

2019

**AMNESTY
INTERNATIONAL**



BUILDING HOPE, ADDRESSING INJUSTICE

**AMNESTY INTERNATIONAL'S
2019 HUMAN RIGHTS REPORT CARD
AND AGENDA FOR CANADA**



BUILDING HOPE, ADDRESSING INJUSTICE

AMNESTY INTERNATIONAL'S 2019 HUMAN RIGHTS AGENDA FOR CANADA



Alex Neve
Secretary General
Amnesty International Canada
(English branch)
aneve@amnesty.ca
1-800-AMNESTY
@AlexNeveAmnesty



France-Isabelle Langlois
Executive Director
Amnistie internationale
Canada francophone
filanglois@amnistie.ca
1-800-565-9766
@filanglois

COVER PHOTO:

Amnesty human rights defenders gather for an International Women's Day event in Toronto in March 2018.

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AMNESTY INTERNATIONAL'S 2019 HUMAN RIGHTS AGENDA FOR CANADA



INTRODUCTION

“Inequalities stir grievances and unrest; fuel hatred, violence, and threats to peace; and force people to leave their homes and countries. Inequalities undermine social progress, and economic and political stability. But human rights build hope. They bind humanity together with shared principles and a better future, in sharp contrast to the divisive, destructive forces of repression, exploitation, scapegoating, discrimination – and inequalities.”¹

United Nations High Commissioner for Human Rights Michelle Bachelet’s address to the UN Human Rights Council earlier this year took place against a backdrop of numerous troubling challenges to the respect and protection of universal human rights.

Conflict, turmoil and repression continue and even expand in far too many corners of the world, from Yemen to Myanmar, Gaza to South Sudan, and Nicaragua to Syria. A growing number of leaders – nationally and locally, spanning the globe – actively promote political agendas that spread fear, bigotry and hate, including in the United States, Brazil, Hungary, Russia and the Philippines.

In far too many countries, violence and discrimination deepen against women and girls, LGBTI communities, racial, ethnic and religious minorities, refugees and migrants, Indigenous peoples, human rights defenders, journalists and others who are at heightened risk of human rights abuse. Women’s rights activists are jailed in Saudi Arabia. China confines over one million Uyghurs and other Muslim minorities in detention camps. Indigenous land defenders are killed in Honduras, Guatemala and Mexico. The



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Outside the Royal Embassy of Saudi Arabia, Ottawa, Sept. 27, 2018.

¹ High Commissioner Bachelet calls on States to take strong action against inequalities, 6 March, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24265&LangID=E>.

Mediterranean continues to be a watery grave for refugees and migrants seeking safety in Europe. Members of the LGBTI community are arbitrarily arrested and tortured in Chechnya.

And the overarching specter of ineffective and inadequate responses from governments to climate change poses what may, in many respects, be the most serious human rights threat of our time.

Despite, and also directly because of, these daunting challenges, individually and collectively, people everywhere mobilize, organize and speak out in ever growing numbers in defense of human rights. In the face of growing risk and peril, vilification and punishment, human rights defenders – particularly those experiencing discrimination because of who they are and what they defend including women, LGBTI, Indigenous, and land defenders – courageously confront violence and injustice and demand that rights be respected. Wide-ranging protest movements – such as those in the streets of Sudan, Venezuela, Zimbabwe, Algeria and Haiti as this report was being finalized – are fueled by demands for democratic and human rights reforms.

If ever there was a time for governments to demonstrate steadfast resolve in advancing a strong human rights agenda, this is that time. Yet such leadership is too infrequently on display. Instead, narrow nationalistic agendas, crass business and trade interests and opportunistic geo-political jockeying dominate global and national affairs, leaving human rights as a second thought at best.

That failure continues to be a harsh reality in Canada, where the extreme inequalities facing First Nations, Inuit and Métis families and communities stands in sharp and disgraceful contrast to the persistent failure of governments in Canada to recognize and uphold their land rights.



The first of these stakes was driven into the slopes over the Peace River by BC Hydro to mark a new road planned as part of the construction of the Site C dam. The path of the road threatened First Nations graves and cultural sites and the homes of local farmers. Hundreds of other stakes have since been added symbolizing solidarity with First Nations land rights from supporters across Canada and around the world.

Canada's record of upholding the country's international human rights commitments domestically has stalled and, in some instances, ground has been lost.

In this pressing global context, Amnesty International's 2019 Human Rights Agenda for Canada assesses the country's adherence to human rights obligations over the past year and lays out recommendations for reform and action going forward.

This is of particularly vital importance at a time when there have been worrying indications of a rise in polarizing and divisive politics, notable in debates and positions about refugee and immigration policy. Also apparent is the lack of concrete progress to address deep-rooted injustice and inequity faced by Indigenous peoples and by racialized communities, evident in the failure to

respect the land rights of Indigenous peoples when large-scale resource development and other projects are in play, and the clear record of racist and biased policing with respect to Black and other racialized communities across the country.

The Canadian government continues to take a number of initiatives which do demonstrate international human rights leadership, such as efforts globally to strengthen protection of LGBTI rights and to support the UN's Global Compacts on Refugees and Migration. There are also examples of Canadian responses to pressing concerns in other countries which have been very welcome, such as speaking out for jailed women human rights defenders in Saudi Arabia and taking a strong position with respect to the Rohingya crisis in Myanmar.

However, Amnesty International is concerned that over the past year, Canada's record of upholding the country's international human rights commitments domestically has stalled and, in some instances, ground has been lost. Critically, despite many important and welcome commitments to address pressing human rights concerns within Canada, particularly the long overdue work of reconciliation with Indigenous peoples, the domestic track record of federal, provincial and territorial governments is at best mixed. This too has an impact on the international stage, undermining Canada's credibility at a time when human rights champions are so desperately needed.

That is reflected in Amnesty International's assessment of progress in advancing 32 recommendations presented in the organization's 2018 Human Rights Agenda for Canada, released in February 2018. Only one has been found to have been fully implemented. Another 6, while incomplete, are at least well underway. A further 14 are in progress but face uncertainty or a degree of concern. And finally, Amnesty International has identified 11 recommendations for which there are serious concerns or where there has been no meaningful progress.

It is a crucial time for shoring up human rights protection across Canada and for demonstrating a strong Canadian commitment to human rights on the world stage. Canada's campaign for a seat on the UN Security Council for the two-year period beginning in January 2021 will come to a vote just over a year from now, in mid-2020. Over the coming year, therefore, there will be even greater attention to Canada's record of implementing its human rights obligations at home and championing human rights on the world stage.

Notably, of course, there will be a federal election in October 2019. Amnesty International will be looking to all political parties to commit to the recommendations in this Human Rights Agenda as part of their electoral platforms.

Amnesty International's 2019 Human Rights Agenda for Canada primarily lays out recommendations for action by the federal government, as has been the case in past editions of the Agenda. However, this year for the first time there are a number of recommendations directed as well at provincial and territorial governments, either as a whole or, in some instances, to specific provincial governments. This is reflective of the fact that Amnesty International's research, campaigning and advocacy in recent years has increasingly responded to a number of international human rights concerns which are very much within the authority and responsibility of provincial governments, notably in British Columbia, Ontario and Quebec.

Highlighting the role of provincial and territorial governments is also critical because at the end of the day, Canada's international human rights obligations are shared collectively by all levels of government in the country. How matters are divvied up within the Canadian Constitution or other national laws does not detract from the fundamental principle that it is Canada, as an entire nation, which must ensure that universal human rights are protected across the country.

Looking ahead, Amnesty International offers 38 recommendations for action in six areas:

Rights of Indigenous peoples

Gender equality

Protecting refugees and migrants

Business, trade and human rights

Justice, policing and security

Advancing human rights globally

As UN High Commissioner Michelle Bachelet underscores, human rights build hope and bind humanity together with shared principles and a better future. The need for governments across Canada to take up that call and put human rights first is increasingly urgent. This Human Rights Agenda concretely demonstrates that the opportunities and openings to do so are clear and pressing, and must be advanced through serious action by federal, provincial and territorial governments across the country.

This 2019 Human Rights Agenda includes an evaluation of the 32 recommendations that were included in Amnesty International's 2018 Human Rights Agenda for Canada. The Report Card assigns four different grades:

HUMAN RIGHTS GRADING SYSTEM



GREEN Recommendation has been met.



AMBER Underway, but incomplete.



ORANGE In progress, but with uncertainty or concern



RED Serious concerns or no progress.



UPHOLD THE RIGHTS OF INDIGENOUS PEOPLES

2018 REPORT CARD

In *Shoring up Rights in a Turbulent Time*, the organization's 2018 Human Rights Agenda for Canada, Amnesty International made seven recommendations regarding a range of measures urgently required to address what the Canadian government regularly acknowledges to be the country's most serious and entrenched human rights failure, the pervasive and wide-ranging violations of the rights of Indigenous peoples.



Suspend all construction on the Site C dam

Construction of the Site C dam has not been suspended and continues at this time, despite continued opposition from the West Moberly and Prophet River First Nations. Amnesty International's 2018 recommendation had been directed to the federal government. And while much of the responsibility for recent decisions and positions taken in court proceedings allowing construction to advance lies with the provincial government in British Columbia, the federal government has not taken any active steps to exercise its own authority to halt construction. The federal government did not oppose (but also did not explicitly support) an application for an injunction on ongoing construction brought by the West Moberly First Nation as part of a treaty rights lawsuit currently underway in BC. The injunction was strenuously opposed by the BC government and BC Hydro and was ultimately denied in an October 2018 BC Supreme Court ruling. The federal government was to report back to the UN Committee on the Elimination of Racial Discrimination by August 2018 regarding the Committee's 2017 call for suspension of Site C.² However, Canada's interim report was not submitted until March 2019³ and did not provide any substantive update, relying instead on the fact that the Committee has now also taken up⁴ the Site C situation through its Early-Warning Measures and Urgent Action Procedures and indicating that a full reply will be provided in Canada's response to that process.

² Committee on the Elimination of Racial Discrimination, Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada, UN Doc CERD/C/CAN/CO/21-23, Paras 20(e) and 40, tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCAN%2fCO%2f21-23&Lang=en.

³ Government of Canada, "Interim Report in follow-up to Canada's review before the United Nations Committee on the Elimination of Racial Discrimination," (4 March 2019), tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCAN%2fCO%2f21-23%2fADD.1&Lang=en.

⁴ Mr. Nouredine Amir (Chair of the Committee on the Elimination of Racial Discrimination), Urgent Letter to Permanent Representative of Canada to the United Nations Office in Geneva, Rosemary McCarney (14 December 2018) UN Doc: CERD/EWUAP/Canada-Site C dam/2018/JP/ks, tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ALE_CAN_8818_E.pdf.



Adopt a legislative framework for implementation of the UN Declaration on the Rights of Indigenous Peoples to guide and ensure collaboration with Indigenous peoples, reform law and policy, elaborate a national action plan, and bring about Parliamentary and public accountability.

Bill C-262, a private members bill that establishes a legislative framework for the implementation of the UN Declaration on the Rights of Indigenous Peoples has been supported by the Liberal, NDP and Green parties.⁵ In May 2018, the bill won an overwhelming majority of support in the House of Commons – passing by a margin of 206 to 79.⁶ It is now before the Senate. Passage of Bill C-262 will require the federal government to work in cooperation with First Nations, Inuit, and Métis peoples to develop a national action plan for implementing the Declaration. Further, it provides for a collaborative process to reform Canada’s laws, policies, and operational practices, to bring them into line with human rights commitments affirmed in the UN Declaration.



Integrate provisions for the right of free, prior and informed consent, consistent with international human rights standards, into all decisions affecting the land rights of Indigenous peoples.

The federal government has made public commitments to support free, prior and informed consent (FPIC), the right of Indigenous peoples to make their own decisions whether or not projects should proceed when their rights are at risk. Crown Indigenous Relations Minister Carolyn Bennett has called FPIC the “heart” of the UN Declaration, which the government committed to fully implement without reservation. Measures to either reform federal laws and policies (as called for by Bill C-262, discussed above) or to interpret federal laws in light of the Declaration (as required by Bills C-68 and C-69, currently before the Senate) open the door to the implementation of FPIC. New impact assessment legislation in British Columbia includes explicit FPIC provisions. However, a consistent and principled implementation of FPIC has yet to be realized by federal, provincial and territorial governments.

Canada drew concern and criticism from UN treaty bodies in 2018 for its continued support of mega-projects that were approved despite explicit opposition from affected First Nations. In December, for example, the UN Committee on the Elimination of Racial Discrimination (CERD) issued two separate letters under their Early-Warning Measures and Urgent Action Procedures calling on Canada to seek independent, expert advice on the implementation of FPIC. One letter was issued in response to an ongoing First Nations legal challenge to the Site C dam (discussed above). The other letter concerned the federal government’s support for the Trans Mountain pipeline despite strong opposition from affected First Nations in British Columbia.



Ensure that the decision-making process around large-scale resource development projects includes meaningful gender-based analysis of possible impacts and necessary mitigation.

There is ample evidence that large-scale resource development projects, particularly those dependent on large numbers of temporary workers, can have distinct, unintended and harmful impacts on women and girls, and Indigenous women and girls in particular. From increased exposure to risks of violence, to decreased access to strained social services, Amnesty’s 2016 report, *Out of Sight, Out of Mind: Gender, Indigenous Rights, and*

5 John Paul Tasker, “Liberal government backs bill that demands full implementation of UN Indigenous rights declaration” CBC (21 November 2017), www.cbc.ca/news/politics/wilson-raybould-backs-undrip-bill-1.4412037.

6 “Romeo Saganash’s Indigenous rights bill passes in the House of Commons” CBC (30 May 2018), www.cbc.ca/news/politics/saganash-undrip-bill-passes-1.4684889.

Energy Development in Northeast British Columbia, Canada, clearly shows how irresponsible it is to ignore these impacts.⁷ Failure to identify and mitigate these impacts inevitably compounds already unacceptable risks to the lives of Indigenous women, girls, and two-spirited persons.⁸

Canada's current regulatory framework for resource development projects falls short when it comes to assessing or mitigating the human rights impact of resource development projects, particularly impacts on Indigenous women, girls, and two-spirit people. The Site C dam environmental assessment, for example, noted how jobs created by the project would draw more workers to the region, likely reducing access to affordable housing, but failed to consider whether increased housing insecurity might affect women differently than men, and whether some groups of women – for example, Indigenous women – would face a heightened risk of experiencing housing insecurity and homelessness.⁹ In contrast, the Peace Project, a research initiative carried out on behalf of the Fort St. John Women's Resource Society, identified insecure housing as a critical risk factor for violence against women, with local service providers identifying affordable housing as the top need for those women and girls most at risk of violence.¹⁰

In a positive step, Bill C-69, which has been passed by the House of Commons and is currently being reviewed by the Senate, would reform Canadian law to require gender-based analysis as part of a more holistic impact assessment framework. Amnesty International welcomes this move to ensure that future assessments will consider how social, economic, health, and environmental impacts may be different for people of different genders.¹¹ Amnesty also welcomes similar provisions passed in new BC legislation with little fanfare or protest in November 2018.¹²

Unfortunately, Bill C-69's much needed policy change is facing strong opposition. Numerous political representatives and media personalities have proliferated harmful misrepresentations of gender-based analysis as a cumbersome process that would slow project approvals and damage industry interests. This fear mongering is wide of the mark, however. Gender-based analysis is an essential and practical tool for industry to understand, assess, and mitigate potential harms, and thus better meet their own moral and legal obligations. Notably, some Canadian corporations involved in international projects funded through Canadian overseas development assistance or multilateral development banks may already have experience with how such assessments can be conducted.



Ensure all First Nations, Métis, and Inuit people fleeing violence have access to culturally-relevant programming, emergency shelters, and transition houses.

In 2016, Amnesty International welcomed the launch of the National Inquiry into Missing and Murdered Indigenous Women and Girls, while cautioning that government should immediately act to implement previously identified solutions as promised.¹³ Unfortunately, such action was not taken. Similarly, the federal

7 Amnesty International, *Out of Sight, Out of Mind: Gender, Indigenous Rights, and Energy Development in Northeast British Columbia, Canada*, Index: AMR 20/4872/2016 (2016) pp 17, 33-35, www.amnesty.ca/sites/amnesty/files/Out%20of%20Sight%20Out%20of%20Mind%20EN%20FINAL%20web.pdf.

8 Amnesty International Canada's Submissions on Bill C-69 (6 April 2018), www.ourcommons.ca/Content/Committee/421/ENVI/Brief/BR9830980/br-external/AmnestyInternationalCanada-e.pdf.

9 Amnesty International, *Out of Sight, Out of Mind*, supra note 7, at p 70.

10 Clarice Eckford and Jillian Wagg, *The Peace Project: Gender Based Analysis of Violence against Women and Girls in Fort St. John* – revised, Fort St. John Women's Resource Society (2014) pp17-18, thepeaceprojectfsj.files.wordpress.com/2014/03/the_peace_project_gender_based_analysis_amended.pdf.

11 Amnesty International Canada's Submissions on Bill C-69, supra note 8.

12 Bill 51, *Environmental Assessment Act*, 3rd Sess, 41st Parl, British Columbia, 2018 (assented to 27 November 2018).

13 Alex Neve, "Amnesty International responds to launch of National Inquiry into Missing and Murdered Indigenous Women and Girls" Amnesty International (3 August 2016), www.amnesty.ca/news/amnesty-international-responds-launch-national-inquiry-missing-and-murdered-indigenous-women.



Activists show solidarity for families of missing and murdered Indigenous women and girls during a Sisters in Spirit vigil, Parliament Hill, Oct. 4, 2018.

government did not respond to recommendations made in the Inquiry's interim report, which was issued in November 2017, until June 2018.¹⁴ Even then, key recommendations – such as the creation of a police task force to review unresolved missing persons and homicides where there are concerns over the adequacy of the initial investigation¹⁵ – were not addressed. This delay in taking long overdue action has increased frustrations and placed added strain on survivors and family members. Amnesty International is greatly concerned that the release of the final report, so close to a federal election, could result in further delays to much needed action.

Canada's persistent failure to take up and address recommendations made by families of the missing and murdered, frontline service providers, regional and national Indigenous peoples' organizations, international human rights bodies, and previous inquiries¹⁶ through a coordinated and comprehensive human rights-based approach, has betrayed survivors of violence as well as the families and communities. Some actions have been taken, but they have been too few, and have been piecemeal at best. The United Nations Committee on the

14 Gloria Galloway, "Head of inquiry into missing, murdered Indigenous women says scope will narrow after extension limited to six months" The Globe and Mail (5 June 2018), www.theglobeandmail.com/politics/article-ottawa-allows-extension-for-inquiry-into-missing-murdered-indigenous/.

