices related to extractive industries at home and abroad.

ENVIRONMENTAL DESTRUCTION AT GRASSY NARROWS FIRST NATION (ARTS. 1, 6, 11, 12, 15)

Rivers and lakes vital to the cultures and economies of First Nations in northwestern Ontario were severely contaminated by an upstream pulp and paper mill which released approximately 9 metric tonnes of mercury into the river system in the 1960s. Despite widespread, serious health problems first identified among First Nations fishers, guides and their families, the federal and provincial governments have never formally acknowledged that mercury poisoning has taken place or has had a severe direct impact on the health and well-being of these communities⁵². Assistance provided by the federal and provincial governments has been insufficient to ensure adequate treatment or compensation to the victims of mercury poisoning or to effectively reduce the risk of continued exposure.

Today, elevated levels of mercury continue to be found in parts of the English and Wabigoon river system. Studies conducted at Asubpeeschoseewagong (Grassy Narrows) and Wabaseemoong (Whitedog) First Nations by scientists from Kumamoto Gakuen University in Minamata, Japan, have found that members of these First Nations are suffering from debilitating physical and neurological harms caused by mercury poisoning, including children born long after the contamination was first identified⁵³. A 2009 government commissioned expert review of the Japanese studies supported these conclusions, stating that there is “no doubt that ... many persons were suffering from mercury-related neurologic disorders” due to high level of exposure recorded in the 1970s and that mercury poisoning is “probably still a problem.”

⁵² Amnesty International, “*A Place to Regain Who We Are*”: *Grassy Narrows First Nation in Ontario* (June 2009) AI Index No. AMR20/001/2009 online: <<http://www.amnesty.org/en/library/info/AMR20/001/2009/en>>; Kelly Crowe, “Grassy Narrows: Why is Japan still studying the mercury poisoning when Canada isn't?” *CBC News* (2 September 2014) online: <<http://www.cbc.ca/news/health/grassy-narrows-why-is-japan-still-studying-the-mercury-poisoning-when-canada-isn-t-1.2752360>> [*A Place to Regain Who We Are*].

⁵³ Shigeru Takaoka, et al, “Signs and symptoms of methylmercury contamination in a First Nations community in Northwestern Ontario, Canada” (2014) *Science of the Total Environment* 468–469, at 950–957; Masazumi Harada, et al. “Mercury Pollution in First Nations Groups in Ontario, Canada: 35 years of Canadian Minamata Disease.” English translation of an article original published in the *Journal of Minamata Studies* 3 (2011) at 3–30 online: <<http://freegrassy.net/wp-content/uploads/2012/06/Harada-et-al-2011-English.pdf>>.

The government-commissioned review was also critical of the failure of Canadian officials to carry out extensive examinations and ongoing follow-up from the time that evidence of contamination first became available and called for “a comprehensive epidemiologic study” to now be undertaken as well as urgent action “to improve the general health of the two communities as the health status of the participants was clearly poor.”⁵⁴ Limited government compensation provided to some of the community members exhibiting symptoms of mercury contamination has declined 50% in real dollars because they were never indexed to inflation. Community members have told Amnesty International that compensation has been denied to a majority of people diagnosed by Japanese experts as being impacted by mercury and that no specialized local facilities have ever been provided.

Provincially-licensed clear-cut logging, carried out in the traditional territory of Grassy Narrows against the express wishes of the community, has put additional pressure on the culture, economy and well-being of the First Nation by disrupting trapping, hunting and gathering of berries and plant medicines, activities vital to the identity and subsistence of the people⁵⁵. Such logging stopped in 2008, after a major newsprint manufacturer agreed not to process pulp from trees logged at Grassy Narrows without free, prior and informed consent⁵⁶. The provincial government has continued to press for renewed clearcutting, however, and has included plans for continued clearcutting in the traditional territory of Grassy Narrows again in its approved forest management plans. In December 2014, the provincial government rejected a request by Grassy Narrows for an environmental assessment of these plans, despite concerns raised that clearcut logging could lead to introduction of additional mercury into the river system. The Ontario Ministry of Natural Resources and Forestry had previously called the potential for run-off from clearcut logging to introduce mercury to water systems “well documented and a serious concern.”⁵⁷

RECOMMENDATIONS

AMNESTY INTERNATIONAL RECOMMENDS THAT ONTARIO AUTHORITIES SHOULD:

- Ensure adequate treatment of and compensation to all victims of mercury poisoning;

⁵⁴ Donna Mergler and Laurie Chan, “Opinions on Dr. Masazumi Harada's studies in Ontario based on articles provided by the Mercury Disability Board” (29 October 2009) (Updated September 15,2010).

⁵⁵ *A place to regain who we are*, *supra* note 52.

⁵⁶ Stephen Earley, “Letter from Region Woodlands Manager, Boise” (27 February 2008) online: <<http://understory.ran.org/wordpress/wp-content/uploads/2008/02/boises-letter.pdf>>.

⁵⁷ Raveena Aulakh, “Grassy Narrows denied assessment on clear-cutting,” *Toronto Star* (30 December 2014).