15 "Interim report of MMIWG National Inquiry underlines urgent need for immediate government action" Amnesty International (1 November 2017), www.amnesty.ca/news/interim-report-mmiwg-national-inquiry-underlines-urgent-need-immediate-government-action.

16 See, e.g., CEDAW, Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, UN Doc CEDAW/C/OP.8/CAN/1 (2015), undocs.org/CEDAW/C/OP.8/CAN/1; IACHR, Missing and Murdered Indigenous Women in British Columbia, Canada, Inter-Am C.H.R., OEA/Ser.L/V/II, Doc. 30/14 (2014), www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf; Wally T. Oppal, Forsaken: the Report of the Missing Women Commission of Inquiry, 19 November 2012, Vol. I, www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf.

Elimination of Discrimination against Women (CEDAW) noted in 2015 that, “although the Committee notes the recent increased efforts by the State party to address these problems, it regrets that such efforts remain fragmented and is of the view that the magnitude of the required changes cannot be achieved by piecemeal reforms of existing programmes and services.”¹⁷ CEDAW concluded that the government’s failure to institute the magnitude of required action constituted a “grave violation” of Indigenous women’s human rights.¹⁸ Amnesty International considers this assessment to still be accurate at this time.



Adopt policies and protocols surrounding officer recruitment, training, and deployment to increase the numbers of experienced officers serving remote and northern First Nations, Métis, and Inuit communities; ensure all officers have appropriate training to ensure gender-sensitive, culturally-competent response to community needs; and reduce the high turn-over rates that create barriers to building trust and positive working relations with these communities.

While First Nations, Inuit, and Métis people are over-represented in the criminal justice system, they are all too often denied substantive equality in access to protection and justice. Numerous inquiries and studies have found that First Nations, Inuit, and Métis peoples are over policed and under protected. Systemic bias, insufficient cultural competence, under-representation of Indigenous persons in police services, and a gulf of mistrust fed by the use of police to enforce unjust laws against Indigenous peoples all contribute to a status quo where Indigenous peoples who come into contact with the law are more likely to experience abuse and less likely to receive the protection they may need, such as the prompt investigation of the disappearance of a loved one.¹⁹ While progress is being made in many police services, efforts to reform policing often fall short of what is required to address such deep-rooted patterns.

These factors are compounded by inadequate access to independent civilian oversight and accountability mechanisms to address issues of bias or mishandled cases. The need for independent, and specifically civilian, oversight was made painfully clear in the wake of the Val-d’Or accusations. When no charges were laid against eight Quebec officers accused of abuse of power and sexual assault against Indigenous women, community members and Indigenous leaders warned of increased lack of trust, fear of reprisals for victims brave enough to speak out, and the increasing likelihood that other women would avoid coming forward in future.²⁰

These concerns are particularly acute in northern communities. A number of factors, including remoteness, the effects of economic marginalization, and the impacts of hosting the large, transient work forces on which resource development industries rely, may create unique policing demands. Instead of prioritizing these communities to be served by experienced police officers, the RCMP has long treated them as training grounds where rookie officers can prove themselves or be weeded out. Short rotations also further limit the opportunities for these officers to develop cultural competency and overcome barriers of mistrust.

17 CEDAW, Report of the inquiry, UN Doc CEDAW/C/OP.8/CAN/1, supra note 16, at para 172.

18 Ibid. at para 214.

19 See, e.g., Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform (Saskatchewan Justice Reform Commission), Final Report, Regina, 2004; Report of the Aboriginal Justice Inquiry of Manitoba: The Deaths of Helen Betty Osborne and John Joseph Harper, Commissioners A.C. Hamilton and C.M. Sinclair, 1991.

20 Benjamin Shingler, “‘Our women should not be silenced, intimidated or discouraged,’ AFN regional chief says” CBC (16 November 2016) www.cbc.ca/news/canada/montreal/indigenous-reaction-police-abuse-charges-val-d-or-1.3853031; and Ingrid Peritz, “Aboriginal women ‘feel anger’ no charges laid against Val-d’Or officers” Globe and Mail (18 November 2016) www.theglobeandmail.com/news/national/two-retired-quebec-police-officers-charged-after-val-dor-assault-investigations/article32928990/.



Fully implement the Canadian Human Rights Tribunal ruling calling for the elimination of discrimination in provision of child and family services to First Nations.

In 2016, the Canadian Human Rights Tribunal issued a landmark ruling that the Canadian government had discriminated against First Nations children by underfunding First Nations' child and family services.²¹ The Tribunal also ordered Ottawa to respect Jordan's Principle and ensure that jurisdictional disputes between federal and provincial governments do not obstruct effective delivery of services to First Nations children and that all First Nations children have access to essential services.²²

Progress in addressing the Tribunal's ruling has been hard won and the result of tireless advocacy led by the First Nations Child and Family Caring Society (FNCFCS). In February 2018, for example, the FNCFCS secured a fifth non-compliance order from the Tribunal addressing the federal government's continued failure to fully implement the Tribunal's 2016 ruling.²³ The ruling emphasized that "the seriousness and emergency of the issue" is still "not grasped with some of Canada's actions and responses," and urged that Canada not delay addressing specific, urgent needs expressed by First Nations.²⁴

In 2018, the federal government, under the direction of then Indigenous Services Minister Jane Philpott, made considerable progress in finally adjusting how it determines levels of funding for First Nations child and family services on reserves and began eliminating the drastic funding gap facing these agencies.²⁵ The government also made significant wider commitments to equitable funding for child and family services for all First Nations, Inuit, and Métis children.

However, the federal government continues to defend a narrow interpretation of Jordan's Principle. Jordan's Principle, consistent with international human rights standards requiring governments to put the best interests of children first, is intended to ensure that jurisdictional disputes or ambiguities do not result in First Nations children being denied services and support they urgently need. The principle is critical in the context of possible confusion and disagreements arising from the distinction between provincial jurisdiction over health care and federal responsibility for services for First Nations people living on reserve. The federal government's efforts to define Jordan's Principle as applying to only some First Nations persons risks replicating the problems that the principle is meant to address.²⁶ The matter is currently still before the Tribunal, more than two years after the original ruling.

On February 28, 2019 the government tabled new legislation, Bill C-92, an *Act respecting First Nations, Inuit and Métis children, youth and families*, which stands to further strengthen protections for Indigenous children. The Bill incorporates important human rights standards and principles, including acknowledging Indigenous peoples' right to self-determination, Canada's duty to ensure substantive equality for Indigenous children, and the obligation to ensure that jurisdictional disputes do not prevent any Indigenous child receiving the services they need. Unfortunately, the Bill does not include statutory funding provisions. The absence of any binding requirement to provide funding adequate to live up to the principles set out in the Bill is a critical concern, as inadequacy of previous funding arrangements is at the heart of the Tribunal's determination that Canada has discriminated against First Nations children.

21 First Nations Child and Family Caring Society of Canada v. Attorney General, 2016 CHRT 2.

22 See, e.g., First Nations Child and Family Caring Society of Canada v. Canada (Attorney General), 2017 CHRT 14.

23 First Nations Child & Family Caring Society, "Canada Fails to Grasp the 'Emergency' in First Nations Child Welfare: Canadian Human Rights Tribunal Finds Federal Government Non-Compliant with Relief Orders" (1 February 2018), fncaringsociety.com/sites/default/files/Caring%20Society%20Press%20Release%202018%20CHRT%204.pdf.

24 First Nations and Family Caring Society of Canada v. Attorney General of Canada, 2018 CHRT 4, paras 67, 121.

25 Jorge Barrera, "Ottawa to increase funding for First Nations child welfare services" CBC (1 February 2018), www.cbc.ca/news/indigenous/ottawa-fnchildwelfare-tribunal-1.4513951.

26 Jorge Barrera, "Canadian Human Rights Tribunal facing loaded question of First Nations identity" CBC (9 January 2019), www.cbc.ca/news/indigenous/jordan-s-principle-human-rights-tribunal-1.4972394.



AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR 2019

UPHOLDING THE RIGHTS OF INDIGENOUS PEOPLES

1. Take comprehensive action to address violence against First Nations, Inuit, and Métis women, girls, two-spirit people.

The scale and scope of violence against First Nations, Inuit and Métis women, girls, and two-spirit people remains one of the most egregious and urgent human rights concerns in Canada. The release of the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls and the report from the Viens Commission on Relations Between Indigenous Peoples and some Public Services in Quebec in 2019 will add to an already extensive body of knowledge both about the threats facing Indigenous women, girls, and two-spirit people, but also the measures necessary to stop this violence and uphold their rights. It is crucial that all levels of government be prepared to act promptly on the National Inquiry's recommendations as part of a comprehensive, coordinated national response that fully addresses the scale and severity of this crisis. The urgency of addressing continued patterns of violence, coupled with the debt owed to those who endured the pain of sharing their testimony with the Inquiry, requires a commitment from all levels of government that the Inquiry report will be acted on without delay.

RECOMMENDATION

The federal government – as well as all provincial and territorial governments – must initiate comprehensive, whole-of-government responses to the release of the final report from the National Inquiry into Missing and Murdered Indigenous Women and Girls, coordinated across all jurisdictions and in collaboration with Indigenous women's organizations, grassroots advocates, and family members. This response should form a distinct and substantial part of a national action plan to prevent and address gender-based violence.²⁷



Melanie Morrison receives solidarity messages supporting her fight to find justice for her sister, Tiffany Morrison, one of the many missing and murdered Indigenous women in Canada.

²⁷ In January 2007, the UN General Assembly adopted a resolution that called on all States to eliminate all forms of violence against women “by means of a more systematic, comprehensive, multisectoral and sustained approach, adequately supported and facilitated by strong institutional mechanisms and financing, through national action plans.” UN General Assembly, Intensification of efforts to eliminate all forms of violence against women: resolution adopted by the General Assembly, UN Doc A/RES/61/143 (2007) para 8, undocs.org/A/RES/61/143. See also, UN General Assembly, Intensification of efforts to eliminate all forms of violence against women: resolution adopted by the General Assembly, UN Doc A/RES/63/155 (2009), undocs.org/A/RES/63/155.

2. Protect and revitalize Indigenous languages.

Proposed federal Indigenous language legislation includes welcome recognition that the right of Indigenous peoples to protect and revitalize their languages is a human right protected in both the Canadian Constitution and under international law. Passage of C-91 would mark a positive step toward realizing protections and obligations enshrined in international human rights covenants and the UN Declaration on the Rights of Indigenous Peoples (articles 13 and 14, among others). Further, it would mark a step toward providing redress for the profound harm caused by a history of government policies and programs that have not only failed to provide equitable support to Indigenous languages but have actively sought their destruction.

As with all human rights, governments have an obligation to ensure full redress where a violation has occurred, including by acknowledging and repairing the harm, and by ensuring that the harm does not continue and is not repeated. In the case of Indigenous languages in Canada, the debt of justice is necessarily even more acute. The dire state of Indigenous language preservation in Canada is the direct result of deliberate, systematic government efforts to eradicate Indigenous cultures and identities – efforts that the Truth and Reconciliation Commission concluded were genocidal in intent. This history demands a high standard of justice. Going forward, measures to protect and promote Indigenous languages must be consistent with such obligations and reflect the urgency of needed action. The proposed legislation, while positive as a statement of intent, will not be enough on its own. Critically, the perpetrators of human rights violations do not get to set the terms for redress. Indigenous peoples need to be heard and listened to, now and going forward, in setting the agenda for language protection and revitalization.

RECOMMENDATIONS

(a) The federal government should work to ensure that Bill C-91 is adopted before the current session of Parliament ends in advance of the 2019 election and must allocate appropriate funds for its implementation so that Indigenous language experts can be confident that they will have access to the resources necessary to meet the needs that they identify, on both an immediate and ongoing basis.

(b) The federal, provincial, and territorial governments should work with Indigenous peoples to develop comprehensive national strategies regarding Indigenous languages that responds to the distinct circumstances and needs of First Nations, Inuit, and Métis peoples.

3. Address the continuing impact and legacy of mercury poisoning at Grassy Narrows.

The federal and Ontario provincial governments' continued failure to acknowledge and address the impacts of mercury poisoning in Asubpeeschoseewagong Anishinabek First Nation (Grassy Narrows First Nation) is prolonging one of the worst health crises facing any community in Canada. Two community health reports led by renowned mercury expert Dr. Donna Mergler, released in May 2018 and December 2018, confirm that mercury contamination of fish central to the cultural traditions, livelihood and subsistence of the people of Grassy Narrows has had a devastating impact on generations of community members. The persistence of this deadly neurotoxin has had direct impacts on the health of community members, including on the lives of children born decades after Ontario first allowed an upstream pulp mill to discharge mercury into the river system. For example, according to the study, children whose mothers ate fish at least once a week while pregnant are four times more likely to have a learning disability or nervous system disorder.²⁸

Critically, avoiding fish also has tragic consequences. The report documents how the erosion of cultural traditions of living on the land has been profoundly harmful, as loss of livelihoods, culture, and identity

²⁸ See, e.g., "New report first to show mercury impacts on Grassy Narrows kids" Amnesty International (5 December 2018), www.amnesty.ca/news/new-report-first-show-mercury-impacts-grassy-narrows-kids.

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Former Grassy Narrows Chief Steve Fobister Sr. speaking with Amnesty International researchers in 2007. Steve Fobister passed away in October 2018. He was denied the chance to see justice in his lifetime for the mercury poisoning that he and other members of the First Nation have worked so hard to address.

contribute to social strain in the community and in the lives of young people.²⁹ The profound harms experienced by the community have been greatly compounded by an ongoing government refusal to acknowledge obvious health impacts and provide appropriate remedy or even accurate information. While the federal and provincial governments drag their feet on the provision of much needed health services, including specialized care facilities for elders suffering from mercury poisoning, Ontario has yet to implement the promised clean up of the river system. The people of Grassy Narrows continue to work tirelessly in the fight for accountability and fair compensation for the myriad health and cultural impacts of mercury poisoning facing their First Nation.

RECOMMENDATIONS

- (a) The federal and Ontario provincial governments should ensure the full implementation of the recommendations made in the community health study, including the need for food security programs using cultural harvesting practices, increased support in the First Nation's school and for mothers, emergency and long-term programmes for children and youth, and provision of specialized care for community members suffering from mercury poisoning.³⁰
- (b) The federal and Ontario provincial governments should fully and fairly compensate all Grassy Narrows people for the impacts of the mercury crisis on their health, culture, livelihood, rights and environment.
- (c) The federal and Ontario provincial governments should swiftly and fully implement existing commitments, including the construction and operation of the Mercury Survivors Home and Care Centre, the complete remediation of the English and Wabigoon River system, and comprehensive reform of the Mercury Disability Board.

4. Enact Bill C-262's legislative framework for implementation of the UN Declaration on the Rights of Indigenous Peoples.

Bill C-262, which has been passed by the House of Commons and is currently before the Senate, offers a crucial means to close the longstanding accountability gap in respect to Canada's Indigenous rights obligations. As a legislative framework for implementation of the UN Declaration on the Rights of Indigenous Peoples that

29 See, e.g., Craig Benjamin, "Generations of Grassy Narrows youth are paying the price of government inaction" Amnesty International (5 December 2018), www.amnesty.ca/blog/generations-grassy-narrows-youth-are-paying-price-government-inaction.

30 Ibid.

integrates regular reporting to Parliament, Bill C-262 provides the means to hold this and future governments accountable for living up to human rights obligations and the commitments that they have made to honour and respect the rights of Indigenous peoples. As the Truth and Reconciliation Commission of Canada stated, the UN Declaration on the Rights of Indigenous Peoples is “the framework for reconciliation” in Canada.

Amnesty International also welcomes efforts to introduce similar legislation by other levels of government and made that recommendation in the organization’s submission to the Viens Commission on Relations Between Indigenous Peoples and some Public Services in Quebec. British Columbia recently committed to be the first province in Canada to introduce legislation to implement the UN Declaration.³¹

RECOMMENDATIONS

- a) As an urgent matter, the federal government should work to ensure that Bill C-262 is passed by the Senate before the end of the current session of Parliament, securing its passage into law.
- (b) All provincial and territorial governments should introduce legislation similar to Bill C-262, to provide a framework for implementation of the UN Declaration on the Rights of Indigenous Peoples within their respective jurisdictions.

5. Commit to full recognition and protection of free, prior and informed consent as a central element to upholding the rights of Indigenous Peoples.

Amnesty International, in coalition with a number of Indigenous Nations, organizations, individual experts and allies, continues to emphasize the vital importance of free, prior and informed consent (FPIC) to the full realization of Indigenous rights in Canada.³² The UN Committee on the Elimination of Racial Discrimination has called on Canada to seek independent, expert advice on the implementation of FPIC in Canadian law.³³

RECOMMENDATIONS

- (a) Federal, provincial and territorial governments must ensure that consent requirements, consistent with Canada’s domestic and international human rights obligations, are incorporated into all processes to review and approve resource extraction and infrastructure projects which potentially impact the lands, territories and resources of Indigenous peoples.
- (b) Federal, provincial, and territorial governments should engage independent experts, such as the United Nations Expert Mechanism on the Rights of Indigenous Peoples, to obtain credible and unbiased advice and to ensure that Canada does not develop interpretations of free, prior and informed consent that are isolated from or at odds with the ongoing progressive development of international law.

6. Work to ensure that Bill C-69 is adopted by Parliament.

With increasingly little time left before this session of Parliament ends and a federal election scheduled for October 2019, it is essential that prompt action is taken to pass Bill C-69, currently before the Senate. Indeed, even if Bill C-69 passes, more work is needed to ensure human rights impacts, including how projects may

31 Chantelle Bellrichard, “B.C. commits to being 1st province in Canada to put UNDRIP into legislation” CBC (13 February 2019), www.cbc.ca/news/indigenous/b-c-commits-to-being-1st-province-in-canada-to-put-undrip-into-legislation-1.5018447.

32 The Coalition for the Human Rights of Indigenous Peoples, “Federal, provincial and territorial interpretation and implementation of free, prior and informed consent must be aligned with Canada’s human rights obligations” (12 February 2019), static1.squarespace.com/static/5ac510114611a0bce082fac/t/5c62e9bfee6eb0235cff2816/1549986240512/Public+statement+interpretation+implementation+of+FPIC+Feb+2019.pdf

33 Amir, Urgent Letter to Rosemary McCarney, supra note 4.

have different impacts based on gender and other factors, are considered throughout the project approval process. The legislation would not cover all projects, nor would it address all impacts, such as impacts that are assumed to be known and manageable, which are routinely excluded from review. There is a crucial need for a strong commitment to gender-based analysis across all federal political parties. Disingenuous and harmful rhetoric around this issue must be abandoned.

RECOMMENDATIONS

(a) The federal government should work to ensure that Bill C-69 is adopted before the end of the current session of Parliament.