- Undertake measures to effectively reduce the risk of continued exposure to mercury poisoning;
- Carry out a comprehensive epidemiological study to improve the health of the affected First Nations communities; and
- Refrain from licensing logging on the traditional territory of Grassy Narrows without the free, prior and informed consent of the First Nation.

LACK OF ACCESS TO WATER (ARTS. 2, 11, 12)

In 2006, this Committee strongly recommended that Canada

review its position on the right to water, in line with the Committee's general comment No. 15 (2002) on the right to water, so as to ensure equal and adequate access to water for people living in the State party, irrespective of the province or territory in which they live or the community to which they belong.⁵⁸

Also in 2006, an expert panel appointed by the federal government concluded that drinking water problems in First Nations communities were primarily the result of federal underfunding. The panel urged the federal government to provide the resources necessary "to ensure that the quality of First Nations water and wastewater is at least as good as that in similar communities and that systems are properly run and maintained."⁵⁹

Instead of acting on the panel's concerns the federal government adopted new legislation, the *Safe Drinking Water for First Nations Act*,⁶⁰ which came into force 1 November 2013. The legislation granted unilateral powers to the federal government to disregard constitutionally protected rights of Indigenous peoples – including self-government rights set out in treaties and other agreements – for the purpose of regulating First Nations water systems.⁶¹ However, the Act did not provide any new resources to ensure that the needs of these communities are actually met.

As a result, an estimated 20,000 First Nations people living on reserves across Canada still

⁵⁸ CESCR *Concluding Observations*, 2006, *supra* note 1 at para 64.

⁵⁹ *Report of the Expert Panel on Safe Drinking Water for First Nations* (Ottawa: Minister of Public Works and Government Services Canada, 2006) at 50 online: <
http://www.safewater.org/PDFS/reportlibrary/P3_EP_-_2006_-_V1.pdf>.

⁶⁰ SC 2013, s 21.

⁶¹ The Act states, "For greater certainty, nothing in this Act or the regulations is to be construed so as to abrogate or derogate from any existing Aboriginal or treaty rights of the Aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*, **except to the extent necessary to ensure the safety of drinking water on First Nation lands.**" Constance Blackhouse and Wilton Littlechild. "Legislation must not erode Aboriginal rights." *Ottawa Citizen*. 20 January 2013. <https://www.itk.ca/front-page-story/legislation-must-not-erode-aboriginal-rights>

have no access to running water or sewage.⁶² In addition, for those who have some water systems in place, the federal government reports that as of October, 2014, the drinking water was considered unsafe to drink in 96 First Nations.⁶³ These figures exclude First Nations in British Columbia where the responsibility for drinking water advisories was transferred to the First Nations Health Authority.

RECOMMENDATION

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- Collaborate with First Nations to ensure that all First Nations communities have access to clean drinking water and adequate sanitation, including through provision of adequate, sustained funding for such services.
- Amend the *Safe Drinking Water for First Nations Act* to ensure respect for First Nations self-government rights in regulating First Nations water systems.

SHOAL LAKE #40: LACK OF ACCESS TO A RANGE OF ESC RIGHTS (ARTS. 2, 6, 11, 12, 13)

One hundred years ago the Shoal Lake #40 community was relocated as part of the development of the city of Winnipeg's water supply system. As of the result of project, the community was cut off from the mainland. While the clean waters of Shoal Lake were diverted to supply the residents of Winnipeg, Shoal Lake #40 has been deprived of access to safe, clean, drinking water. Its residents have told Amnesty International that they have lived under a boiled water advisory for almost two decades.⁶⁴

The community is isolated from many of the necessities of life, from jobs, to groceries, to medical care on the mainland, relying on a small barge to travel off of their artificial island, or driving across the Lake's frozen surface during the winters. Before and after a hard freeze, community members must risk crossing the Shoal Lake by foot. This dangerous situation has resulted in the loss of lives through accidents or through tragic delays in getting patients to

⁶² Neegan Burnside Ltd, *National Assessment of First Nations Water and Wastewater Systems - National Roll-Up Report*, (Department of Indian Affairs and Northern Development Canada, April 2011) online: <http://www.aadnc-aandc.gc.ca/eng/1313770257504/1313770328745>.

⁶³ Health Canada, "Drinking Water and Wastewater" online: < <http://www.hc-sc.gc.ca/fniah-spnia/promotion/public-publique/water-eau-eng.php#s2d>>.

⁶⁴ See Craig Benjamin, "Justice almost within reach for Shoal Lake #40 First Nation" (10 July 2014) online: < <http://www.amnesty.ca/blog/justice-almost-within-reach-for-shoal-lake-40-first-nation>>; See also "Shoal Lake 40 'Human Rights Violations Museum' highlights water problems" *CBC News* (17 September 2014) online: < <http://www.cbc.ca/news/canada/thunder-bay/shoal-lake-40-human-rights-violations-museum-highlights-water-problems-1.2769067>>.

hospitals or emergency responders to the community.⁶⁵

In order to address these dangers and improve access to economic, social and cultural rights of the Shoal Lake #40 community, its residents have been advocating for the construction of a bridge between their island and the mainland, which has received the support of the surrounding cities. However, the federal government, which must also approve such construction, has refused to participate in meetings with the community.⁶⁶ In November 2014, The International Joint Commission, a group comprised of American and Canadian experts appointed to resolve boundary disputes between the two countries, has also indicated that the Shoal Lake #40 community has not received adequate redress for the violations of their rights, and requested a report from the government on that subject. The federal government has not provided a response.⁶⁷

RECOMMENDATION

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- Collaborate with the Shoal Lake #40 First Nation to take all necessary measures to ensure safe year-round travel to and from the community.

IV. REFUGEE AND MIGRANT RIGHTS

DENIAL OF SOCIAL ASSISTANCE (ARTS. 2, 9, 11)

In April 2014, a government Member of Parliament tabled Bill C-585, *An Act to amend the Federal-Provincial Fiscal Arrangements Act (period of residence)*,⁶⁸ which allows provinces to reduce access to social assistance to refugee claimants and other people without permanent status in Canada by imposing a minimum provincial residency requirement before allowing such individuals to apply for benefits. On 23 October 2014, the same provisions of this Bill

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ See Mary Agnes Welch, "Watchdog backs Shoal Lake bands" *Winnipeg Free Press* (7 November 2014) online: < <http://www.winnipegfreepress.com/local/watchdog-backs-shoal-lake-bands-281887791.html>>; Tom Pearson, "Still waiting for Freedom Road" *Winnipeg Free Press* (6 January 2015) online: < <http://www.winnipegfreepress.com/opinion/analysis/still-waiting-for-freedom-road-287614061.html>>.

⁶⁸ 41st Parl, 2nd Sess, 2013 (introduction and first reading 4 April 2014).

were incorporated into Bill C-43,⁶⁹ a government omnibus budget Bill. The Bill received Royal Assent and became law on 16 December 2014. The new law has been widely condemned by refugee and human rights groups across Canada as it opens the possibility that refugee claimants in some provinces could be denied access to social assistance, leaving them without any means of support.⁷⁰

RECOMMENDATION

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- Repeal Bill C-585, *An Act to amend the Federal-Provincial Fiscal Arrangements Act (period of residence)* and ensure that all individuals seeking Canada's protection receive adequate social security;

REFUGEE AND MIGRANT HEALTH (ARTS. 2, 12)

In 2012, the government made sweeping cuts to the program that funds health services for refugee claimants and refugees in Canada.⁷¹ The cuts resulted in a new, tiered system of health benefits to persons in need of protection in Canada. Which tier a person is entitled to belong to in the new Interim Federal Health Program depends on a number of factors. Refugee claimants lost access to often life-saving medications, such as, for instance, insulin to treat juvenile diabetes. Health coverage was limited to "urgent or essential care" and no longer extended to treatment that would be considered to be preventative in nature. An individual who was seeking permanent residence in Canada, for instance, almost went blind when the government refused to fund his urgent eye surgery, which his doctor ended up conducting on a *pro bono* basis. Refugee claimants coming from countries designated as "safe countries of origin" were not even covered for urgent or essential care as a result of the cuts. Rather, they only would receive coverage for conditions that pose a risk to public health or public security. And individuals who were deemed inadmissible to Canada but awaiting a final pre-removal risk assessment were excluded from any coverage whatsoever, *even if* their

⁶⁹ *A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on February 11, 2014 and other measures*, 41st Parl, 2nd Sess, 2013 (introduction and first reading 23 October 2014) online:

<

<http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&Bill=C43&Parl=41&Ses=2>>.

⁷⁰ See, e.g., Amnesty International, "Denying Social Assistance to Refugee Claimants Violates International Law: Bill C-585 Must be Withdrawn" (22 October 2014) online: <<http://www.amnesty.ca/news/public-statements/denying-social-assistance-to-refugee-claimants-violates-international-law-bil>>; See also Stephanie Levitz, "Refugee groups want welfare changes pulled from omnibus budget bill" *CBC News* (18 November 2014) online: <<http://www.cbc.ca/news/politics/refugee-groups-want-welfare-changes-pulled-from-omnibus-budget-bill-1.2838774>>.

⁷¹ See Meagan Fitzpatrick, "Refugee health benefits scaled back by Tories" *CBC News* (25 April 2012) online: <<http://www.cbc.ca/m/touch/politics/story/1.1164074>>.

health conditions posed a risk to public health or public security.⁷²

Some provinces agreed to provide access to health care and prescription medication, but in those cases there is a 4-6 week wait to access provincial social assistance benefits. These measures put the lives of refugees who require essential medicines and other health services at risk.⁷³

Medical professionals and medical associations, including the Canadian Medical Association, the Canadian Nurses Association and the Canadian Dental Association, have all raised serious health-related concerns about the cuts, and have urged the government to reinstate funding.⁷⁴

In July 2014, the Federal Court of Canada declared the cuts to be unconstitutional, finding them to be “cruel and unusual.”⁷⁵ The Federal Court also found that the withholding of healthcare specifically from refugee claimants coming from safe countries of origin was discriminatory.⁷⁶ The government is appealing the decision to the Federal Court of Appeal.⁷⁷ In November 2014, the government lost on a motion before the Federal Court of Appeal to suspend the lower Court’s remedy to restore health services to refugees while the appeal was proceeding, temporarily restoring healthcare pending the resolution of the case.⁷⁸

Canada also refuses to provide healthcare to migrants without legal status. In a 2011 case involving the right to health of irregular migrants in Canada, the Federal Court of Appeal held

⁷² See, for background information on the cuts and their impacts on the lives and well-being of refugees, *Canadian Doctors for Refugee Care v Canada (Attorney General)*, 2014 FC 651 [*Canadian Doctors for Refugee Care*].