(b) All provinces and territories should initiate law reform to include gender-based analysis in the assessment process for all large-scale resource development projects.

7. Ensure substantive equality for Indigenous children.

Bill C-92, an Act respecting First Nations, Inuit and Métis children, youth and families, tabled by the federal government on February 28, 2019, represents long-overdue and potentially ground-breaking reforms to Indigenous child and family services in Canada. Like other important and long overdue legislative initiatives to recognize and protect the rights of Indigenous peoples, it is crucial that C-92 be enacted in the current session of Parliament. It is equally important to ensure that this and future governments allocate appropriate funding to actually live up to the important standards and principles set out in the proposed legislation.

RECOMMENDATIONS

(a) The federal government should work to ensure that Bill C-92 is adopted before the end of the current session of Parliament.

(b) The federal government must take concrete measures, whether through amendment of the Bill, or passage of associated annexes and regulations, or other means, to ensure that the ability of child and family service organizations to meet the needs of Indigenous children is not jeopardized through arbitrary funding decisions by future governments.

8. Uphold the rights of Indigenous land defenders.

Where police are called to maintain order or enforce injunctions in respect to actions such as Indigenous land occupations and demonstrations, policing strategies must address the unique historic and legal context of Indigenous occupation and protest. To this end, the Ipperwash Inquiry emphasized that police must “remain neutral” on the underlying dispute and operate based on understanding and respect for the “history, traditions, culture, and claims” of Indigenous protestors.³⁴ In this light, longstanding concerns over police monitoring and surveillance of Indigenous movements and advocates,³⁵ take on a particular urgency.

34 Sidney B. Linden, “Chapter 9: Policing Aboriginal Occupations,” Report of the Ipperwash Inquiry, Government of Ontario (31 May 2007), p 190, www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/report/vol_2/pdf/E_Vol_2_CH09.pdf.

35 Tim Groves and Martin Lukacs, “Mounties spied on native protest groups,” The Star (4 December 2011), www.thestar.com/news/canada/2011/12/04/mounties_spied_on_native_protest_groups.html; Cindy Blackstock, “The government spied on me without a warrant,” The Star (21 June, 2014), www.thestar.com/opinion/commentary/2014/06/21/the_government_spied_on_me_without_a_warrant.html; Jorge Barrera, “Former Idle No More organizer unfazed RCMP have him under surveillance,” APTN (21 December 2015), aptnnews.ca/2014/10/21/former-idle-organizer-unfazed-rcmp-surveillance/; Sean Craig, “RCMP tracked 89 indigenous activists considered ‘threats’ for participating in protests,” National Post (13 November 2016), nationalpost.com/news/canada/rcmp-tracked-89-indigenous-activists-considered-threats-for-participating-in-protests; “Criminalization of Indigenous Communities,” voices-voix (1 August 2017), voices-voix.ca/en/facts/profile/criminalization-indigenous-communities; Hilary Beaumont, “Canadian police spied on Indigenous protesters on Parliament Hill” Vice News (10 November 2017), news.vice.com/en_ca/article/a3jxa/canadian-police-spied-on-indigenous-protesters-on-parliament-hill; “CSIS surveillance of pipeline protesters faces federal review,” CBC (27 September 2018), www.cbc.ca/news/canada/british-columbia/csis-surveillance-of-pipeline-protesters-faces-federal-review-1.3188231.



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However, information reported in the press suggests that the RCMP approach has been far from neutral in respect to disputes over Indigenous land rights. Various accounts suggest the RCMP have often improperly conflated public order, which they have a duty to maintain, with the government's political agenda to advance certain resource development projects. For example, material recently acquired through access to information requests has revealed that police risk assessment of Indigenous land and water defenders focuses on their potential to sway public opinion and not on potential criminality.³⁶ This type of assessment, alongside court injunctions initiated by private corporations against Indigenous people³⁷ and RCMP policing tactics, creates a bias in favour of corporate interests and private property rights over Indigenous rights and title.³⁸ Additionally, recent RCMP statements made regarding the Wet'suwet'en land rights³⁹ reveal a troubling lack of understanding of the legal and cultural context of Indigenous rights and title.

This pattern of bias must also be viewed in the larger context of the continued lack of police accountability for excessive force against and mistreatment of Indigenous peoples. Amnesty International, echoing the UN Committee Against Torture, continues to call for an independent investigation into the treatment of the Mohawk men detained by the Ontario Provincial Police in April 2008 in connection with protests held at Tyendinaga,

36 Miles Howe & Jeffrey Monaghan, "Strategic Incapacitation of Indigenous Dissent: Crowd Theories, Risk Management, and Settler Colonial Policing" *Canadian Journal of Sociology* 43(4) 2018, journals.library.ualberta.ca/cjs/index.php/CJS/article/view/29397.

37 Rachel LaFortune, "'Rule of Law' is not a justification for colonial violence" Amnesty International (6 February 2019), www.amnesty.ca/news/%E2%80%98rule-law%E2%80%99-not-justification-colonial-violence.

38 Ibid. See also, Howe & Monaghan, Strategic Incapacitation of Indigenous Dissent, supra note 37.

39 West Coast Environmental Law, "The Unist'ot'en stand-off: How Canada's 'prove-it' mentality undermines reconciliation" (16 January 2019), www.wcel.org/blog/unistoten-stand-how-canadas-prove-it-mentality-undermines-reconciliation.

Ontario.⁴⁰ Between 2003 and 2008, community members from the Tyendinaga Mohawk Territory in Eastern Ontario carried out a series of blockades, land occupations and other protest actions sparked by the federal government's longstanding failure to restore or protect lands wrongfully severed from the Territory.⁴¹ While these protests inconvenienced members of the public and had the potential to lead to tension and conflict, no credible evidence has ever been brought forward to suggest that they represented a significant threat to public safety.⁴² Given that the land at the heart of the dispute had been wrongfully taken from the First Nation, efforts by community members to assert their rights and protect the land would not necessarily be unlawful, much less criminal.⁴³

Despite this, the Ontario Provincial Police (OPP) responded to the protests and land occupations with a massive deployment of officers that, by its nature, allowed for the possibility of using lethal force.⁴⁴ Five Mohawk men were forcefully arrested and detained as part of the police response. They were held in locked cells, with nylon restraints binding their wrists for periods ranging from three to 13 hours, contrary to standard police practice and without credible justification.⁴⁵ Amnesty International is concerned that the plastic restraints may have been deliberately misused in an attempt to inflict pain and discomfort on the men, or to humiliate them during their detention, and has pointed to widespread concerns in the community that such actions may have been motivated by a combination of racial bias and a desire to retaliate against the men for their roles in the protest.⁴⁶ While over a decade has passed since these incidents, police accountability, a crucial pillar of human protection, remains elusive.

RECOMMENDATIONS

(a) The federal government should provide clear guidance to the RCMP in keeping with recommendations from the 2007 Ipperwash Inquiry that police maintain a neutral position with respect to underlying disputes at the heart of land rights protests and occupations and operate based on understanding and respect for the “history, traditions, culture, and claims” of Indigenous protestors.⁴⁷

(b) The Ontario provincial government must ensure that an independent and impartial investigation is conducted into the treatment of Mohawk men detained by the Ontario Provincial Police in April, 2008 in connection with the land rights protest at Tyendinaga, Ontario.

40 Committee against Torture, Concluding observations on the seventh periodic report of Canada (5 December 2018) paras 22-23, tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CAN/CAT_C_CAN_CO_7_33163_E.pdf.

41 The land in question is within the Tyendinaga Mohawk Territory as set out in the 1793 Simcoe Deed, also known as Treaty No. 3½. The federal government oversaw the transfer of the Culbertson Tract out of the hands of the Tyendinaga Mohawk Nation in the early 19th Century. The Mohawks have consistently sought its return. In 1995, the Mohawk Council of Tyendinaga submitted a claim for redress under the federal Specific Claims Policy. The federal government then conducted an eight-year review of the history and legal status of the land. In 2003, the federal government acknowledged that the removal of the Culbertson Tract land was unlawful under the terms of the Simcoe Deed and the federal government had an “outstanding lawful obligation” to redress this wrong. At the time of writing, the lands had still not been restored to the Mohawk people nor have they been protected for future use by the Mohawk people. For more background, see Jonah Gindin, “Stone by stone, rail by rail” Briarpatch Magazine (9 June 2008), briarpatchmagazine.com/articles/view/stone-by-stone-rail-by-rail.

42 Amnesty International, Excessive and dangerous police response during Mohawk land rights demonstrations on the Culbertson Tract (31 May 2011), para 1, www.amnesty.ca/news/news-item/amnesty-international-calls-for-public-review-of-police-handling-of-tyendinaga-mohawk.

43 Ibid., at para 124.

44 Ibid., at para 1.

45 Amnesty International, Canada: Submission to the United Nations Committee Against Torture, 65th Sess. (12 November – 7 December 2018) p 9, www.amnesty.ca/sites/amnesty/files/AI%20UN%20CAT%20Submission%20Canada%202018%20FINAL_O.pdf.

46 Julien Gignac, “Amnesty calls for independent probe into OPP treatment of Mohawk protesters” Toronto Star (15 June 2018), www.thestar.com/news/canada/2018/06/15/amnesty-calls-for-independent-probe-into-opp-treatment-of-mohawk-protesters.html.

47 Linden, Chapter 9, *supra* note 34, at 190.

9. Suspend further construction of the Site C dam.

Amnesty International has, for several years, echoed the demand of First Nations to suspend construction in the absence of their free, prior and informed consent. However, both the federal and provincial governments, across all party lines (Conservative, Liberal and NDP) have refused to take that step and have continued to issue permits and approvals allowing Site C dam construction to proceed.

Notably, a key United Nations body, the Committee on the Elimination of Racial Discrimination (UNCERD), has added its voice, with an evident sense of urgency, to the calls for construction to be halted. UNCERD prioritized that recommendation at the time of the Committee's most recent periodic review of Canada's record in addressing racial discrimination, held in August 2017, asking for a report back within one year. That response was provided to the UNCERD in March 2019, six months overdue, and did not offer any substantive reply. UNCERD had reiterated the call to suspend construction in December 2018 through the Committee's Early-Warning Measures and Urgent Action Procedures, requesting a reply by April 8, 2019.



Roshni Khemraj participates in a Stop Site C Dam action at York University.

RECOMMENDATIONS

- (a) The federal and provincial governments should immediately suspend all permits for the construction of the Site C dam.
- (b) Unless an agreement is reached with the free, prior and informed consent of First Nations that would make the current Treaty rights civil suit unnecessary, the federal and provincial governments must ensure that any positions they take in court are consistent with their obligations to uphold the rights of Indigenous peoples and their public commitments to reconciliation.
- (c) The federal governments should report to the UNCERD no later than April 8, 2019 indicating that federal and BC provincial approval to continue with construction of the Site C dam will be revoked for the duration of the treaty rights lawsuit initiated by West Moberly and Prophet River First Nations.



TAKE ACTION ON GENDER EQUALITY, AT HOME AND ABROAD

2018 REPORT CARD

Amnesty International's 2018 Human Rights Agenda laid out five recommendations for Canadian government action to advance gender equality at home and abroad.



Develop and enact a National Action Plan on Gender-Based Violence, building on the federal strategy to address gender-based violence and applying to all federal, provincial and territorial jurisdictions, with an intersectional focus and special provisions addressing the disproportionate levels of violence experienced by Indigenous women, girls, and two-spirit people.

In June 2017 the federal government launched *It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence*.⁴⁸ Amnesty International⁴⁹ welcomed the strategy but, alongside a broad coalition of women's rights and other civil society organizations, has repeatedly⁵⁰ underscored the strategy's insufficiency because it only covers areas under federal jurisdiction. All people in Canada should have the same access to violence prevention programs, and all women in Canada who experience violence should have the same access to programs and services no matter where they live. This is why Canada so desperately needs a coordinated, comprehensive, and well-resourced National Action Plan covering all forms of gender-based violence and extending to all jurisdictions in Canada. The federal government is best placed to initiate and lead the development and adoption of such a National Action Plan.

Many governments – including close allies such as Norway, Germany, and Australia – specifically called on Canada to commit to developing a National Action Plan when Canada's human rights record was reviewed by the UN Human Rights Council in May 2018.⁵¹ Canada did not accept those recommendations, noting instead that “addressing gender-based violence is a shared responsibility between federal, provincial and territorial governments, who work together to find complementarity between their respective strategies. With numerous measures in place that seek to address gender-based violence, Canada is not presently developing a national action plan.”⁵² A truly national action plan involving the federal, provincial, territorial, municipal, and Indigenous governments and governance is needed to ensure policy and programming coherence and consistency that in turn will lead to decreased levels of gender-based violence.

48 Status of Women Canada, “Strategy to Prevent and Address Gender-Based Violence,” Government of Canada (3 July 2018), <https://cfc-swc.gc.ca/violence/strategy-strategie/index-en.html>.

49 Jackie Hansen, Why Canada needs a National Action Plan on Gender-Based Violence, 7 March, 2018, <https://www.amnesty.ca/blog/why-canada-needs-national-action-plan-gender-based-violence>.

50 Letter from Amnesty International and 25 organizations to Prime Minister Justin Trudeau, “RE: Urgent Need for National Action Plan to Prevent and Address Gender-Based Violence in Canada,” March 8, 2018, <https://www.nawl.ca/en/actions/entry/joint-letter-calling-on-the-prime-minister-to-enact-a-national-action-plan>.

51 UN Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Canada,” A/HRC/39/11, July 11, 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/210/82/PDF/G1821082.pdf?OpenElement>.

52 Report of the Working Group on the Universal Periodic Review: Canada, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, UN Doc. A/HRC/39/11/Add.1 (18 September 2018) para. 19. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/278/42/PDF/G1827842.pdf?OpenElement>.



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Develop and promote a clear, public articulation of Canada's intersectional feminist foreign policy which is centred on the most marginalized women, girls and LGBTI people; empowers, supports and protects women and LGBTI rights defenders; and transforms Canada's bilateral and multilateral engagement to uproot the power relationships and structures at the core of gender inequality.

Minister of Foreign Affairs Chrystia Freeland has stated that “Canada’s feminist foreign policy is founded on a simple objective: to enable women and girls around the world to have an equal voice and equal rights, to benefit from equal opportunities and to live in equal safety and security.”⁵³ The feminist foreign policy includes the Feminist International Assistance Policy and the Women, Peace and Security National Action Plan,⁵⁴ both initiatives that have been warmly welcomed by Amnesty International and other civil society organizations.

Amnesty International and other civil society organizations have encouraged Canada to build upon these initiatives and launch a clearly enunciated and comprehensive feminist foreign policy covering foreign affairs, development assistance, defense, and trade, that is inclusive of LGBTI rights, to support Canada in taking a consistently feminist approach to its foreign policy.⁵⁵ Such an approach would avoid situations as we see with respect to Saudi Arabia, where, on the one hand, Canada has advocated for the release of jailed women human rights defenders, but on the other hand refuses to cancel the multi-billion dollar sale of light armoured vehicles to the Saudi military in the face of Saudi Arabia’s responsibility for extensive war crimes in Yemen.

53 Global Affairs Canada, “Statement by Foreign Affairs Minister on International Women’s Day,” March 8, 2019, <https://www.canada.ca/en/global-affairs/news/2019/03/statement-by-foreign-affairs-minister-on-international-womens-day.html>.

54 Global Affairs Canada, “Women, peace and security,” accessed March 11, 2019, https://international.gc.ca/world-monde/issues_developpement-enjeux_developpement/gender_equality-egalite_des_genres/women_peace_security-femmes_paix_securite.aspx?lang=eng.

55 See, e.g., Jayne Stoyles, “A feminist policy can guide all policymaking,” Amnesty International (7 March 2018), www.amnesty.ca/blog/feminist-policy-can-guide-all-policymaking; Sarah Pittman, “How Feminist is Canada’s New Foreign Aid Really,” Centre for Feminist Foreign Policy (7 October 2017), www.centreforfeministforeignpolicy.org/journal/2017/10/5/how-feminist-is-canadas-foreign-aid-really.



Institute public service capacity-building to support implementation of Canada's feminist commitments.

There have been positive developments with an ongoing “feminist” re-orientation of the public sector and, very notably, the elevation of Status of Women Canada from the government agency it has been for 42 years, to a full-fledged Department of Women and Gender Equality covering both women’s rights and LGBTI rights.⁵⁶ However, proclaiming that initiatives are feminist or support gender equality does not automatically make them so. What continues to be lacking is additional training and resourcing to support the public service in understanding and implementing this ambitious and very welcome new mandate. Such training must go beyond the GBA+ online training that is generally provided, to really get to the core of how each civil servant can apply their learning in their particular role within government.



Increase development assistance funding to 0.7% of gross national income.

Canada’s level of international development assistance sits currently at a deeply disappointing 0.26% of gross national income, well below (in fact just over 1/3 of) the UN’s recommended target of 0.7%.⁵⁷ Canada ranks as a dismal 19th among 44 countries included in a list of donor states compiled by the Organization for Economic Cooperation and Development, lagging substantially behind many European countries.⁵⁸ Since 2000, Canada’s percentage of development assistance has never been higher than 0.336%, which was in 2005.⁵⁹ Amnesty welcomed the announcement of the Feminist International Assistance Policy in June 2017, though remains concerned that this feminist re-orientation of funding allocations has not resulted in significant additional investments to help Canada have maximum impact in promoting women’s rights and gender equality abroad.⁶⁰



Call for a Parliamentary Committee study on intersex rights to identify areas for law and policy reform.

There has been no progress within government or by any parliamentary committee to conduct a study on intersex rights to identify areas for law and policy reform. Egale Canada has called⁶¹ on the government to initiate comprehensive action to substantially strengthen the human rights protections of intersex people in Canada, including ending medically unnecessary surgeries on intersex children without their consent.

56 Minister for Women and Gender Equality Maryam Monsef, Creation of the Department for Women and Gender Equality (13 December 2018) <https://www.canada.ca/en/status-women/news/2018/12/creation-of-the-department-for-women-and-gender-equality.html>.

57 Oxfam Canada, Feminist Scorecard 2019, <https://www.oxfam.ca/feminist-policy-scorecard-2019/global-development/>.

58 Organization for Economic Cooperation and Development, Net ODA: Total, % of gross national income, 2000 – 2017, <https://data.oecd.org/oda/net-oda.htm>.

59 Ibid.

60 Global Affairs Canada, “Report to Parliament on the Government of Canada’s Official Development Assistance,” 2018, <https://international.gc.ca/gac-amc/publications/odaaa-lrmado/report-rapport-17-18.aspx?lang=eng>

61 Egale Canada urges the Federal Government to meet domestic and International Human Rights requirements of Intersex People on International Intersex Awareness Day (October 26 2018) <https://egale.ca/egale-canada-urges-the-federal-government-to-meet-domestic-and-international-human-rights-requirements-of-intersex-people-on-international-intersex-awareness-day/>.



AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR 2019

TAKE ACTION ON GENDER EQUALITY, AT HOME AND ABROAD

10. Develop a National Action Plan to Prevent and Address Gender-Based Violence.

Marking International Women's Day in 2018, 26 national, regional and local organizations across Canada wrote to Prime Minister Justin Trudeau and then Status of Women Minister Maryam Monsef, recognizing the "government's notable contributions to date to ending gender-based violence" and calling on the government "to go further and develop a National Action Plan to Prevent and Address Gender-Based Violence in Canada."⁶² In 2012 the UN called on all states to have such Action Plans in place by 2015.⁶³ Recommendations from the UN Committee on the Elimination of Discrimination against Women (CEDAW)⁶⁴ and from numerous governments during Canada's 2013 and 2018 Universal Periodic Reviews, all urge Canada to develop and adopt a National Action Plan.⁶⁵ A Blueprint for a National Action Plan has been developed by Women's Shelters Canada and broadly endorsed by civil society organizations including Amnesty International.⁶⁶

RECOMMENDATION

The federal government should work with provinces, territories, municipalities, Indigenous governments and governance, and with civil society including Indigenous women's organizations, to develop and implement a coordinated, comprehensive, well-resourced National Action Plan covering all forms of gender-based violence in all jurisdictions in Canada that builds on the existing federal strategy.

11. Substantially boost levels of financial support for women's movements in Canada.

The women's movement in Canada was decimated under the previous federal government.⁶⁷ Funding for advocacy was cut and funding for frontline service provision was rolled back. The current government has made efforts to boost funding for the women's movement in Canada, including investing \$100 million over five years in women's rights projects, in addition to a budget 2019 commitment of \$160 million over five years beginning in 2019-2020.⁶⁸ Women's organizations remain chronically underfunded, dependent on project funds, and lacking long-term, stable core funding. Current funding levels are insufficient to match the

62 Letter from Amnesty International and 25 organizations to Prime Minister Justin Trudeau, *supra* note 51.

63 UN Women, "Handbook for National Action Plans on Violence Against Women," 2012, <http://www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.pdf>.

64 "Expedientiously adopt a national action plan, in consultation with civil society organizations, especially indigenous women's organizations, to combat gender-based violence." United Nations Committee on the Elimination of Discrimination Against Women, "Concluding observations on the combined eighth and ninth period reports of Canada," CEDAW/C/CAN/CO/8-9 (25 November 2016), para. 25(d), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/03/PDF/N1640203.pdf?OpenElement>.

65 UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Canada," A/HRC/24/11 (June 28 2013), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/152/42/PDF/G1315242.pdf?OpenElement>; and UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Canada," A/HRC/39/11 (July 11 2018), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/210/82/PDF/G1821082.pdf?OpenElement>.

66 A Blueprint for Canada's National Action Plan on Violence Against Women and Girls, <https://endvaw.ca/wp-content/uploads/2015/10/Blueprint-for-Canadas-NAP-on-VAW.pdf>.

67 Ali Hamandi, "For women, Harper's government has been a disaster," iPolitics (September 22 2015) <https://ipolitics.ca/2015/09/22/for-women-harpers-government-has-been-a-disaster/>. See also, "Harper's Tories aim to erode women's rights 'by stealth': coalition," CBC (25 September 2008), www.cbc.ca/news/canada/harper-s-tories-aim-to-erode-women-s-rights-by-stealth-coalition-1.750387.

68 Government of Canada, "Budget 2019: Chapter 4: Delivering Real Change: Advancing Gender Equality," March 19, 2019, <https://budget.gc.ca/2019/docs/plan/chap-04-en.html>.

pressing needs that exist. For example, according to frontline workers, demand for services at rape crisis centres has increased since the start of #MeToo movement, but funding for such services has not increased to keep pace with demand.⁶⁹

Depending on where a woman lives in Canada, she may have very different access to services if she flees a violent situation. Frontline services are all stretched. Culturally relevant services for Indigenous women are particularly lacking. Women's movements in all their diversity need much greater support, including for advocacy and certainly for programming designed to meet the needs of specific communities such as Indigenous women. Real progress towards gender equality in Canada will only occur when women and non-binary people everywhere in Canada are able to live in safety and dignity with their rights respected. Realizing that progress is in turn incumbent upon a thriving, well-resourced civil society advocating on behalf of, and providing frontline services to, women and non-binary people across the country.

RECOMMENDATION

The federal government should work with organizations promoting gender equality to develop a strategy and action plan that will ensure meaningful and sustainable levels of multi-year core financial support for women's movements across the country, including for advocacy activities and with priority focus on the rights of Indigenous, racialized, disabled, refugee and immigrant and LGBTI women, as well as women living in poverty.

12. Reform Canadian law to protect the human rights of sex workers.

Sex workers in Canada and around the world are overwhelmingly women and LGBTI individuals, and are among the most marginalized and stigmatized groups in society. Amnesty International urges governments around the world to take action to uphold the human rights of sex workers, including by decriminalizing the consensual exchange of sexual services between adults for remuneration; enforcing laws regarding sexual exploitation of children, trafficking, assault, and sexual assault; refocusing laws away from catch-all offenses that criminalize most or all aspects of sex work and towards laws and policies that protect sex workers' health and safety; and pursuing comprehensive measures to address the social and economic inequalities that deny many people, including sex workers, genuine choices in how they earn a living.⁷⁰

Amnesty International is concerned that the current state of the law in Canada with respect to sex work is not rights-based and does not protect the human rights of sex workers. In the December 2013 *Bedford*⁷¹ ruling, the Supreme Court of Canada declared three criminal prohibitions related to sex work to be unconstitutional, noting "the prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing dangerous conditions on prostitution; they prevent people engaged in a risky – but legal – activity from taking steps to protect themselves from the risk." In response, in December 2014

69 See, e.g. Meagan Fitzpatrick, "Ontario sexual assault centres urge Ford government to help meet 'explosive' demand for service," CBC (19 February 2019), www.cbc.ca/news/canada/toronto/ontario-sexual-assault-centres-urge-ford-government-to-help-meet-explosive-demand-for-service-1.5024274 (reporting on "explosive demand" for sexual assault support services in Ontario); Rape Crisis Centre struggling to keep up with #MeToo surge," CBC (3 February 2018), www.cbc.ca/news/canada/ottawa/ottawa-rape-crisis-centre-more-calls-me-too-1.4507275 (Ottawa rape crisis center director reports 35% spike in calls from sexual abuse victims in the wake of #MeToo); Keili Bartlett, "Surge in requests for help, reports of sexual assault since #MeToo," Victoria News (15 October 2017), www.vicnews.com/news/surge-in-requests-for-help-reports-of-sexual-assault-since-metoo/ ("The latest available data from VSAC shows a 39 per cent increase in new people accessing the victims' service program from Oct. 2017 to May 2018 – in the months immediately after the #MeToo movement went viral – compared to the same time the year before."); Emma Paling, "Canada's #MeToo Movement Stretched Limits of Sexual Assault Support Centres," Huffington Post (18 February 2018), www.huffingtonpost.ca/2018/02/15/canadas-metoo-movement-stretches-limits-of-sexual-assault-support-centres_a_23362835/ ("On average, the 12 centres in Alberta see about 1,700 new counselling clients annually. But in the fiscal year ending March 2017, that number was 3,510 – more than double the average").

70 Amnesty International, "Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers," May 26, 2016, <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>.

71 Canada (Attorney General) v Bedford, 2013 SCC 72, December 20, 2013, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>.

Parliament passed the *Protection of Communities and Exploited Persons Act* (PCEPA).⁷²

Rather than strengthening rights protections for sex workers in Canada, the PCEPA has further marginalized and heightened risks to their security. The PCEPA introduced four new criminal offences, including modifications to the provisions declared unconstitutional in the Bedford ruling. By criminalizing the purchase of sexual services, preventing sex workers from communicating with clients to screen them, and preventing sex workers from organizing their own security, sex workers have become further marginalized and imperiled under the PCEPA.⁷³

RECOMMENDATIONS

(a) The federal government should repeal the *Protection of Communities and Exploited Persons Act*, decriminalizing all aspects of commercial sex between consenting adults.

(b) The federal government should pursue measures to more effectively enforce existing criminal laws to protect sex workers from violence and discrimination including, notably, laws regarding the sexual exploitation of children; engage with sex workers to develop policies and programs that will best help to ensure that the social, economic and cultural rights of sex workers are respected, protected, and fulfilled; and in recognition of the disproportionate levels of violence, discrimination and other harms experienced by Indigenous sex workers, ensure that the development of laws, regulations, policies, and programming concerning the rights of sex workers in Canada complies with the UN Declaration on the Rights of Indigenous Peoples.

13. Increase support to women's and LGBTI movements around the world.

Space for civil society is shrinking around the world, and the space is becoming increasingly small and exponentially more dangerous for women human rights defenders and LGBTI human rights defenders,⁷⁴ who are persecuted both because of who they are as well as the changes for which they are advocating. In this troubling global context there is a vital role that the Canadian government can and must play, particularly through the country's Feminist International Assistance Policy (FIAP), and through its Voices at Risk guidelines to support human rights defenders, to ensure



The daughters of murdered Indigenous environmentalist Berta Cáceres demonstrate against violations of their rights to truth and justice in Honduras.

72 Department of Justice, "Protection of Communities and Exploited Persons Act," S.C. 2014, c. 25, https://laws-lois.justice.gc.ca/eng/annualstatutes/2014_25/page-1.html.

73 Canadian Alliance for Sex Work Law Reform, "Safety, Dignity, Equality: Recommendations for Sex Work Law Reform in Canada," March 2017, <http://sexworklawreform.com/wp-content/uploads/2017/05/CASWLR-Final-Report-1.6MB.pdf>.

74 Amnesty International, "Human rights defenders under threat: a shrinking space for civil society," 2017, <https://www.amnesty.org/en/documents/act30/6011/2017/en/>; Human Rights Defenders World Summit 2018, "Action Plan," 2018, <https://hrdworldsummit.org/action-plan/>; and Michel Forst, "Situation of women human rights defenders: Report of the Special Rapporteur on the situation of human rights defenders," Human Rights Council, A/HRC/40/60, January 10, 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/004/97/PDF/G1900497.pdf?OpenElement>; Amnesty International Joint Public Statement, "Ukraine: Address Attacks against Activists and human Rights Defenders," Index: EUR 50/9201/2018 (3 October 2018), www.amnesty.org/download/Documents/EUR5092012018ENGLISH.pdf; Amnesty International, Less Equal: LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan, and Kyrgyzstan, Index: EUR 04/7574/2017 (2017), www.amnesty.org/download/Documents/EUR0475742017ENGLISH.PDF.

women and LGBTI human rights defenders, particularly grassroots activists, are able to conduct their vital work in a safe and enabling environment.

There is concern, however, that funding through the FIAP is not reaching grassroots activists and organizations. According to the MATCH International Women's Fund, only 0.3% of Canada's gender equality-focused overseas development assistance went to women's rights organizations.⁷⁵ This funding is hampered as well by the fact that Canada's level of international development assistance as a percentage of gross national income continues to fall well below the UN recommended target of 0.7%. As well, the Voices at Risk guidelines must be accompanied by a clear and transparent implementation plan, to ensure that all missions consistently implement the guidelines, and so activists are aware of what types of assistance they can request from Canadian missions.

RECOMMENDATIONS

- (a) The federal government should set concrete targets for increasing Canada's international development assistance to 0.7% of gross national income within as short a period of time as possible.
- (b) Levels of funding for grassroots women and LGBTI human rights defenders should be substantially increased and should cover the full range of support needed.⁷⁶

14. Strengthen human rights protections for intersex people.

In many parts of the world, including in Canada, measures that recognize and provide meaningful human rights protections to intersex people are weak or nonexistent. A recent Amnesty International report, for instance, draws attention to serious failings in protecting the rights of intersex people in Iceland.⁷⁷ Amnesty International shares the concern highlighted by other organizations and activists⁷⁸ in Canada that medically unnecessary surgeries are being performed on intersex children in Canada without their consent.

RECOMMENDATIONS

The federal government should work with provincial and territorial governments and intersex activists to ensure that no medically unnecessary surgeries are performed on intersex children without their free, full, and informed consent.

15. Take concrete action to end sterilization without consent.

As recently as last year, Indigenous women across Canada report being sterilized without their consent. This is a form of violence, and in December the UN Committee Against Torture (UNCAT) affirmed it is a form of torture – because this practice is intentional, committed by state officials, causes serious harm, and is rooted in discrimination – and called on Canada to take steps to investigate the issue, halt the practice, ensure justice for survivors, and report back to the Committee on progress made within a year.⁷⁹

⁷⁵ Testimony of Beth Woroniuk (Policy Lead, MATCH International Women's Fund), House of Commons Standing Committee on Finance, September 19, 2018, <https://openparliament.ca/committees/finance/42-1/165/beth-woroniuk-1/only/>.

⁷⁶ Bottom of Form

Global sexual and reproductive health and rights leaders call for continued Canadian leadership, 30 January, 2019, <https://www.actioncanadashr.org/srhr-and-canadian-leadership/>.

⁷⁷ Amnesty International, No Shame in Diversity: The right to health for people with variations of sex characteristics in Iceland (19 February 2019), <https://www.amnesty.ca/sites/amnesty/files/EUR2894982019%20No%20Shame%20in%20Diversity.pdf>.

⁷⁸ Egale, supra note 61.

⁷⁹ "Sterilizing Indigenous Women without Consent is Torture, says UN Committee," Amnesty International (7 December 2018), www.amnesty.ca/news/sterilizing-indigenous-women-without-consent-torture-says-un-committee.

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(L-R) Sarah Kennell, director of government relations for Action Canada on Sexual Health and Rights, Jacqueline Hansen, Amnesty International Canada's gender rights campaigner and Francyne Joe, president of Native Women's Association of Canada. The three groups partnered to back a United Nations Committee Against Torture report confirming that sterilizing Indigenous women without consent is a form of torture on Dec. 8, 2018.

Racial bias against Indigenous peoples in the provision of public services in Canada is a well-known problem and has been acknowledged by government. This discrimination has led to medically unnecessary sterilizations – mostly tubal ligations – without the patient's free, full, and informed consent. Little is known about how many women have been sterilized because the issue has not been fully investigated. Media coverage in the fall of 2018 of a proposed class action lawsuit in Saskatchewan representing two Indigenous women who report being sterilized without their consent, led to more women coming forward to disclose that they too were forcibly or coercively sterilized. With each successive wave of media coverage, more women came forward, and as of February 2019, over 100 Indigenous women from across Canada had disclosed to the lawyer leading the class action lawsuit that they had been sterilized without providing free, full, or informed consent.⁸⁰

The federal government has the jurisdiction and the obligation to ensure that the UNCAT's recommendations are implemented. Further, federal government coordination and leadership is essential to ensuring a consistent approach to this issue across jurisdictions. Such an approach, of course, must involve survivors, Indigenous women's organizations, provinces, territories, and medical bodies. Worryingly, the federal government, while expressing concern over reports of forced and coerced sterilization, has been hesitant to take concrete action to implement the UNCAT's recommendations. In February 2019, the House of Commons Standing Committee on Health approved a brief study of forced sterilization of women in Canada, but placed the study at the bottom of the committee's priority list, meaning it may not occur before the upcoming election.⁸¹

Meanwhile, to Amnesty International's knowledge, the federal government has made no effort to meet with survivors and their representatives, or to appoint a high-level focal point to do so. Furthermore, the government has mainly characterized the issue as being about the need for culturally safe health care. While Indigenous women must have access to culturally relevant health care services across Canada, the central issue in this case is consent. Whether an Indigenous woman births with a traditional midwife in a rural area or with a doctor in an urban hospital, her free, full, and informed consent must be secured before undergoing any medical procedures.

RECOMMENDATIONS

- (a) The federal government should ensure that allegations of forced or coerced sterilizations of Indigenous women in Canada are thoroughly investigated.
- (b) The federal government should establish policies and accountability mechanisms applicable across Canada that provide clear guidance on how to ensure sterilizations are only performed with free, full, and informed consent.
- (c) The federal government should work with provincial and territorial governments to ensure access to justice for survivors of forced or coerced sterilizations and their families.

⁸⁰ Interview with Alisa Lombard, Maurice Law (27 February 2019).

⁸¹ Standing Committee on Health, "Minutes of Proceedings," (31 January 2019), www.ourcommons.ca/DocumentViewer/en/42-1/HESA/meeting-131/minutes; and Standing Committee on Health, "Minutes of Proceedings" (5 February 2019), www.ourcommons.ca/DocumentViewer/en/42-1/HESA/meeting-132/minutes.



PROTECT THE RIGHTS OF REFUGEES AND MIGRANTS

2018 REPORT CARD

Amnesty International made six recommendations to the federal government with respect to the rights of refugees and migrants in the organization's 2018 Human Rights Agenda for Canada.



Suspend the 2004 Canada/US Safe Third Country Agreement, so that refugee claimants are permitted to make claims at Canadian border posts and not forced to make potentially dangerous irregular border crossings from the United States into Canada.

The government has consistently refused to withdraw from or suspend the Safe Third Country Agreement (STCA), even as criticism of the multitude of ways in which the Trump Administration has pursued policies and authorized immigration enforcement activity that has resulted in widespread and grave violations of the rights of refugees and migrants seeking to enter the United States as well as those already present in the United States. The government has mounted a full defence of the STCA (and thus a defence of the US record with

The toxic debate about extending the border wall between the United States and Mexico is illustrative of the deteriorating regard for the rights of refugees and migrants under the Trump Administration.



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respect to the rights of refugees and migrants) in responding to a legal challenge launched in July 2017 by the Canadian Council for Refugees, Canadian Council of Churches, Amnesty International and a number of individual applicants.⁸²

The government has also unconditionally defended the STCA in comments during Canada's most recent periodic review by the UN Committee Against Torture, in November 2018, noting without further explanation that "Canada continued to believe that the United States remained a safe country for asylum seekers"⁸³ as well as in a recent written submission to the UN Committee on the Elimination of Racial Discrimination (UNCERD), noting without any analysis that "the U.S. continues to satisfy the criteria upon which it was designated as a safe third country."⁸⁴ At the time of its August 2017 review of Canada, the UNCERD had recommended to the government to "rescind or at least suspend the Safe Third Country Agreement"⁸⁵ and had prioritized that recommendation for an interim report within one year, which was submitted by the government more than six months late. Concerns about the government's approach to the STCA have mounted with recent reports that Minister of Border Security Bill Blair intends to extend it to the entire border, not just official border posts; followed by a Budget 2019 allocation of \$1.18 billion over five years for a Border Enforcement Strategy.