⁷³ *Ibid.*

⁷⁴ Letter to Minister of Citizenship and Immigration Jason Kenney, from Canadian Association of Optometrists Canadian Medical Association, Canadian Nurses Association, Canadian Association of Social Workers, Canadian Dental Association, Canadian Pharmacists Association, College of Family Physicians of Canada, and Royal College of Physicians and Surgeons of Canada (18 May 2012) online:

< https://www.cda-adc.ca/_files/cda/news_events/media/news_releases/2012/kenneymay2012.pdf>.

⁷⁵ *Canadian Doctors for Refugee Care*, *supra* note 73 at paras 636, 669, 688, 691, 1080.

⁷⁶ *Ibid* at para 766.

⁷⁷ See Louise Elliott, “Refugee health-cuts ruling appealed by Ottawa” *CBC News* (1 October 2014) online: < <http://www.cbc.ca/news/politics/refugee-health-cuts-ruling-appealed-by-ottawa-1.2783819>>.

⁷⁸ See Susana Mas, “Refugee health care temporarily restored in most categories” *CBC News* (4 November 2014) online: < <http://www.cbc.ca/news/politics/refugee-health-care-temporarily-restored-in-most-categories-1.2823265>>.

that “[t]he Charter does not confer a freestanding constitutional right to health care”⁷⁹ and that withholding healthcare in that case was in accordance with principles of fundamental justice.⁸⁰ Leave to appeal the case to the Supreme Court of Canada was denied.

RECOMMENDATIONS

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- Permanently restore the Interim Federal Health Program for refugee claimants and refugees in Canada;
- Ensure equal access to essential healthcare for all individuals in Canada, including irregular migrants.

V. VIOLENCE AGAINST WOMEN (ARTS. 2, 10, 12)

In addition to the lack of progress in addressing staggeringly high rates of violence against Indigenous women in Canada, there has been little or no progress in reducing violence against non-Indigenous women and girls. Since publishing its groundbreaking survey on violence against women two decades ago, the Government of Canada has moved backwards, collecting less and less information about violence against women and girls.⁸¹ In a recent report, however, the Canadian Centre for Policy Alternatives estimated that rates of physical and sexual violence against women have risen by 2.4 percent for the adult population, while fewer and fewer of those crimes are being reported to the police.⁸² The study found that “on

⁷⁹ *Toussaint v Canada (Attorney General)*, 2011 FCA 213 at para 77.

⁸⁰ Section 7 of the *Canadian Charter of Rights and Freedoms* provides that “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

⁸¹ See Carol Goar, “Women struggle in information vacuum: Campaign to end violence against women stymied by lack of up-to-date information” *The Star* (23 September 2013) online:

<

http://www.thestar.com/opinion/commentary/2013/09/23/women_struggle_in_information_vacuum_goar.html>.

⁸² Kate McInturff, *The Gap in the Gender Gap: Violence Against Women in Canada* (Canadian Centre for Policy Alternatives, 2013) online:

<<https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/>

any given day, more than 8,256 women and children will seek protection from a shelter or transition home.”⁸³

Recently, Canada has frequently undermined the protection of sexual and reproductive rights in other countries, in important UN fora dealing with violence against women. At the UN Human Rights Council in June 2013, Canada drafted the annual resolution on violence against women, themed around sexual violence, and failed to include language adopted at the March 2013 UN Commission on the Status of Women outlining the full range of sexual and reproductive health services that should be made available to survivors of sexual violence.⁸⁴ In September 2013 at the UN General Assembly, Canada called for more action on early and forced marriage, and backed a United Kingdom initiative condemning sexual violence in conflict.⁸⁵ However, one week later, contrary to its international declarations, Canada stated publicly that it would not fund safe abortion services for rape survivors in its overseas aid projects.⁸⁶

RECOMMENDATIONS

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- Develop a comprehensive national plan of action to address violence against women in the country;
- Increase and enhance data collection on incidents of violence against women in Canada.
- Change Canada’s foreign policy stance on reproductive rights and fund safe abortion services for rape survivors in its overseas aid projects.

2013/07/Gap_in_Gender_Gap_VAW.pdf>.

⁸³ *Ibid* at 11.

⁸⁴ Government of Canada, *Draft Resolution: Accelerating Efforts to eliminate all forms of violence against women: preventing and responding to rape and other forms of sexual violence* (10 June 2013) online: < <http://blog.unwatch.org/wp-content/uploads/Resolution1.pdf>>.

⁸⁵ See Foreign Affairs, Trade and Development Canada, “Address by Minister Baird to the 68th Session of the United Nations General Assembly” (30 September 2013) online: <<http://www.international.gc.ca/media/aff/speeches-discours/2013/09/30a.aspx>>.