Repeal discriminatory and punitive measures in the Immigration and Refugee Protection Act, including the Designated Country of Origin and Designated Foreign Nationals provisions.

Despite repeated indications from the government that it was prepared to repeal or reform the discriminatory and punitive Designated Country of Origin (DCO) and Designated Foreign National (DFN) provisions in the Immigration and Refugee Protection Act, the provisions remain in the Act, untouched. The DCO regime violates the rights of refugee claimants to a fair hearing by imposing shorter timelines and other measures for no reason other than the claimant's country of origin. DCO-related delays in being able to access the Pre-Removal Risk Assessment were recently found to be unconstitutional by the Federal Court in *Fehér*. The DFN regime imposes mandatory immigration detention on refugee claimants and other migrants who arrive in Canada by sea and are designated as "irregular arrivals."⁸⁶



Provide required resources to the Immigration and Refugee Board to ensure fair and expeditious processing of "legacy claims" referred for hearings before legislative reforms in December 2012; as well as the growing caseload related to an increased number of claims from individuals crossing into Canada from the United States.

Legacy claims involve applications for refugee protection that were filed before December 15, 2012. The Immigration and Refugee Board (IRB) formed a Legacy Task Force in 2017, with the goal of eliminating the substantial backlog of what was initially 5,600 legacy claims. At the end of 2018, there were 585⁸⁷ legacy

82 Amnesty International, News Release, "Legal challenge of Safe Third Country Agreement launched" (5 July 2017), online: <https://www.amnesty.ca/news/legal-challenge-safe-third-country-agreement-launched>.

83 UN Committee Against Torture, News Release, "Committee against Torture Examines Canada's Report" (22 November 2018), online: [https://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/D10501B4C4A6C6C6C125834D002D9045?OpenDocument](https://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/D10501B4C4A6C6C6C125834D002D9045?OpenDocument).

84 Government of Canada, Interim Report, supra note 3.

85 CERD, Concluding Observations, 2017, supra note 2 at para 34(d).

86 Immigration and Refugee Protection Act, SC 2001, c 27, ss 20.1(1), 55(3.1).

87 Immigration and Refugee Board, "Refugee Protection Claims (Legacy) by Country of Alleged Persecution – 2018" (updated 15 February 2019), online: <https://irb-cisr.gc.ca/en/statistics/protection/Pages/RPDLegStat2018.aspx>.

claims pending, down from 3,933⁸⁸ one year earlier. In the 2018 federal budget the IRB received an increase in funding amounting to \$74 million over two years, despite the fact that the IRB had estimated it needed “\$140 million a year, plus an additional \$40 million in one-time costs, to process 36,000 extra refugee cases annually” and that “a longer-term strategy will be needed to fully clear Canada’s backlog of asylum claims.”⁸⁹ The 2019 federal budget indicates that there will be resources allocated to support processing of 50,000 asylum claims per year but provides no further details. The budget also announced three new Federal Court judicial positions to assist with the immigration and refugee caseload.



Work with provincial and territorial governments to guarantee adequate and sustained levels of legal aid funding to ensure access to counsel for refugees and vulnerable migrants in refugee and immigration proceedings.

For years, there has not been any demonstrated effort by the federal government to work with provincial governments to ensure adequate, sustained and consistent levels of legal aid funding for representation in refugee and immigration proceedings across the country. Provincial governments continue to cope with budgetary pressures in the funding of legal aid programs. Manitoba has recently proposed funding non-lawyers to represent refugee claimants as a way of reducing expenditures.⁹⁰ Ontario’s Auditor General reported in December 2018 that federal government contributions to legal aid costs associated with refugee claim proceedings in Ontario was only 39% of what was required, compared to 90% in Manitoba and 72% in British Columbia.⁹¹ The 2019 federal budget announced that new money will be allocated for refugee and immigration legal aid.



Kutupalong, Bangladesh, has rapidly become the largest refugee camp in the world. It is home to over 620,000 Rohingya refugees from Myanmar.

88 Immigration and Refugee Board, “Refugee Protection Claims (Legacy) by Country of Alleged Persecution – 2017” (updated 3 July 2018), online: <https://irb-cisr.gc.ca/en/statistics/protection/Pages/RPDLegStat2017.aspx>.

89 Teresa Wright, “Millions more needed to tackle Canada’s refugee claims backlog: internal documents”, The Canadian Press (10 January 2019), online: <https://globalnews.ca/news/4834938/refugee-claims-backlog/>.

90 Carol Sanders, “Non-lawyers for refugees misguided: expert, Legal Aid Manitoba’s plan a response to high number of claimants”, (9 January 2019), Winnipeg Free Press, online: <https://www.winnipegfreepress.com/local/non-lawyers-for-refugees-misguided-expert-504141612.html>.

91 Jacques Gallant, “Auditor general report finds Legal Aid failing to properly track lawyers’ billings, quality of work: Provincial agency also needs more federal funding for immigration and refugee cases to avoid future deficits, the 2018 auditor general report concludes”, (5 December 2018), Toronto Star, online: <https://www.thespec.com/news-story/9068231-auditor-general-report-finds-legal-aid-failing-to-properly-track-lawyers-billings-quality-of-work/>.



Revise refugee resettlement levels with an aim to reaching 20,000 government-sponsored refugees on an annual basis by 2020.

The revised resettlement target level for government-sponsored refugees in 2020 is only 10,700, an increase of 1,400 from the 2019 target but far below the recommended annual target of 20,000 proposed by Amnesty International, the Canadian Council for Refugees,⁹² and numerous other organizations. The target for privately-sponsored refugee resettlement in 2020 is 20,000 and for blended government/private sponsorship the target is 1,000,⁹³ meaning that the combined total target for refugee resettlement in Canada in 2020 through all three programs is only up by 1,750 over 2019. There is no further increase anticipated in any of the targets in 2021.



Champion adoption of an effective Global Compact on Refugees including a credible and comprehensive responsibility sharing model for the financing, hosting and resettlement of the global refugee population.

The international community began negotiations in 2016 towards the adoption of a Global Compact on Refugees, intended to strengthen refugee protection globally, including through the establishment of a meaningful system of responsibility-sharing among governments. The Global Compact⁹⁴ was adopted by the UN General Assembly in December 2018. While the Canadian government had advanced strong negotiating positions throughout the process, the final provisions with respect to responsibility-sharing were disappointingly weak.

Amnesty International had urged governments to commit to binding mechanisms to ensure the responsibility for refugee protection will be shared equitably among states. The Global Compact, however, maintains the longstanding reliance on voluntary pledges that have proven to be ad hoc, inconsistent and inadequate. A Global Refugee Forum will be convened at ministerial level once every four years beginning in 2019, at which governments will “announce concrete pledges and contributions towards the objectives of the global compact, as set out in para 7, and to consider opportunities, challenges and ways in which burden- and responsibility-sharing can be enhanced.”⁹⁵

92 Canadian Council for Refugees, “It’s time to lead. Again. Always.” online: <https://ccrweb.ca/en/time-to-lead>.

93 Immigration, Refugees and Citizenship Canada, News Release, “Supplementary Information 2019-2021 Immigration Levels Plan” (31 October 2018), online: <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/supplementary-immigration-levels-2019.html>

94 Global Compact on Refugees, UN Doc. A/73/12 (Part II)*, (17 December 2018), online [.pdf]: https://www.unhcr.org/gcr/GCR_English.pdf.

95 Global Compact on Refugees, supra note 95 at para 17.



AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR 2019

PROTECT THE RIGHTS OF REFUGEES AND MIGRANTS

16. Suspend the Canada/US Safe Third Country Agreement.

The unrelenting and deepening assault on the rights of asylum-seekers, refugees and migrants in the United States since Donald Trump assumed the presidency in January 2017 has been extensively documented by a large number of human rights organizations, academics, journalists and other experts.⁹⁶ In assessing whether the United States is indeed “safe” for refugees for the purposes of Canadian law, the government is required to consider a number of criteria in s. 102⁹⁷ of the *Immigration and Refugee Protection Act* (IRPA), including the US government’s “policies and practices with respect to claims under the Refugee Convention and with respect to obligations under the Convention Against Torture”⁹⁸ and “its human rights record.”⁹⁹ Amnesty International has consistently maintained over the past two years that the deeply troubling developments in the United States, which continue to deteriorate precipitously, are of such sufficient gravity that the country can no longer be considered to be “safe” for refugees and that the 2004 Safe Third Country Agreement between Canada and the United States must, therefore, be immediately suspended.

Because the STCA only applies to refugee claims made at official border posts, there have been a growing number of refugee claims made by individuals who have crossed irregularly into Canada.¹⁰⁰ That has exposed some individuals to dangerous and potentially life-threatening conditions, particularly when crossing into Canada during winter months. It has also sparked an inflammatory and unfounded political and public narrative about an influx of “illegal” migrants, refugees or border-crossers, which risks undermining support for refugee protection in the country.

In July 2017, Amnesty International, along with the Canadian Council for Refugees, the Canadian Council of Churches and a number of individual applicants, launched an application in Federal Court seeking to strike down the application of the STCA.¹⁰¹ In August 2017, the UN Committee on the Elimination of Racial

96 Amnesty International & Canadian Council for Refugees, “Contesting the Designation of the US as a Safe Third Country” (19 May 2017), online [pdf]: <https://www.amnesty.ca/sites/amnesty/files/Contesting%20the%20Designation%20of%20the%20US%20as%20a%20Safe%20Third%20Country.pdf>; Victoria López, “Rampant Abuses in Immigration Detention Prove ICE Is Rotten to the Core” (1 March 2019), online (blog): American Civil Liberties Union <https://www.aclu.org/blog/prisoners-rights/rampant-abuses-immigration-detention-prove-ice-rotten-core>; Amnesty International, “USA: ‘You don’t have any rights here’: Illegal pushbacks, arbitrary detention and ill-treatment of asylum-seekers in the United States” (11 October 2018), online: <https://www.amnesty.org/en/documents/amr51/9101/2018/en/>; Center for Constitutional Rights, News Release, “Court Filing Seeks Information Regarding Retaliation Against Immigrants’ Rights Attorneys at Southern Border” (28 February 2019), online: <https://ccrjustice.org/home/press-center/press-releases/court-filing-seeks-information-regarding-retaliation-against>; Human Rights First, News Release, “Expansion of Remain in Mexico Plan a Further Assault on Asylum System” (1 March 2019), online: <https://www.humanrightsfirst.org/press-release/expansion-remain-mexico-plan-further-assault-asylum-system>; Michael Garcia Bochenek, “Trump’s Family Separation Affected ‘Thousands’ More Children Than Previously Known: Documents Reveal Concentrated Targeting of Migrant Families”, Human Rights Watch, (18 January 2019), online: <https://www.hrw.org/news/2019/01/18/trumps-family-separation-affected-thousands-more-children-previously-known>; Lutheran Immigration and Refugee Service, News Release, “LIRS Bears Witness to the Conditions of Country’s Largest Child Detention Center: Visit comes amidst widespread reports of abuse in the industry” (6 March 2019), online: <https://www.lirs.org/lirs-bears-witness-to-conditions-of-homestead-child-detention-center>; National Immigrant Justice Center, “The Trump Administration’s Manipulation Of Data To Perpetuate Anti-Immigrant Policies” (29 January 2019), online: <https://www.immigrantjustice.org/research-items/policy-brief-trump-administrations-manipulation-data-perpetuate-anti-immigrant>; Refugees International, “RI Concerned Over US CBP’s Treatment of Asylum Seekers at the US-Mexico Border” (6 March 2019), online: <https://www.refugeesinternational.org/advocacy-letters-1/2019/3/6/statement-for-the-record-oversight-of-customs-and-border-protections-response-to-the-smuggling-of-persons-at-the-southern-border>; U.S. Committee for Refugees and Immigrants, News Release, “US Committee for Refugees and Immigrants Opposes National Emergency Declaration” (15 February 2019), online: <https://refugees.org/news/national-emergency-declaration/>.

97 IRPA, supra note 87.

98 Ibid, s 102(2)(b).

99 Ibid, s.102(2)(c).

100 19,419 individuals were apprehended by the RCMP and made claims for refugee status, after crossing irregularly into Canada in 2018. <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/asylum-claims-2018.html>.

101 Supra note 82.

Discrimination called on Canada to suspend the STCA¹⁰² and in November 2018 the UN Committee Against Torture, noting concerns about “aggressive anti-immigration policies” in the United States, called on Canada to conduct “an assessment of the impact of the Safe Third Country Agreement on potential asylum seekers arriving from the United States of America.”¹⁰³ There have been recent troubling statements by Minister of Border Security Bill Blair and in the 2019 federal budget pointing to government plans to extend application of the STCA to the entire Canada/US border.

RECOMMENDATION

The federal government should immediately suspend the Canada/US Safe Third Country Agreement and allow claims for refugee status in Canada to be made at official Canada/US land border posts.

17. Commit to sustained annual increases in government-sponsored refugee resettlement towards a target of 20,000.

The UNHCR and the international community praised Canada in 2016¹⁰⁴ for the record high level of resettlement that year in the wake of public calls for action on resettlement of Syrian refugees. That year, 46,700 refugees were resettled to Canada. This was not the first time Canada resettled a large number of refugees. In 1980, Canada resettled 40,271 Indochinese refugees.¹⁰⁵

According to the United Nations High Commissioner for Refugees (UNHCR), 68.5 million people are forcibly displaced worldwide, 25.4 million of whom are refugees. The numbers are the highest they have been in generations, with crises in Syria, South Sudan and Myanmar alone accounting for over 6 million refugees. In the midst of this mounting challenge, Canada is a country with demonstrated capacity and, therefore, a responsibility to increase, not decrease, the number of refugees resettled each year. At the present time the government has set a target of 10,700 refugees to be resettled to Canada through government sponsorship in 2020 and that number is not set to increase in 2021. Amnesty International and other organizations have called on the government to commit to an annual target of 20,000 refugees resettled to Canada through government sponsorship, in addition to numbers brought to the country through private sponsorship.

RECOMMENDATION

The federal government should commit to resettle 20,000 refugees to Canada through government sponsorship by 2022 and set phased-in targets in 2020 and 2021 to reach that goal. That commitment should include specific programs responding to pressing global refugee protection concerns, including resettlement at-risk and vulnerable Rohingya refugees in Bangladesh.

18. Pursue a human-rights centred approach to reform of the Immigration and Refugee Board.

In 2018, an independent review of the IRB was conducted and released¹⁰⁶ which found, broadly, that there was need for an increase in capacity, that significant changes to the system were needed for efficiency, and that integrated planning and coordination was required from the start to the end of a refugee claim. In

¹⁰² CERD Concluding Observations, 2017, *supra* note 2.

¹⁰³ UNCAT Concluding Observations, 2018, *supra* note 40, at paras 32 and 33.

¹⁰⁴ UNHCR, News Release, “Canada’s 2016 record high level of resettlement praised by UNHCR” (24 April 2017), online: <https://www.unhcr.org/news/press/2017/4/58fe15464/canadas-2016-record-high-level-resettlement-praised-unhcr.html>.

¹⁰⁵ *Ibid.*

¹⁰⁶ Neil Yeates, “Report of the Independent Review of the Immigration and Refugee Board: A Systems Management Approach to Asylum” (10 April 2018), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/report-independent-review-immigration-and-refugee-board.html>.

response, the government has since established an “Asylum System Management Board”¹⁰⁷ and an expanded “Integrated Claim Analysis Centre” which involve increased communication, information-sharing and priority-setting among the Canada Border Services Agency, Immigration, Refugees and Citizenship Canada, and the IRB. Amnesty International and other refugee advocacy and human rights organizations expressed caution that such steps risked undermining the independence of the IRB which must operate with no interference from the government, and that such information sharing with departments that appear frequently as parties in IRB litigation compromises the IRB’s independence. This independence is critical for due process as guaranteed to refugee claimants under the Charter of Rights.¹⁰⁸

Amnesty International’s submission to the review urged the government to adopt the Canadian Council for Refugees’ proposed model for IRB reform which would focus on a human rights centered approach and ensure that the IRB would be adequately resourced to hear claims in a fair, independent and efficient manner. There has been a welcome announcement in the 2019 federal budget that there will be more resources allocated to processing asylum claims. While Amnesty welcomes efforts to find efficiencies, such as the new guidelines on expedited claims,¹⁰⁹ it must not be at the cost of fairness.

RECOMMENDATION

Any reforms to the Immigration and Refugee Board pursued by the federal government should reinforce the Board’s independence, commit to prioritizing expertise in decision-maker appointment, and undertake to balance the need to find efficiencies without compromising fairness.

19. Uphold the right of access to essential healthcare for all migrants and repeal medical-related inadmissibility in Canadian immigration law.

In July 2018, the UN Human Rights Committee found¹¹⁰ that Canada violated the right to life of a woman who was unable to access life-saving healthcare on account of her immigration status. Other UN bodies have also called on Canada to provide access to healthcare to migrants, concluding that the failure to do so violates a number of Canada’s binding international human rights obligations.¹¹¹



Amnesty International joins a national day of action for migrant healthcare on Feb. 12, 2019 urging Canada to follow the UN Human Rights Committee decision on *Nell Toussaint v. Canada*.

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107 Immigration, Refugees and Citizenship Canada, “Asylum System Management Board” (17 December 2018), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/corporate-initiatives/asylum-system-management-board.html>.

108 See *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177.

109 Immigration and Refugee Board of Canada, News Release, “IRB Issues New Instructions Governing the Streaming of Less Complex Claims at the Refugee Protection Division” (31 January 2019), online: <https://irb-cisr.gc.ca/en/news/2019/Pages/less-complex-claims-rpd.aspx>.

110 UN Human Rights Committee, *Nell Toussaint v Canada*, 123rd Sess (2-27 July 2018), 7 August 2018, UN Doc CCPR/C/123/D/2348/2014, online: <http://undocs.org/CCPR/C/123/D/2348/2014>.

111 See UN Human Rights Committee, Concluding observations on the sixth periodic report of Canada, 114th Sess, UN Doc CCPR/C/CAN/CO/6, 13 August 2015, para 12, online: <http://undocs.org/CCPR/C/CAN/CO/6>; Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Canada, UNCESCR, 57th Sess, UN Doc E/C.12/CAN/CO/6, 23 March 2016, para 49, online: <http://undocs.org/E/C.12/CAN/CO/6>; Committee on the Elimination of Racial Discrimination, Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada, 93rd Sess, UN Doc CERD/C/CAN/CO/21-23, 13 September 2017, para 33, available online: <http://undocs.org/CERD/C/CAN/CO/21-23>.