⁸⁶ See CBC News, “Canada won’t fund abortion in cases of war rape, child marriage” (4 October 2013) online: < <http://www.cbc.ca/news/politics/canada-won-t-fund-abortion-in->

VI. SOLITARY CONFINEMENT (ART. 12)

It its *General Comment No. 14* on the right to health, this Committee has stated that the right be free from torture is an integral component of the right to health under Article 12 of the *ICESCR*:

The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health⁸⁷

The practice of solitary confinement has become widespread in Canada as a "standard tool of population management to maintain the safety and security of the institution."⁸⁸ On any given day, about 850 of the 14,700 offenders in federal institutions are in segregation units, and the proportion in provincial institutions may be even higher.⁸⁹ According to Correctional Services Canada data, the average length of stay in segregation between 2006 and 2011 was 40 days, and 13 percent of segregated inmates stayed more than four months.⁹⁰

In 2012, the UN Committee against Torture expressed its concern at Canada's use of "solitary confinement, in the forms of disciplinary and administrative segregation, often extensively prolonged, even for persons with mental illness."⁹¹ The Committee recommended that Canada "limit the use of solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review," and

cases-of-war-rape-child-marriage-1.1912822>.

⁸⁷ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, 22nd Sess, UN Doc E/C.12/2000/4 (11 August 2000) at para 8 [emphasis added].

⁸⁸ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2011-2012* (2012) online: < <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20112012-eng.aspx>> [OCI Report].

⁸⁹ Kirk Makin, "Canadian Prisons 'Out of Step' on Solitary Confinement," *The Globe and Mail* (21 March 2013).

⁹⁰ OCI Report, *supra* note 88.

⁹¹ UN Committee against Torture *Concluding Observations*, 2012, *supra* note 14 at para 19.

“abolish the use of solitary confinement for persons with serious or acute mental illness.”⁹²

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2011 affirmed that being confined in isolation produces severe – and sometimes irreversible – physical and psychological effects, and can in certain circumstances amount to torture.⁹³ The tragic effects of such practices in Canada have been widely publicized in the case of Ashley Smith, a mentally ill teenager who, in 2007, after being held in solitary confinement for almost four years, died by self-inflicted strangulation under the watch of guards and supervisors. In 2013, a jury in the inquest into Ms. Smith’s death determined that it was a homicide.⁹⁴ In 2010, 24-year-old Edward Snowshoe killed himself after 38 days of being held in isolation at the federal Edmonton Institution. Prior to that, he had already spent 134 days in solitary confinement and tried to kill himself on three occasions at a different institution.⁹⁵ In December 2014, Canada dismissed the recommendations made in the Ashley Smith Inquiry, and refused to place limits on its practice of solitary confinement in federal prisons.⁹⁶

In January 2015, the British Columbia Civil Liberties Association and the John Howard Society of Canada filed a lawsuit against the federal government for its use of “administrative segregation” in prisons.⁹⁷

RECOMMENDATION

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- End Canada’s widespread use of solitary confinement in federal institutions, particularly with respect to persons with serious or acute mental illness,

⁹² *Ibid.*

⁹³ United Nations Human Rights Council, *Interim Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, 66th Sess, UN Doc A/66/268 (5 August 2011) at para 25.

⁹⁴ *Re Smith* (2013) online:
<<https://www.canlii.org/en/on/onocco/doc/2013/2013canlii92762/2013canlii92762.html?searchUrlHash=AAAAAQAVYXNobGV5IHNTaXRoIGhvbWljaWRIAAAAAAE>>.

⁹⁵ “He needed help. He got none” *The Globe and Mail* (14 July 2014).

⁹⁶ See Josh Wingrove, “Canadian government rejects solitary confinement limits” *The Globe and Mail* (11 December 2014) online:

<<http://www.theglobeandmail.com/news/politics/government-rejects-changes-to-limits-on-solitary-confinement/article22049695/>>.

⁹⁷ “John Howard Society, BCCLA sue Ottawa over solitary confinement” *CBC News* (19 January 2015) online: < <http://www.cbc.ca/news/canada/british-columbia/john-howard-society-bccla-sue-ottawa-over-solitary-confinement-1.2917930>>.

limiting its use as only a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review.

VII. FAILURE TO ADOPT A NATIONAL HUMAN RIGHTS-BASED HOUSING STRATEGY (ART. 11)

In 2006 this Committee recommended that Canada “address homelessness and inadequate housing as a national emergency[.]”⁹⁸ It emphasized the responsibility of courts to fully consider Canada’s international human rights obligations when interpreting the *Canadian Charter of Rights and Freedoms*, and urged the government to design and implement a national strategy to reduce homelessness.⁹⁹

The government has steadfastly refused to adopt a human rights based housing strategy. In February 2013, the government opposed and defeated private member’s legislation which called upon the Minister responsible for the Canada Mortgage and Housing Corporation to “establish a national housing strategy designed to respect, protect, promote and fulfil the right to adequate housing as guaranteed under international human rights treaties ratified by Canada.”¹⁰⁰

The right to adequate housing was taken up recently by the Ontario Court of Appeal in a case brought by a group of homeless people who argued that the Ontario and Canadian governments’ failure to develop a housing strategy had violated their rights under the *Canadian Charter of Rights and Freedoms*. The Court’s decision¹⁰¹ dismissed the landmark case without a full hearing, stating that right to housing was not justiciable under the *Charter* and that the *Charter’s* section 7 right to life and security of the person did not confer a “general freestanding right to adequate housing”¹⁰² One judge dissented, ruling that the case should have been allowed to proceed to a full hearing. The plaintiffs are seeking leave to appeal to the Supreme Court of Canada.