Although the federal government provides healthcare coverage through the Interim Federal Health Program (IFHP) to most refugee claimants, many are excluded from coverage as a result of confusion relating to availability of insurance and refusal by clinics to accept patients who have IFHP coverage rather than provincial health insurance.¹¹² Additional resources for the IFHP announced in the 2019 federal budget are welcome, but do not address concerns about lacks of essential healthcare coverage for all migrants, regardless of status. Further, despite years of advocacy calling on the government to repeal medical inadmissibility provisions in the IRPA, the provisions remain in place with modifications such that migrants who have severe illnesses, whose healthcare costs are more than three times the original threshold, would still be excluded from receiving permanent residency status.¹¹³ This is despite a parliamentary committee having recommended that the medical inadmissibility provisions be removed entirely.¹¹⁴

Access to healthcare in Quebec for children who are Canadian born and therefore Canadian citizens, depends on their parents' immigration status. The Quebec Ombudsman estimates that hundreds of children are affected in Montreal alone; an exact number for the province is not available.¹¹⁵ When applying for provincial health care, the Régie d'assurance maladie du Québec requires that parents who are not Canadian citizens provide proof that they are in the process of obtaining permanent immigrant status from the federal government. Otherwise, their children are not eligible for provincial healthcare before the age of 18. Amnesty International has joined other organizations in Quebec in demanding that all Canadian children in the province have access to healthcare, regardless of the immigration status of their parents.¹¹⁶

RECOMMENDATIONS

- (a) The federal government should ensure that all refugee claimants, refugees and migrants have access to essential healthcare regardless of immigration status.
- (b) The federal government should repeal all medical inadmissibility provisions in Canadian law.
- (c) The Quebec provincial government should ensure that all Canadian citizen children in the province have access to the provincial healthcare system, regardless of the immigration status of their parents.

20. Institute an emergency relocation program for human rights defenders at risk.

Human rights defenders (HRDs) face grave risk in countries around the world; in fact, the levels of violence, including killings, and repression, including arbitrary arrest and imprisonment, have increased in recent years. In response, countries such as Norway, Spain, South Africa, Ireland, Sweden, Italy and the Netherlands have worked with national and international civil society groups to develop relocation programs through which a human rights defender at risk of human rights violations can be quickly evacuated from their country and provided refuge and safety abroad.

112 See YY Brandon Chen and Jamie Liew, "Refugees once again have full health benefits, but some practitioners still don't know that", CBC News (9 May 2017), online: <https://www.cbc.ca/news/opinion/refugee-health-care-1.4105120>.

113 Immigration, Refugees and Citizenship Canada, News Release, "Government of Canada brings medical inadmissibility policy in line with inclusivity for persons with disabilities" (16 April 2018), online: <https://www.canada.ca/en/immigration-refugees-citizenship/news/2018/04/government-of-canada-brings-medical-inadmissibility-policy-in-line-with-inclusivity-for-persons-with-disabilities.html>.

114 House of Commons Standing Committee on Citizenship and Immigration, "Building and Inclusive Canada: Bringing the IRPA in step with modern values," 42nd Parliament, 1st Session, December 2017, Recommendation 1. Online: <https://www.ourcommons.ca/Content/Committee/421/CIMM/Reports/RP9322080/cimmp15/cimmp15-e.pdf>.

115 Amnistie Internationale, "Pour que tous les enfants canadiens aient accès aux soins de santé" (1 June 2018), online: <https://amnistie.ca/sinformer/communiqués/local/2018/canada/pour-que-tous-enfants-canadiens-aient-acces-soins-sante>.

116 Ibid.

Canada's Voices at Risk guidelines for human rights defenders¹¹⁷ do not contemplate emergency relocation of HRDs who remain in their countries of origin. Such HRDs are often at great risk of harm, but are unable to avail themselves of existing refugee resettlement programs or other refugee protection mechanisms since they remain within their countries of origin and thus do not satisfy the definition of a refugee. Through the use of temporary resident permits or other visas, Canada could join other nations in providing pathways to safety for human rights defenders in need of urgent protection who may not have other readily available means of reaching safety.

RECOMMENDATION

The federal government should work with civil society to create an emergency relocation program or visa scheme for at-risk human rights defenders who are still in their country of nationality and do not, therefore, meet the legal definition of a refugee.

21. Reform immigration detention to meet international standards and ensure independent oversight.

In 2017, the UN Committee on the Elimination of Racial Discrimination called on Canada to “ensure that immigration detention is only undertaken as a last resort; ... establish a legal time limit on the detention of migrants; and immediately end the practice of detention of minors.”¹¹⁸

Steps have been taken towards meeting some of those recommendations. A November 2017 Ministerial Direction¹¹⁹ to the Canada Border Services Agency (CBSA) from Public Safety Minister Ralph Goodale and a related National Directive adopted by CBSA¹²⁰ both establish that children will only be held in immigration detention in “extremely limited circumstances.” In July 2018, the government unveiled a new Alternatives to Detention program, in partnership with a number of community organizations, significantly expanding the range of alternative measures to be used as a means of substantially reducing the need for and length of immigration detention.¹²¹ No steps have been taken, however, to set a maximum time limit for immigration detention, meaning that prolonged and even indefinite detention remains a serious concern.¹²²

As of November 2017, at least 16 people had died in immigration detention since 2000.¹²³ These are only those deaths that have been either reported in the media or disclosed by family of the deceased. There remain no obligations on the CBSA to report deaths in custody despite serious concerns about the legal black hole in

117 Government of Canada, “Voices at risk: Canada's guidelines on supporting human rights defenders,” 5 June 2017, Section 4: Canada and Human Rights Defenders, online: https://international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng#a4.

118 CERD Concluding Observations, 2017, supra note 2 at para 34.

119 Canada Border Services Agency, News Release, “Minister Goodale issues new direction on keeping children out of Canada's immigration detention system and keeping families together” (6 November 2017), online: <https://www.canada.ca/en/border-services-agency/news/2017/11/minister-goodale-issues-new-direction-on-keeping-children-out-of-canada-si.html>.

120 Canada Border Services Agency, “National Directive for the Detention or Housing of Minors”, National Immigration Detention Framework (6 November 2017), online: <https://www.cbsa-asfc.gc.ca/security-secure/detent/nddhm-dndhm-eng.html>. See Amnesty International's concerns raised by the then refugee rights campaigner at Amnesty International Canada: Gloria Nafziger, “An end to immigration detention of children?” (29 November 2017), Amnesty International (blog), online: <https://www.amnesty.ca/blog/end-immigration-detention-children>.

121 CBC News, “Border agency deploys technology to cut the number of refugee claimants being detained: CBSA hopes to use more community monitoring instead of holding centres”, CBC News (24 July 2018), online: <https://www.cbc.ca/news/politics/cbsa-border-agency-immigration-detention-1.4759567>. See also CBSA, “Alternatives to Detention Program: Backgrounder”, Government of Canada (24 July 2018), online: <https://www.canada.ca/en/border-services-agency/news/2018/07/alternatives-to-detention-program.html>.

122 Lengthy detentions that appear to have no end in sight are not uncommon. The story of Ebrahim Toure is one such example. See Brendan Kennedy, “Immigration detainee Ebrahim Toure finally free after more than five years”, Toronto Star (21 September 2018), online: <https://www.thestar.com/news/investigations/2018/09/21/immigration-detainee-ebrahim-toure-finally-free-after-5-12-years.html>.

123 Petra Molnar and Stephanie J Silverman, “Migrants are dying in detention centres: When will Canada act?”, The Conversation (14 November 2017), online: <https://theconversation.com/migrants-are-dying-in-detention-centres-when-will-canada-act-87237>.

which the Agency operates.¹²⁴ Promised legislation for oversight of the Canada Border Services Agency, which is responsible for immigration detention, has not been brought forward, leaving it the only major federal law enforcement agency with significant policing powers without independent oversight.¹²⁵

In November, 2018 the UN Committee Against Torture called on Canada to adopt a range of measures addressing human rights concerns associated with immigration detention, including establishing a “reasonable time limit on the duration of administrative immigration detention;”¹²⁶ ensuring that “children and families with children are not detained solely because of their immigration status;”¹²⁷ and establishing an “effective and independent oversight mechanism of the Canada Border Services Agency to which individuals held in immigration detention can bring complaints.”¹²⁸ In the 2019 federal budget the government announced plans to extend the mandate of the Civilian Review and Complaints Commission of the RCMP to include CBSA.

RECOMMENDATIONS

- (a) The federal government should enact further reforms to immigration detention in Canada to absolutely prohibit children being detained for immigration purposes and set a reasonable maximum time limit on the duration of immigration detention.
- (b) The federal government should ensure that any expansion of the Civilian Review and Complaints Commission of the RCMP to provide independent review and oversight of the Canada Border Services Agency includes robust reporting requirements from the CBSA and an effective complaints mechanism.



Canada's anti-torture record was reviewed by the UN Committee against Torture in November 2018.

124 There was another death in CBSA custody in 2018 when Bolante Idowu Alo, a Nigerian national, died after what the CBSA said was an altercation. Further details of the case remain unknown. See Ronna Syed, “Body of Nigerian man who died in CBSA custody remains in limbo 3 weeks later”, CBC News (1 September 2018), online: <https://www.cbc.ca/news/canada/calgary/bolante-idowu-alo-body-in-limbo-1.4807359>.

125 See discussion about CBSA oversight in a report by the BCCLA. Laura Track and Josh Paterson, “Oversight at the Border: A Model for Independent Accountability at the Canada Border Services Agency”, BCCLA (June 2017), online: <https://bccla.org/wp-content/uploads/2017/06/FINAL-for-web-BCCLA-CBSA-Oversight.pdf>. Amnesty International has frequently called for CBSA oversight. Amnesty International, News Release, “Amnesty International demands independent oversight for CBSA following death of third detainee” (17 May 2016), online: <https://www.amnesty.ca/news/amnesty-international-demands-independent-oversight-cbsa-following-death-third-detainee>.

126 UNCAT Concluding Observations, 2018, *supra* note 40, at para 35(c).

127 *Ibid* at para 35(e).

128 *Ibid* at para 35(i).



HUMAN RIGHTS AND THE ECONOMY

2018 REPORT CARD

Amnesty International laid out three recommendations to the federal government for action to strengthen respect for human rights in Canadian business, trade and investment activities, policies and law, in the organization's 2018 Human Rights Agenda for Canada.



Move rapidly to appoint a well-resourced, independent Canadian Ombudsperson for Responsible Enterprise with a robust investigatory mandate to ensure human rights accountability for Canadian companies operating abroad and remedy for those harmed.

In the months leading up to the finalization of this report, Amnesty International's assessment of the federal government's progress with respect to this recommendation has shifted from green, to yellow and now orange (and is at risk of veering towards red). There was considerable hope and expectation when representatives from civil society, the labour movement and industry joined then Minister of International Trade François-Philippe Champagne in January 2018 as the government announced plans to establish and appoint a Canadian Ombudsperson for Responsible Enterprise. Due to widespread and well-documented allegations of human rights abuses linked to Canadian extractive companies operating overseas, Amnesty International, in collaboration with civil society and Indigenous groups and activists in Canada and abroad, had been pressing for an Ombudsperson and other measures to strengthen Canadian corporate accountability for human rights for more than a decade. Multiple United Nations treaty bodies and the UN Working Group on Business and Human Rights have also called on Canada to take action.

The announcement was followed by the convening of a new Multi-Stakeholder Advisory Body on Responsible Business Conduct



Mayan Catholic sister Maudilia López Cardona address a crowd of supporters outside the Guatemalan Embassy in Ottawa in May 2018 during a visit to deliver a letter signed by dozens of NGOs about the horrific escalation of attacks on human rights defenders in Guatemala.

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Abroad, of which Amnesty International is a member, to provide advice to the Minister on related matters. Amnesty International and other Canadian civil society groups stood with the Minister and agreed to participate in the MSAB on the basis of clear commitments that the government intended finally to create an effective Ombudsperson, and to seek advice on implementation of the country's international human rights obligations with respect to overseas corporate activity.

There was every expectation that the Ombudsperson would be appointed reasonably soon after the announcement and that the government would meaningfully implement the promised mandate and powers. However, as of March 27, 2019, more than fourteen months after the announcement, there has been no such appointment, and certainly no steps towards establishing the Ombudsperson's office and commencing with investigations. In recent months there has been opposition from industry to the government's commitment to ensure that the Ombudsperson would have meaningful powers to independently investigate, namely the powers to compel documents and summon witnesses when required.¹²⁹ At the present time there is no clarity from the government as to when the CORE will be appointed, nor a clear indication of how the government intends to fulfill its commitment to create an independent office that has the resources, mandate and powers needed to begin to address allegations of serious and widespread human rights abuses.



Take concrete steps towards a “progressive” trade agenda that upholds Canada’s human rights obligations and duty to protect human rights from both state and non-state actors, consistently champions meaningful consultation with and the free, prior and informed consent of Indigenous Peoples, and includes strong corporate accountability measures as well as a commitment to carry out independent, impartial and comprehensive human rights impact assessments of trade deals using UN benchmarks.

The government has taken some initial steps to include human rights in its conception of a “progressive trade agenda.” Yet the degree to which this has been taken up and implemented as an overarching policy priority remains unclear and extremely inconsistent. There has been no elaboration of a comprehensive commitment to putting human rights at the centre of Canadian trade policy.

When the government announced the commencement of negotiations in March 2018 towards a possible free trade agreement with the MERCOSUR¹³⁰ bloc of countries, then Minister of International Trade Champagne tweeted that: “this will be our most progressive negotiation, with comprehensive gender, labour, human rights & Indigenous assessments.”¹³¹ In September 2018, when the government tabled its Annual Report on Human Rights and Free Trade between Canada and Colombia, as required under the terms of a side agreement adopted further to the Canada-Colombia Free Trade Agreement, a commitment was made to “improve” the report and to “explore options on how this report could help to promote respect for human rights and responsible business conduct by Canadian companies in Colombia.”¹³² Consultations regarding other possible options are currently underway. This commitment came in response to concerns expressed by Amnesty International¹³³ and other civil society groups over many years that the methodology and approach taken to

129 In announcing plans to establish the CORE, the government stated that it “is committed to ensuring that the Ombudsperson has all the tools required to ensure compliance with information requests – including the compelling of witnesses and documents – in the hopefully very rare circumstances where a company is not fully and appropriately cooperating.” Responsible business conduct abroad – Questions and answers, <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/faq.aspx?lang=eng>.

130 Full members: Argentina, Brazil, Paraguay, Uruguay, and Venezuela; Associate countries: Bolivia, Chile, Colombia, Ecuador, Guyana, Peru and Suriname.

131 https://twitter.com/FP_Champagne/status/972131807570333696.

132 Annual Report Pursuant to the Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia, for the period January 1, 2017 to December 31, 2017, https://www.canadainternational.gc.ca/colombia-colombie/bilateral_relations_bilaterales/rep-hrft-co_2017-dple-rapp.aspx?lang=eng.

133 Citing grave concerns, Amnesty International Canada withdraws from reporting process on Human Rights and Free Trade between Canada and Colombia, (23 March 2018), <https://www.amnesty.ca/news/citing-grave-concerns-amnesty-international-canada-withdraws-reporting-process-human-rights-and>.

preparing these annual reports has been unduly restrictive and has therefore failed in any meaningful way to be responsive to serious human rights concerns in Colombia that are unquestionably related to trade and investment, such as the grave human rights violations experienced by Indigenous peoples and Afro-Colombian communities faced with an influx of mining, oil and gas and palm plantation companies into their lands and territories.

There have been some minor improvements with respect to recognizing the rights of Indigenous peoples in the renegotiated NAFTA, the United States-Mexico-Canada Agreement.¹³⁴ In 2017 the free trade deal between Canada and Chile was updated to include a chapter on gender,¹³⁵ as was the Canada-Israel Free Trade Agreement in 2018.¹³⁶ However, the overwhelming majority of existing, new and proposed free trade agreements contain no provisions or commitments with respect to human rights. Recent updates to the Canada-Israel Free Trade Agreement failed, in particular, to respond to a human rights concern that is directly trade-related, the importation into Canada of goods that are produced in unlawful Israeli settlements in the Occupied Palestinian Territories.¹³⁷



Consistently implement the Voices at Risk guidelines for supporting human rights defenders facing threats and attacks, in accordance with their requests, including defenders who may be challenging human rights impacts they believe to be associated with the operations of Canadian extractive companies.

The government's Voices at Risk guidelines on supporting human rights defenders recognize that "human rights defenders – including those advocating for rights related to land and the environment – often focus on the activities of multinational corporations, subsidiary companies and contracted organizations in supply chains" and that "support for these human rights defenders should be provided as outlined in these guidelines, regardless of the nationality of the company in question."¹³⁸ It is an important acknowledgement that the government must respond to situations in which human rights defenders in other countries may experience human rights abuses associated with their advocacy related to the operations of a Canadian company.

Amnesty International remains concerned, however, that while some Canadian missions abroad have responded to urgent requests from particular human rights defenders who face risks associated with their opposition to or campaigning regarding Canadian mining and other companies, such measures are far from consistent and rarely include strong, high-level political responses. The resources and diplomatic attention offered to assist human rights defenders in such situations generally pales dramatically in comparison to what is devoted to advancing the trade and investment interests of the companies or industry sector involved. Furthermore, Amnesty International has received concerning reports from some human rights defenders that Canadian diplomatic staff asked them not to raise concerns regarding Canadian resource extraction projects at embassy-convened human rights meetings.

134 New trade agreement a 'step up' from NAFTA on Indigenous rights, CBC News, 1 October, 2018, <https://www.cbc.ca/news/indigenous/usmca-trade-deal-indigenous-rights-1.4846073>.

135 Working at the cutting edge of trade and gender in the Canada-Chile FTA, https://www.international.gc.ca/gac-amc/publications/blueprint_2020-objectif_2020/highlighting_gender-trade-mettre_accents_sur_genre_commerce.aspx?lang=eng.

136 Updated Canada-Israel trade agreement to give gender rules 'teeth', CBC News, 28 May, 2018, <https://www.cbc.ca/news/politics/canada-israel-free-trade-agreement-gender-1.4680309>.

137 Letter to PM Trudeau regarding Israeli settlement goods, 28 July, 2017, <https://www.amnesty.ca/sites/amnesty/files/Letter%20to%20PM%20Trudeau%20regarding%20Israeli%20settlement%20goods.pdf>.

138 Government of Canada, Voices at risk, supra note 117.



AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR 2019

HUMAN RIGHTS AND THE ECONOMY

22. Appoint the Canadian Ombudsperson for Responsible Enterprise, with no further delay and with necessary powers to conduct independent and effective investigations.

The decision and announcement in January 2018 to establish and appoint a Canadian Ombudsperson for Responsible Enterprise (CORE) was a much-needed and long-anticipated step forward in strengthening accountability for human rights in the operations of Canadian companies abroad, including but not limited to the extractives sector. It is a vital means of upholding the internationally-guaranteed right of individuals and communities to have access to an effective remedy when they experience human rights abuses related to corporate activity.