⁹⁸ CESCR *Concluding Observations*, 2006, *supra* note 1 at para 62.

⁹⁹ *Ibid*, paras 36, 62.

¹⁰⁰ Bill C-304, *An Act to Ensure Secure, Adequate, Accessible and Affordable Housing for Canadians*, 3rd Sess, 40th Parl, 2010.

¹⁰¹ *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852.

¹⁰² *Ibid* at 30.

RECOMMENDATION

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- Develop a national housing strategy designed to respect, protect, promote and fulfil the right to adequate housing including prioritising the crisis of homelessness.
- Recognize the indivisibility of human rights and comply with its international economic, social and cultural rights obligations when interpreting and applying the *Canadian Charter of Rights and Freedoms*.

VIII. DISCRIMINATION ON THE BASIS OF GENDER IDENTITY (ART. 2)

In Canada and worldwide, transgender individuals face a heightened risk of murder, assault and other crimes and human rights violations.¹⁰³ They also experience widespread discrimination with respect to employment, housing and other essential rights. The impact is devastating. Transgender individuals face some of the highest levels of depression and suicide of any sector in society.¹⁰⁴ Law reform is one of the many measures needed to better protect the rights of transgender individuals.

¹⁰³ United Nations Human Rights Council, *Resolution adopted by the Human Rights Council: 17/19 Human rights, sexual orientation and gender identity*, 70th Sess, UN Doc A/HRC/RES/17/19 (14 July 2011); United Nations Human Rights Council, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, 19th Sess, UN Doc A/HRC/19/41 (17 November 2011) at para 1 [A/HRC/19/41].

See also Jaime M Grant, Lisa A Mottet, Justin Tanis, Jack Harrison, Jody L Herman, and Mara Keisling, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011) at 3-6; and Catherine Taylor and Tracey Peter, *Every Class in Every School: Final Report on the First National Climate Survey on Homophobia, Biphobia, and Transphobia in Canadian Schools* (Toronto: Egale Human Rights Trust, 2011) at 15-17 online: <<http://egale.ca/wp-content/uploads/2011/05/EgaleFinalReport-web.pdf>>.

¹⁰⁴ Transgender youth in Ontario face a risk of suicide and substance abuse approximately 14 times that of their heterosexual peers. Canadian Mental Health Association Ontario, "Lesbian, Gay, Bisexual & Trans People and Mental Health" online: <<http://ontario.cmha.ca/mental-health/lesbian-gay-bisexual-trans-people-and-mental-health/>>.

Over the past decade there have been four attempts to strengthen Canadian legal protections for transgender individuals through private members legislation. The most recent effort, Bill C-279, *An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity)*, has passed the House of Commons but has been stalled in the Senate since 21 March 2013, where it faces opposition from a number of government-appointed Senators.¹⁰⁵ The Bill would add gender identity to the prohibited grounds of discrimination under the Canadian Human Rights Act as well as the hate crime provisions in the Criminal Code. Bill C-279 has been endorsed by the police, who indicate it would significantly improve their ability to investigate and punish crimes committed against transgender individuals.¹⁰⁶

RECOMMENDATION

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- Ensure the speedy passage of Bill C-279, in its current form, by the Senate and effective implementation.

IX. CORPORATE ACCOUNTABILITY, TRADE, AND HUMAN RIGHTS (ARTS. 1, 7, 11, 12)

Canadian mining companies dominate the industry worldwide and now operate in every corner of the globe, not shying away from the frontlines of armed conflict, grave human rights violations, and extreme poverty.¹⁰⁷ In 2010 the government opposed private member's

¹⁰⁵ 1st Sess, 41st Parl, 2013 (Second Reading in the Senate) status of Bill online: <<http://www.parl.gc.ca/LEGISInfo/BillDetails.aspx?Language=E&Mode=1&billId=6251806>>.

¹⁰⁶ Standing Senate Committee on Legal and Constitutional Affairs, Issue 18, Evidence (9 October 2014) (Superintendent Don Sweet, Criminal Investigations Directorate, Ottawa Police Service) online: <<http://www.parl.gc.ca/content/sen/committee/412/LCJC/18EV-51642-E.HTM>>.

¹⁰⁷ Amnesty International has pointed to human rights concerns associated with the operations of several Canadian companies around the world: see, e.g. Amnesty International, *Guatemala: Impunity, insecurity and discrimination. Amnesty International Submission to the UN Universal Periodic Review* (November 2012) online:

<<http://www.amnesty.org/en/library/asset/AMR34/004/2012/en/989d1e67-cd75-40e2-97cf-229fe23cd150/amr340042012en.pdf>>; Amnesty International, *Guatemala: Submission to the UN Human Rights Committee for the 104th Session of the Human Rights Committee*

legislation¹⁰⁸ establishing human rights standards for Canadian extractive companies. On 1 October, 2014, Bill C-584, a private member's Bill calling for the creation of an ombudsperson for the corporate social responsibility (CSR) of Canadian extractive corporations working outside Canada, was also defeated.¹⁰⁹ A CSR strategy centered on voluntary participation of companies was instituted in 2009, but the work of the CSR Counsellor at the centre of that strategy has been hampered by the refusal of companies to cooperate in the complaints process. Moreover, the CSR Counsellor's position has been vacant now for over a year.