Amnesty International has welcomed the government's commitment that the CORE would be entrusted with the necessary powers required to carry out effective and independent investigations, including the power to compel the disclosure of documents and testimony from Canadian company officials and other key witnesses. Amnesty International has supported the proposal made by the Canadian Network on Corporate Accountability to ensure the Ombudsperson has these powers, by appointing the Ombudsperson via the federal *Inquiries Act*.¹³⁹ The long delay of more than fourteen months in appointing the first Canadian Ombudsperson for Responsible Enterprise and confirming that the CORE will have powers under the Inquiries Act is of mounting concern, particularly as a federal election draws nearer.

It is vital that the government move forward without further delay in fulfilling these commitments related to the Ombudsperson's appointment so as to provide an avenue for redress for impacted individuals and communities; keep pace with business and human rights developments on the global stage; and demonstrate that Canada takes seriously its human rights obligations when it comes to overseas corporate activity.

RECOMMENDATION

The federal government must move immediately to appoint the independent Canadian Ombudsperson for Responsible Enterprise and entrust the CORE with powers under the Inquiries Act to compel documents and testimony. In no circumstances should the appointment be delayed until after the House of Commons rises in advance of the October 2019 federal election.

23. Enact human rights due-diligence supply chain legislation.

In February 2019, then Minister of International Development Marie-Claude Bibeau informed the House of Commons Standing Committee on Foreign Affairs and International Development that the government "will begin a process in 2019 to consult on possible supply chain legislation."¹⁴⁰ The commitment came in response to the Standing Committee's study and report, *A Call to Action: Ending the Use of all Forms of Child Labour in Supply Chains*¹⁴¹ to which Amnesty International made a submission. Civil society groups have highlighted to governments around the world the crucial need to enact laws that require companies and industry sectors to

¹³⁹ Media Advisory: One year ago the Government of Canada announced the creation of a corporate ombudsperson. It's time to fulfill its promise, Canadian Network on Corporate Accountability, (17 January 2019), <http://cnca-rcce.ca/recent-works/media-advisory-one-year-ombuds-announcement/>.

¹⁴⁰ Letter from Minister of International Development Marie-Claude Bibeau to the Chair Standing Committee on Foreign Affairs and International Development Michael Levitt, M.P., http://www.ourcommons.ca/content/Committee/421/FAAE/GovResponse/RP10314755/421_FAAE_Rpt19_GR/421_FAAE_Rpt19_GR-e.pdf.

¹⁴¹ *A Call to Action: Ending the Use of all Forms of Child Labour in Supply Chains*, Report of the Standing Committee on Foreign Affairs and International Development, (October 2018), <http://www.ourcommons.ca/Content/Committee/421/FAAE/Reports/RP10078750/faaerp19/faaerp19-e.pdf>.

implement stringent due-diligence measures to guard against human rights abuses at any stage in their supply chains. There are European initiatives¹⁴² which offer lessons learned and best practices on which Canada can build in the development of legislation here.

RECOMMENDATION

The federal government should promptly commence consultations regarding the development of human rights due-diligence supply chain legislation in Canada which takes account of the full complement of internationally protected human rights, including child and forced labour, as well as environmental sustainability. Any such legislation must provide an explicit basis for liability when a corporation's failure to exercise appropriate due diligence causes harm.

24. Commit to carrying out comprehensive and independent human rights impact assessment of free trade agreements.

As noted above, the government has committed to explore options for improving the annual human rights report under the Canada-Colombia Free Trade Agreement. Amnesty International has urged that the report be conducted as a comprehensive and independent human rights impact assessment, grounded in the full array of international human rights obligations binding on Canada and Colombia (explicitly including the UN Declaration on the Rights of Indigenous Peoples), with a scope that looks widely at trade and investment associated with the agreement, including in but not limited to the resource extraction sector, rather than the current narrow focus that looks only at the possible human rights impact of decisions regarding tariff reductions.¹⁴³ A revised approach should also include a process for ensuring that human rights concerns identified in the assessment can and will be addressed. If a credible process of this nature was instituted, it would not need to be conducted annually but could be carried out at intervals of perhaps 3 to 5 years.

A new approach to assessing the human rights impact of the Canada-Colombia deal should be developed in a manner that would be conducive to being replicated with respect to the entirety of Canada's bilateral and multilateral trade agreements, beginning with countries such as Honduras, Peru and Mexico where mounting concerns about human rights abuses associated with Canadian trade and investment policy and actions are similar to those arising in Colombia and for which there is presently no mechanism for assessment and resolution.

RECOMMENDATIONS

(a) The federal government should commit to adopting a measurable new approach to the annual human rights report under the Canada-Colombia Free Trade Agreement when the 2019 report is tabled. The new approach should consist of a comprehensive, independent human rights impact assessment conducted at regular intervals that looks at the full range of international human rights obligations binding on the two countries, including the UN Declaration on the Rights of Indigenous Peoples, and should have a scope that assesses the impact of all decisions, activities and investment that is related to the trade agreement. The new approach should provide particular focus, but not be limited to, the resource extraction sector and should provide a process for addressing any human rights concerns that are identified, including by ensuring access to remedy for those harmed.

¹⁴² France Takes Historic Step Toward Reducing Supply Chain Abuses, Human Rights Watch, (27 February 2017), <https://www.hrw.org/news/2017/02/27/france-takes-historic-step-toward-reducing-supply-chain-abuses> ; European Coalition for Corporate Justice, Human Rights Due Diligence, <http://corporatejustice.org/priorities/13-human-rights-due-diligence> ; Transparency in Supply Chains: A practical guide, UK Modern Slavery Act 2015, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf ; Council of the European Union, 3462nd Council Meeting, Brussels, (12 May 2016), <http://www.parliament.bg/pub/ECD/224453ST08736.EN16.DOCX> .

¹⁴³ Amnesty International Canada withdraws from reporting process on Human Rights and Free Trade between Canada and Colombia, *supra* note 133. See also, Canada/Colombia Free Trade Deal: Meaningless Consultation Process Sells Human Rights Short, 24 March, 2014, <https://www.amnesty.ca/news/news-releases/canadacolombia-free-trade-deal-meaningless-consultation-process-sells-human>; Canada-Colombia Free Trade: Another Human Rights Report without human rights, 24 June, 2013, <https://www.amnesty.ca/news/public-statements/canada-colombia-free-trade-another-human-rights-report-without-human-rights>.

(b) The federal government should undertake to institute comprehensive, independent human rights impact assessments for the full range of Canada's existing and proposed bilateral and multilateral free trade agreements.

25. Take action to ensure redress, justice and accountability for the Mount Polley mine disaster.

Amnesty International remains deeply concerned that 4 ½ years after it occurred, the federal government and provincial British Columbia government have failed to take meaningful action to ensure redress, justice and accountability for the catastrophic consequences of the breach of the tailings dam at the Mount Polley mine in the interior of British Columbia, in August 2014.¹⁴⁴ The disaster, widely considered one of the worst in Canadian mining history, has had grave human rights implications for Indigenous peoples and communities in the area. Notably, in its review of Canada's anti-racism record in August 2017, the UN Committee on the Elimination of Racial Discrimination was so urgently concerned about the implications of the disaster on the rights of Indigenous peoples as to call on Canada to "publicly release the results of any government studies of the Mount Polley disaster and the criminal investigation into the disaster, before the statute of limitations for charges under the relevant acts expires."¹⁴⁵ This recommendation was prioritized for a report back to the Committee within one year, reflecting the gravity of the Committee's concern. The response from Canada, which was submitted more than six months late, does not commit to releasing any such results of studies or criminal investigations.

With respect to justice and accountability, only one criminal investigation is still underway. All others have been stayed or did not result in charges being laid before limitation periods expired. A joint investigation into violations of federal laws is being carried out by the BC Conservation Officer Service, the federal Department of Fisheries and Oceans and the Royal Canadian Mounted Police. The statute of limitations for any resulting charges will expire on 4 August, 2019. Civil lawsuits are pending and may go ahead once information is available about whether criminal charges will be laid.

To date, the only known report on the health impacts of the disaster on Indigenous peoples has been a screening and scoping report carried out by the First Nations Health Authority.¹⁴⁶ That report notes that Indigenous peoples themselves have borne the costs of remediation measures (such as providing small



Activists from across North America join residents and Indigenous peoples at Hazelton Creek, B.C., the site of the Mount Polley mine disaster, on Oct. 1, 2018. They called on Canada to hold those responsible for the disaster to account.

144 A Breach of Human Rights - The Human Rights Impact of the Mount Polley Mines Disaster, British Columbia, Amnesty International, 24 May 2017, https://www.amnesty.ca/sites/amnesty/files/FINAL_May%2024_Mount%20Polley%20briefing.pdf.

145 CERD, Concluding Observations, 2017, *supra* note 2 at para 20(f).

146 Shandro, J., M. Winkler, L. Jokinen, and A. Stockwell. Health impact assessment for the 2014 Mount Polley Mine tailings dam breach: Screening and scoping phase report. (January 2016) <http://www.fnha.ca/Documents/FNHA-Mount-Polley-Mine-HIA-SSP-Report.pdf>

amounts of canned salmon to their band members) and impact studies (deferring funds earmarked for much needed infrastructure projects) and calls for a full health impact assessment to be carried out by government. Many residents refuse to fish or drink water from the lake over fears of contamination. Fish, game, berries and medicinal plants near the Mount Polley mine are important sources of food security, livelihood and culture to Indigenous peoples in the area. Non-Indigenous peoples in the area who rely on Quesnel lake for food, water and livelihoods have also been affected.

Meanwhile there are understandably serious concerns about the health and environmental impact of mining effluent currently being discharged into Quesnel Lake by the mine. The discharge permit was granted in 2017 without the free, prior, informed consent of affected Indigenous communities and despite enormous opposition from non-Indigenous residents. A recent peer-reviewed study of the impacts of the disaster on Quesnel Lake waters by the University of Northern British Columbia found higher bacterial and mineral counts in the area nearest the original inundation zone.¹⁴⁷ Since 2017, Imperial Metals has been found to be regularly out of compliance with its discharge permit, leading to fears that the planned suspension of the mine in May 2019 will result in further violations. Residents sought and will be granted a review of the discharge permit before the Environmental Review Board in May 2019.

Finally, despite the lessons learned from the Mount Polley disaster, the province continues to approve tailings storage facilities designed to hold wet tailings. In 2015, a panel of experts convened to study the Mount Polley disaster called for the province to end the practice. The experts panel warned the BC government that it could expect up to two major tailings disasters per decade, and 6 every 30 years, based on this technology. As long as wet storage tailings dams, like that at Mount Polley, remain in operation, downstream communities, Indigenous peoples and the environment remain at serious risk of harm.

RECOMMENDATIONS

- (a) The federal government should fund and make publicly accessible an independent analysis of the full health impacts of the Mount Polley disaster on Indigenous peoples and surrounding communities; and pending the results of such an analysis should direct British Columbia to suspend the company's water discharge permit which currently allows it to pipe intermittently clarified - but otherwise untreated - raw effluent directly into Quesnel Lake.
- (b) The federal government should commit funding and resources to carry out long-term studies of the effects of the Mount Polley tailings breach and ongoing water discharges from the mine site on Quesnel Lake and surrounding waters and make the results public at regular intervals.
- (c) The federal government should commit to making a decision and sharing information publicly about the ongoing joint investigation being carried out by the BC Conservation Officer Service, federal Department of Fisheries and Oceans Canada and Royal Canadian Mounted Police before the limitation period for laying charges expires on 4 August, 2019.
- (d) The BC provincial government should mandate full financial bonding from Imperial Metals for the entire, long-term costs of remediating the Mount Polley mine site.¹⁴⁸
- (e) The BC provincial government should ban wet mine waste storage that threatens downstream communities and watersheds and prohibit mines which require perpetual water treatment.

¹⁴⁷ The bacterial community of Quesnel Lake sediments impacted by a catastrophic mine tailings spill differ in composition from those at undisturbed locations – two years post-spill,” I. Hatam, E. L. Petticrew, T. D. French, P. N. Owens, B. Laval & S. A. Baldwin, *Scientific Reports*, Volume 9, Article number: 2705 (2019), <https://www.nature.com/articles/s41598-019-38909-9>.

¹⁴⁸ BC's underfunded liabilities for mines mean that BC taxpayers and Indigenous peoples presently bear the majority of the costs of mining disasters and long-term remediation.



JUSTICE, POLICING, NATIONAL SECURITY AND HUMAN RIGHTS

2018 REPORT CARD

In Amnesty International's 2018 Human Rights Agenda for Canada the organization elaborated two recommendations for action needed to address human rights concerns related to Canada's approach to national security. This year Amnesty International presents 6 recommendations dealing more widely with concerns related to justice, policing and national security.



Address provisions in Bill C-59 which continue to give rise to human rights concerns, including repeal of the immigration security certificate process, amendments to the no-fly list appeal provisions and introduction of stronger safeguards with respect to information sharing.

Bill C-59,¹⁴⁹ an *Act respecting national security matters*, tabled in Parliament by the federal government in June 2017, was passed by the House of Commons in June 2018 and is currently before the Senate, which has not yet commenced Committee review of the Bill. Bill C-59 is in part a response Bill C-51,¹⁵⁰ controversial national security reforms brought forward by the previous government in 2015 which introduced into Canadian law a number of provisions violating or failing to conform to Canada's international human rights obligations.¹⁵¹ C-59 addresses and rectifies some of the problematic provisions in C-51 but many remain untouched. The Bill does propose a model of review for federal agencies and departments engaged in national security activities that would address an overdue need which was the subject of a comprehensive study and proposal by the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar,¹⁵² released in December 2006. C-59 introduces new provisions that raise additional serious human rights concerns and the Bill also fails to address longstanding human rights shortcomings in Canadian national security law that precede the C-51 reforms.

In April 2018 Amnesty International joined 25 other civil society organizations and individual experts¹⁵³ in pressing for reforms with respect to three main areas of concern regarding C-59 as a minimum: authorizing mass surveillance, failing to provide a fair process for administering no-fly lists, and legalizing cyber-attacks by the Canadian Security Establishment.

149 Bill C-59, *An Act respecting national security matters*, 1st Sess, 42nd Parl, 2015 (second reading in the Senate 11 December 2018) [Bill C-59].

150 Bill C-51, *Anti-terrorism Act*, 2015, 1st Sess, 41st Parl, 2015 (assented to 18 June 2015).

151 See Amnesty International, "Insecurity and Human Rights: Concerns and Recommendations with respect to Bill C-51, the Anti-Terrorism Act, 2015" (9 March 2015), online [.pdf]: <https://www.amnesty.ca/sites/amnesty/files/imce/images/INSECURITY%20AND%20HUMAN%20RIGHTS-%20CONCERNS%20AND%20RECOMMENDATIONS%20WITH%20RESPECT%20TO%20BILL%20C-51%2C%20THE%20ANTI-TERRORISM%20ACT%2C%202015.pdf>.

152 Dennis R O'Connor, "A new review mechanism for the RCMP's National Security Activities", Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (2006), online [.pdf]: http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/maher_arar/07-09-13/www.ararcommission.ca/eng/EnglishReportDec122006.pdf.

153 International Civil Liberties Monitoring Group, "Civil Society Statement regarding Bill C-59, An Act respecting national security matters" (5 April 2018), online: <https://iclmg.ca/civil-society-statement-c59/> [Civil Society Statement regarding Bill C-59].



Amend the Immigration and Refugee Protection Act to meet the international human rights obligation absolutely to prohibit the return of anyone to a country where they face a serious risk of torture.

Canadian law has long maintained the possibility that individuals can be deported or extradited, in exceptional circumstances, to a country where they would face a serious risk of torture.¹⁵⁴ This provision, which violates the binding and non-derogable obligation in international human rights law¹⁵⁵ to refrain from returning any individual in any circumstances to a country where they would face a serious risk of torture, was upheld by the Supreme Court of Canada in its controversial 2002 Suresh ruling.¹⁵⁶ The United Nations Human Rights Committee and the United Nations Committee against Torture (UN CAT) have repeatedly called on Canada to reform Canadian law to comply with the absolute ban on refoulement to torture, most recently during the UN CAT review of Canada's record under the UN Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in November 2018.¹⁵⁷



AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR 2019

JUSTICE, POLICING, NATIONAL SECURITY AND HUMAN RIGHTS

26. Take action to address anti-Black racism in policing, justice and corrections.

Canada has a long history of anti-Black racism and discrimination from a legacy of slavery, exclusionary immigration, detention policies, segregation and disproportionate incarceration. Violent policing of Black communities operates to surveil Black people and enforce systemic racism. As the Government of Ontario's Anti-Black Racism Strategy explains, "Systemic racism occurs when institutions or systems create or maintain racial inequity, often as a result of hidden institutional biases in policies, practices and procedures that privilege some groups and disadvantage others."¹⁵⁸

On December 10, 2018 – International Human Rights Day, marking on that occasion the 70th anniversary of the Universal Declaration of Human Rights – the Ontario Human Rights Commission released its ground-breaking and deeply troubling report, *A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service*.¹⁵⁹ The report's disturbing findings indicate that between 2013 and 2017, a Black person was nearly 20 times more likely to be killed by police in Toronto than a white person. This number is disproportionate and even more concerning given that Black people make up approximately 9% of the population of Toronto.

¹⁵⁴ IRPA, supra note 87 at s 115(2).

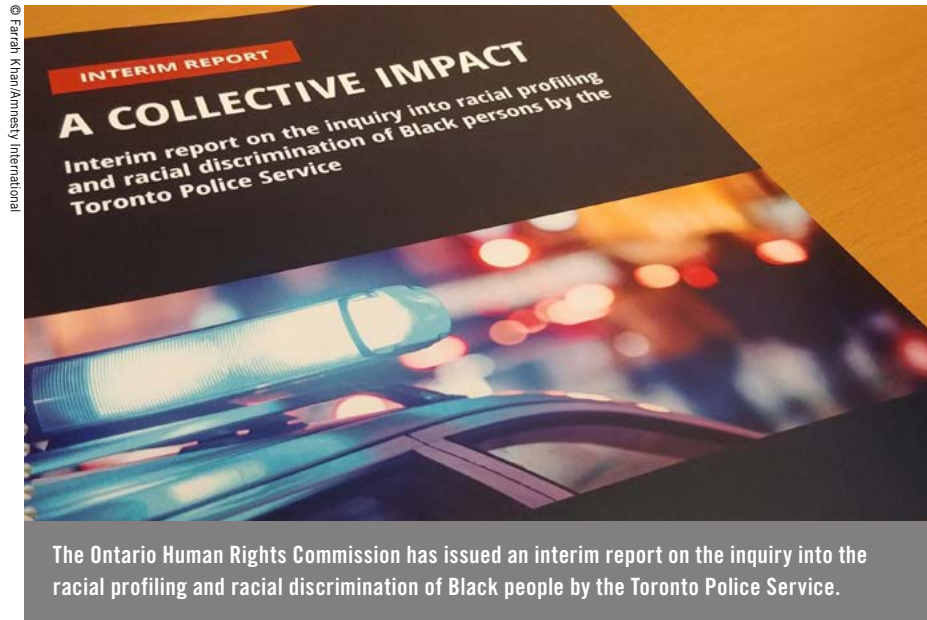
¹⁵⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 UNTS 85 art 3 (entered into force 26 June 1987, accession by Canada 24 June 1987) [UNCAT].