In November 2014, the federal government's revised CSR strategy, *Doing Business the Canadian Way*,¹¹⁰ conditions the ability of companies to access assistance through what the

(March 2012) online:

<<http://www.amnesty.org/en/library/asset/AMR34/001/2012/en/f787f76b-edfe-478a-bbfb-c612ce3b507e/amr340012012en.pdf>>; Amnesty International, *Undermining Rights: Forced evictions and police brutality around the Porgera Goldmine, Papua New Guinea* (January 2010) online:

<<http://www.amnestyusa.org/sites/default/files/asa340012010eng.pdf>>; Amnesty International, "Salvadoran environmental activists killed and radio station staff threatened" (5 January 2010) online: < <http://www.amnesty.org/en/news-and-updates/salvadoran-environmental-activists-killed-radio-station-staff-threatened-20100105>>; Amnesty International, "Mexico: Protester's family at risk after killing" (3 December 2009) online:

<<http://www.amnesty.org/en/library/asset/AMR41/062/2009/en/6624dc3e-f9d5-4ed6-9044-8ad6a756b1a9/amr410622009en.pdf>>; Amnesty International, "Mexico: Activists under threat" (10 September 2009) online: <

<http://www.amnesty.org/en/library/asset/AMR41/047/2009/en/9964b9d6-d2bb-4fce-b6f7-fc61139c4390/amr410472009en.pdf>>; Amnesty International, "Ecuador: Fear for safety" (25 July 2007) online:

<<http://www.amnesty.org/en/library/asset/AMR28/002/2007/en/5b94fe02-d378-11dd-a329-2f46302a8cc6/amr280022007en.pdf>>; Amnesty International, "Ecuador: Further information on fear for safety" (24 August 2007) online: <

<http://www.amnesty.org/en/library/asset/AMR28/003/2007/en/5a1f0ad2-d36e-11dd-a329-2f46302a8cc6/amr280032007en.pdf>>; Amnesty International, "Quebec court decision in Kilwa Massacre DRC case denies right to remedy for victims of corporate human rights abuses" (1 February 2012) online: < <http://www.amnesty.ca/news/news-item/quebec-court-decision-in-kilwa-massacre-drc-case-denies-right-to-remedy-for-victims-o>>.

¹⁰⁸ Bill C-300, *An Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries*, 3rd Sess, 40th Parl, 2010.

¹⁰⁹ Bill C-584, *Corporate Social Responsibility of Extractive Corporations Outside Canada Act*, 2nd Sess, 41st Parl, 2013 online: < <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&Bill=C584&Parl=41&Ses=2>>.

¹¹⁰ Government of Canada, *Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad* (November 2014)

government terms “economic diplomacy” on the companies’ compliance with CSR best practices and willingness to participate in the CSR strategy’s dispute resolution processes. “Economic diplomacy” includes receiving support from the Trade Commissioner Service, government letters of support, participation in government trade missions and support from Export Development Canada.¹¹¹ While a welcomed small step, as the Canadian Network on Corporate Accountability has noted, the new CSR Strategy still fails to establish an independent Ombudsperson to investigate human rights complaints against transnational corporations operating abroad, despite widespread public support for such a role to be created.¹¹²

In 2007 the Committee on the Elimination of Racial Discrimination (CERD) expressed concern over “reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada on the right to land, health, living environment and the way of life of indigenous peoples living in these regions.”¹¹³ The CERD urged Canada to implement laws to hold transnational corporations registered in Canada accountable for their human rights abuses abroad.¹¹⁴

Judges have generally ruled that cases launched by victims of corporate human rights abuses should be heard in the country where the mine is located rather than in Canada or have dismissed such lawsuits at the outset on other grounds. However, the Ontario Superior Court recently ruled that a case against HudBay Minerals related to its operations in Guatemala may proceed in Canadian courts. The Hudbay case involves allegations by Maya-Q’eqchi villagers from eastern Guatemala that security personnel employed by Hudbay Minerals’ local subsidiary shot and killed school teacher Adolfo Ich Chamán, shot and paralyzed youth German Chub Choc, and gang-raped 11 Maya-Q’eqchi’ women. Hudbay Minerals did not appeal the decision, and a hearing will be conducted before the Ontario Superior Court.¹¹⁵ Given that the Hudbay decision came from a lower court, its precedential value remains to be seen. In June 2014, a new action was filed by seven men in British Columbia against

online: < http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Enhanced_CS_Strategy_ENG.pdf >.

¹¹¹ *Ibid* at 12-13.

¹¹² See Canadian Network on Corporate Accountability, “Government fails to create an extractive-sector Ombudsman, despite broad public support” (14 November 2014) online: < <http://cnca-rcrce.ca/government-fails-to-create-an-extractive-sector-ombudsman-despite-broad-public-support/>>.

¹¹³ CERD *Concluding Observations*, 2007, *supra* note 16 at para 17.

¹¹⁴ *Ibid*.

¹¹⁵ See Bertrand Marotte, “Guatemalan mine claims against HudBay can be tried in Canada, judge says” *The Globe and Mail* (23 July 2013) online: < <http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/guatemalan-mine-claims-against-hudbay-can-be-tried-in-canada-judge-says/article13360800/>>.

Canadian company Tahoe Resources for injuries suffered when Tahoe's security personnel allegedly opened fire on them at close range during a peaceful protest against the mine.¹¹⁶ On 20 November 2014, yet another lawsuit was filed by three Eritrean men against Nevsun Resources Limited over the use of slave labour at their Bisha Mine in Eritrea.¹¹⁷

As for existing non-judicial grievance mechanisms, such as Canada's National Contact Point to the Organization for Economic Cooperation and Development,¹¹⁸ they have proven to be disappointing failures.¹¹⁹

The failure to adopt human rights standards for Canadian companies is exacerbated by a failure to anchor Canada's trade policies in a strong human rights framework. Canada continues to pursue bilateral and multilateral free trade agreements without specific attention to or incorporation of international human rights obligations. This is a particularly troubling omission given that recent trade agreements have been negotiated with countries that have

¹¹⁶ See Canadian Centre for International Justice, "Guatemalans file lawsuit against Canadian mining company for 2013 shooting" (18 June 2014) online: < http://www.cciij.ca/media/news-releases/index.php?DOC_INST=4>.

¹¹⁷ See Canadian Centre for International Justice, "Eritreans file lawsuit against Canadian mining company for slave labour and crimes against humanity." (20 November 2014) online: < http://www.cciij.ca/media/news-releases/index.php?DOC_INST=6>.

¹¹⁸ Foreign Affairs, Trade and Development Canada, "Canada's National Contact Point (NCP) for the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (MNEs)" (21 March 2014) online: < http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/index.aspx?lang=eng&menu_id=1&menu=R>.

¹¹⁹ For instance, Canadian NGO Mining Watch Canada reports that a complaint submitted to the National Contact Point regarding human rights harms by communities affected by Canadian company Goldcorp in Guatemala was closed without ruling on the allegations of human rights violations. See Mining Watch Canada, "Canadian government Abdicates Responsibility to Ensure Respect for Human Rights" (6 May 2011) online, Mining Watch Canada: < <http://www.miningwatch.ca/news/canadian-government-abdicates-responsibility-ensure-respect-human-rights>>. Similarly, on 25 July 2013, the International Federation for Human Rights, The Comision Ecumenica de Derechos Humanos, and MiningWatch Canada filed a complaint to the National Contact Point regarding the actions of company Corriente Resources and its Subsidiary Ecuacorriente in the Ecuadorian Amazon, including the militarization of the region and forced displacement of communities. A year later, the complainants had not yet received even a preliminary assessment of the case, despite the National Contact Point procedures indicating that this step should be undertaken within three months: See MiningWatch Canada, "Human Rights Organizations Urge Canada to Take Action Against Corporate Abuses in Ecuador" (27 June 2014) online: < <http://www.miningwatch.ca/news/human-rights-organizations-urge-canada-take-action-against-corporate-abuses-ecuador>>.

worrying human rights records, such as Colombia¹²⁰ and Honduras.¹²¹

The agreement with Colombia includes a requirement for yearly reports assessing the human rights impact of the deal to be prepared by both governments and tabled in their respective Parliaments. A growing number of Canadian natural resource companies are active in Colombia. Despite being informed on numerous occasions by representatives of the National Indigenous Organization of Colombia about concerns over serious human rights abuses associated with the resource extraction sector in Colombia, including economic, social and cultural rights that threaten the physical and cultural survival of indigenous communities, the Canadian government has failed to address these concerns in any way in its yearly reports.¹²²

RECOMMENDATIONS

AMNESTY INTERNATIONAL RECOMMENDS THAT THE CANADIAN AUTHORITIES SHOULD:

- Pass laws that ensure access to Canadian courts for victims of human rights abuses arising from the overseas operations of Canadian extractive firms;
- Ensure the creation of an extractive-sector Ombudsperson, with the power to independently investigate complaints into human rights abuses and make recommendations; and
- Institute a policy of ensuring that all trade deals are subject to independent and comprehensive human rights impact assessments before they are concluded and at regular intervals after coming into force.

¹²⁰ *Canada-Colombia Free Trade Agreement*, 21 November 2008, online: <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/can-colombia-toc-tdm-can-colombie.aspx>>.

¹²¹ *Canada-Honduras Free Trade Agreement*, 3 November 2013, not yet in force, online: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/honduras/toc-tdm.aspx?lang=eng>>.

¹²² See, e.g. "Government report on human rights abuses in Colombia a 'sham'" *CBC News* (21 May 2014) online: <<http://www.cbc.ca/news/politics/government-report-on-human-rights-abuses-in-colombia-a-sham-1.2649163>>.



www.amnesty.org