¹⁵⁶ Suresh v Canada (Minister of Citizenship and Immigration), 2002 SCC 1.

¹⁵⁷ UNCAT Concluding Observations, 2018, supra note 41 at paras 24 and 25.

¹⁵⁸ Government of Ontario, "Anti-Black Racism Strategy" (14 December 2017), online: <https://www.ontario.ca/page/ontarios-anti-black-racism-strategy>.

¹⁵⁹ Ontario Human Rights Commission, "A Collective Impact: Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service" (November 2018), online: <http://ohrc.on.ca/en/public-interest-inquiry-racial-profiling-and-discrimination-toronto-police-service/collective-impact-interim-report-inquiry-racial-profiling-and-racial-discrimination-black>.



The OHRC report was followed by the report from an independent review on police street checks commissioned by the Ontario government and carried out by Justice Michael H. Tulloch, which was released on December 31, 2018. Justice Tulloch concluded that arbitrary street checks (also known as carding) by police disproportionately impacted racialized individuals and there was not adequate evidence to prove street checks were contributing to a reduction in crime.¹⁶⁰

Anti-Black racism in the Canadian policing, justice and corrections systems has frequently been highlighted as a serious concern by UN human rights bodies. Following a 2016 mission to Canada, the UN Working Group of Experts on Peoples of African Descent noted that it was,

... particularly concerned about anti-Black racism and there is clear evidence that racial profiling is endemic in the strategies and practices used by law enforcement. Consumer racial profiling and the arbitrary use of “carding”, or street checks, disproportionately affects people of African descent. The Working Group is concerned about excessive use of force and police-involved deaths, especially when responding to cases involving vulnerable people of African descent, such as those who are mentally ill or otherwise in crisis. It also is concerned that there is no race-based statistics of fatal police incidents involving persons of African descent.¹⁶¹

The Working Group made a comprehensive range of recommendations to Canada to address its concerns, including to “develop and implement an African Canadian justice strategy to address the anti-Black racism and discrimination within the criminal justice system.”¹⁶² The Working Group also recommended that “the practice of carding, or street checks, and all other forms of racial profiling be discontinued and that the practice of racial profiling be investigated and the perpetrators sanctioned.”¹⁶³

In its August 2017 review of Canada’s record, the UN Committee on the Elimination of Racial Discrimination called on Canada to “ensure that law enforcement and security agencies have programmes to prevent racial profiling, and that these are implemented and compliance monitored, including through independent oversight.”¹⁶⁴ The Committee also urged that it be made “mandatory to collect and analyze data ... on random stops by law enforcement officers, including on the ethnicity of the persons stopped”¹⁶⁵ and that steps be taken to “address the root causes of overrepresentation of African-Canadians and Indigenous peoples at all levels of the justice system, from arrest to incarceration.”¹⁶⁶

160 The Honourable Michael H. Tulloch, “Report of the Independent Street Checks Review” (31 December 2018), online: <http://www.mcscs.jus.gov.on.ca/english/Policing/StreetChecks/ReportIndependentStreetChecksReview2018.html>.

161 UN Human Rights Council, “Report of the Working Group of Experts on People of African Descent on its mission to Canada”, 36th Sess, (16 August 2017), UN Doc A/HRC/36/60/Add.1, para 78, online: <http://undocs.org/A/HRC/36/60/Add.1>.

162 Ibid at para 89(a).

163 Ibid at para 90.

164 CERD, Concluding Observations, 2017, supra note 2, at para 16(a).

165 Ibid at para 16(b).

166 Ibid.

RECOMMENDATIONS

- (a) The Ontario provincial government should implement the recommendations in the Ontario Human Rights Commission Report: A Collective Impact, Interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service and the Report of the Independent Street Checks Review conducted by the Honourable Michael H. Tulloch.
- (b) The federal government should initiate consultations with civil society groups and provincial, territorial and municipal governments to develop an action plan for implementing recommendations regarding anti-Black racism in the country's policing, justice and corrections systems that have been made by the UN Working Group of Experts on People of African Descent and the UN Committee on the Elimination of Racial Discrimination.
- (c) Federal, provincial and territorial governments should implement bans on racial profiling that includes putting an immediate stop to all random police street checks, which is backed up with compliance monitoring and independent oversight.

27. Reform national security laws and policies to guard against torture and other human rights violations.

While Bill C-59 has been passed by the House of Commons, it is awaiting review by the Senate Standing Committee on National Security and Defence and can still be revised before it comes to a final vote and eventual adoption by Parliament. Amendments are needed to rectify human rights concerns with the Bill and to address existing shortcomings in Canadian national security law and policy that are not included in Bill C-59.

A number of national security-related concerns and recommendations arose in the course of the recent review of Canada's record by the UN Committee against Torture in November 2018. Among other measures, the Committee called on Canada to adopt a policy prohibiting prisoner transfers to security forces of another country when there is a substantial risk of torture;¹⁶⁷ refrain from relying upon diplomatic assurances when there is a substantial risk that someone being removed from Canada would be tortured;¹⁶⁸ amend intelligence-sharing directives to comply fully with the absolute prohibition on torture;¹⁶⁹ and revise the immigration security certificate process to be fully compliant with international human rights obligations.¹⁷⁰

RECOMMENDATIONS

- (a) The federal government should amend Bill C-59 to address civil society concerns about mass surveillance, unfair no-fly list administration and legalization of cyber-attacks by the Communications Security Establishment.¹⁷¹
- (b) The federal government should further amend Bill C-59 and other relevant laws and policies to address national security-related recommendations made by the UN Committee against Torture, including enacting the absolute ban on refoulement to torture, refraining from the use of diplomatic assurances, prohibiting the transfer of prisoners to another country's forces if there is a substantial risk of torture, revising directives with respect to intelligence-sharing and torture, and reforming the immigration security certificate process to comply with international human rights obligations.

167 UNCAT, Concluding Observations, 2018, *supra* note 40, at para 31(b).

168 UNCAT, Concluding Observations, 2018, *supra* note 40, at para 29.

169 *Ibid* at para 43.

170 *Ibid* at para 47.

171 Civil Society Statement Regarding Bill C-59, *supra* note 153.

28. Take steps to ensure appropriate redress for and full review of past cases of national security and military-related human rights violations.

In past editions of Amnesty International's Human Rights Agenda for Canada, the organization highlighted cases of Canadian citizens who had experienced torture and other grave human rights violations in other countries in national security-related cases and for which judicial inquiries and court rulings had clearly demonstrated that Canadian officials bore significant responsibility. Amnesty International supported the calls made by these individuals for redress, justice and accountability for the violations they had experienced, which was taken up by various UN human rights bodies as well. Over the years Amnesty International welcomed the compensation and apologies that were provided to Maher Arar,¹⁷² Benamar Benatta,¹⁷³ Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin,¹⁷⁴ and Omar Khadr.¹⁷⁵ Amnesty International did not include recommendations with respect to this crucial human rights imperative in the 2018 Human Rights Agenda for Canada because it appeared that the government's previous resistance to providing redress had given way to a recognition of the importance of ensuring that individuals who have experienced serious human rights violations, including in a national security context, have access to an effective remedy.

It has, therefore, been deeply troubling to see the manner in which the government has suddenly and inexplicably changed its approach in the case of Abousfian Abdelrazik. His longstanding claim for redress for Canada's role in the torture, unlawful imprisonment and other grave human rights violations he experienced in Sudan between 2003 and 2009, appeared to be close to resolution. But an abrupt and inexplicable change of position by the federal government led to the sudden cancellation of mediation in April 2018¹⁷⁶ and an indefinite delay of the court case in September 2018.¹⁷⁷ Amnesty International sharply criticized the government for obstructing Abousfian Abdelrazik's access to an effective remedy for the human rights violations he has experienced as far back as 16 years ago.¹⁷⁸ In November 2018, the UN Committee Against Torture indicated it "is

concerned at reports that [Canada] is obstructing the efforts of Absoufian Abdelrazik – a Canadian citizen who alleges that he was unlawfully imprisoned and tortured in the Sudan between September 2003 and July 2004 and between October 2005 and July 2006 – to obtain redress for the alleged complicity of Canadian officials in



(L-R) Lawyer Paul Champ, Abousfian Abdelrazik and Alex Neve, at a press conference about developments in Abdelrazik's civil court case against the federal government, Sept. 14, 2018, Parliament Hill. Abousfian Abdelrazik is a Canadian citizen who was detained and tortured in Sudan.

172 Amnesty International, "Maher Arar: A timeline of Amnesty International's campaigning" (2 September 2015), online: <https://www.amnesty.ca/blog/maher-arar-a-timeline-of-amnesty-international%E2%80%99s-campaigning>.

173 Champ & Associates, Benamar Benatta reaches settlement with Canadian government, 9 March, 2015, <https://champlaw.ca/Benatta>.

174 Amnesty International, News Release, "Amnesty International welcomes compensation and apology for Canada's role in the torture and other human rights violations endured by Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin" (17 March 2017), online: <https://www.amnesty.ca/news/amnesty-international-welcomes-compensation-and-apology-canada%E2%80%99s-role-torture-and-other-human>.

175 Amnesty International, News Release, "Redress for Omar Khadr is welcome and long overdue" (4 July 2017), online: <https://www.amnesty.ca/news/redress-omar-khadr-welcome-and-long-overdue>.

176 Murray Brewster, "Ottawa ditches mediation talks in \$27M Abdelrazik lawsuit", CBC News (17 April 2018), online: <https://www.cbc.ca/news/politics/abdelrazik-settlement-talks-1.4621700>.

177 Jim Bronskill, "Judge agrees to delay hearing Abdelrazik lawsuit due to federal plea: Abdelrazik's lawyer says delay is 'contemptible'", The Canadian Press (18 September 2018), online: <https://www.cbc.ca/news/politics/abdelrazik-lawsuit-postponed-indefinitely-1.4829080>.

178 Amnesty International, News Release, "Amnesty International Deeply Disappointed by Adjournment of Abousfian Abdelrazik's Human Rights Case" (18 September 2018), online: <https://www.amnesty.ca/news/amnesty-international-deeply-disappointed-adjournment-abousfian-abdelrazik%E2%80%99s-human-rights-case>.

his treatment, particularly the Canadian Security Intelligence Service”¹⁷⁹ and called on the government to “provide information on specific measures taken” in this and other cases by November 2019.¹⁸⁰

In other cases involving concerns about human rights violations arising in cases dealing with national security and defence, the Canadian government has failed to carry out full and comprehensive reviews of the law, policy and actions taken to ensure that appropriate redress is provided and that necessary reforms to avoid similar injustices from reoccurring are identified.

Hassan Diab was extradited to France in November 2014, where he was held for over three years without charge or trial and mainly in solitary confinement, on accusations he was responsible for a synagogue bombing in Paris in 1980, before being returned to Canada in January 2018. An external review of his case ordered by then Minister of Justice Jody Wilson-Raybould does not include a mandate to consider the need for reform to Canada’s extradition laws.¹⁸¹

In November 2018 the UN Committee Against Torture repeated the call made by Amnesty International and many other organizations and experts¹⁸² for a full review of the policy that allowed for prisoners apprehended by Canadian forces in Afghanistan to be transferred into the custody of Afghan forces, even though there was a well-documented and serious risk that they would face torture.¹⁸³



Ottawa academic Hassan Diab endured over three years of detention without charge or trial after being extradited to France in a case which has been shown to be lacking in any credible evidence against him.

RECOMMENDATIONS

- (a) The federal government should take immediate steps to provide appropriate redress to Abousfian Abdelrazik for Canada’s role in the human rights violations he experienced in Sudan.
- (b) The federal government should review the criteria and processes for reaching decisions about providing redress in individual cases involving national security-related human rights violations so as to establish an impartial, consistent and transparent approach to resolving such cases that accords with international human rights obligations regarding access to an effective remedy.
- (c) The federal government should extend the mandate of the current external review of the case of Hassan Diab to include consideration of whether reforms are needed to Canadian extradition law.
- (d) The federal government should comply with the UN Committee against Torture’s recommendation to “launch a transparent and impartial investigation into the actions of Canadian officials relating to the transfer of Afghan detainees” with an eye to adopting a “policy for military operations that clearly prohibits prisoner transfers to another country when there are substantial grounds for believing that the individuals to be transferred would be in danger of being subjected to torture.”¹⁸⁴

179 UNCAT, Concluding Observations, 2018, supra note 40, at para 38.

180 Ibid at paras 39 and 54.

181 Amnesty International, News Release, “Rights groups tell Justice Minister that Hassan Diab external review is not enough” (19 July 2018), online: <https://www.amnesty.ca/news/rights-groups-tell-justice-minister-hassan-diab-external-review-not-enough>.

182 The Rideau Institute, “Open Letter to PM urging Public Inquiry on Afghan Detainee Transfers”, (8 June 2016), online: <http://www.rideauinstitute.ca/2016/06/08/open-letter-to-pm-urging-public-inquiry-on-afghan-detainee-transfers/>. The letter, dated 7 June 2016, was signed by 41 human rights experts, parliamentarians and other eminent Canadians.

183 UNCAT, Concluding Observations, 2018, supra note 41 at paras 30 and 31.

184 Ibid at para 31.

29. Bring the use of solitary confinement in Canada into full conformity with international norms.

International human rights law is very clear. Prolonged solitary confinement, certainly beyond 15 days, constitutes torture or ill-treatment. Safeguards are necessary to ensure it is never used against children or people with mental illness and that international restrictions with respect to the use of solitary confinement against women prisoners¹⁸⁵ are fully respected. There must be independent oversight to guard against its misuse or abuse and to ensure it is not applied in a disproportionate manner against groups subject to marginalization and discrimination.¹⁸⁶

After decades of denial that there are serious and legitimate concerns with respect to the prevalence and nature of solitary confinement in Canadian prisons, there has been considerable action in recent years. There have been two significant court challenges, in British Columbia¹⁸⁷ and Ontario,¹⁸⁸ both of which are still underway. A number of particularly cruel and tragic individual cases have received considerable media and public attention.¹⁸⁹ The Ontario Human Rights Commission has taken a strong position calling for an end to the use of solitary confinement.¹⁹⁰ The federal government has brought forward two separate Bills proposing reforms.¹⁹¹



“...both African-Canadian and Indigenous offenders are overrepresented in ‘segregation’ (solitary confinement)”
– The UN Committee for the Elimination of Racial Discrimination

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¹⁸⁵ United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), GA Res 65/229, UNGAOR, 65th Sess, 16 March 2011, UN Doc A/RES/65/229, online: <http://undocs.org/A/RES/65/229>. See rules 12, 13 and 22 in particular.

¹⁸⁶ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), GA Res 70/175, UNGAOR, 70th Sess, 8 January 2016, UN Doc A/RES/70/175, online: <http://undocs.org/A/RES/70/175>. See rules 43 to 45 in particular.

¹⁸⁷ See BCCLA, News Release, “We won! BC Supreme Court ends indefinite solitary confinement in federal prisons in Canada” (17 January 2018), online: <https://bccla.org/2018/01/bc-supreme-court-ends-indefinite-solitary-confinement-federal-prisons-across-canada/>. See also BCCLA, News Release, “Rights organizations fight against federal government attempt to overturn solitary confinement victory” (13 November 2018), online: <https://bccla.org/news/2018/11/release-solitary-confinement-rights-organizations-fight-against-federal-government-attempt-to-overturn-solitary-confinement-victory/>.

¹⁸⁸ CCLA, News Release, “Court strikes down solitary confinement regime in response to CCLA’s challenge” (18 December 2017), online: <https://ccla.org/court-strikes-down-solitary-confinement-regime-in-response-to-cclas-challenge/>. See also CCLA, News Release, “CCLA court challenge to solitary confinement: The next step” (6 April 2018), online: <https://ccla.org/ccla-court-challenge-solitary-confinement-next-step/>.

¹⁸⁹ Paul Darrow, “Solitary confinement: How four people’s stories have changed hearts, minds and laws on the issue”, The Globe and Mail (20 June 2017), online: <https://www.theglobeandmail.com/news/national/solitary-confinement-canada-required-reading/article35391601/>.

¹⁹⁰ Renu Mandhane, Chief Commissioner of the Ontario Human Rights Commission, “Adam Capay case shows Ontario must eliminate the inhumane practice of segregation”, The Globe and Mail (26 February 2019), online: <https://www.theglobeandmail.com/opinion/article-adam-capay-case-shows-ontario-must-eliminate-the-inhumane-practice-of/>; Patrick White, “End solitary confinement, says Ontario human rights commissioner in wake of Adam Capay case”, The Globe and Mail (26 February 2019), online: <https://www.theglobeandmail.com/canada/article-solitary-confinement-should-be-banned-in-ontario-human-rights/>.

¹⁹¹ See Bill C-56, An Act to amend the Corrections and Conditional Release Act and the Abolition of Early Parole Act, 1st Sess, 42nd Parl, 2015 (Introduction and first reading in the House of Commons, 19 June 2017) [Bill C-56]. See also Bill C-83, An Act to amend the Corrections and Conditional Release Act and another Act, 1st Sess, 42nd Parl, 2015 (Concurrence at report stage in the House of Commons, 26 February 2019) [Bill C-83].

UN human rights bodies have also made numerous recommendations with respect to the use of solitary confinement in Canada. The UN Committee for the Elimination of Racial Discrimination has highlighted concern at “reports that both African-Canadian and Indigenous offenders are overrepresented in ‘segregation’ (solitary confinement), that 50 percent of Indigenous women have reportedly been placed in segregation and that Indigenous inmates have the longest average stay in segregation.”¹⁹² Most recently, the UN Committee against Torture presented a comprehensive range of recommendations for reform, including that the use of solitary confinement be “subject to independent review”.¹⁹³

Despite all of this activity, meaningful changes to solitary confinement have not yet been adopted and implemented by the federal government and action to advance reforms at provincial and territorial level has been inconsistent at best.

RECOMMENDATION

The federal government should lead a process involving provincial and territorial governments, civil society groups and Indigenous peoples’ organizations so as to identify comprehensive law and policy reforms needed in all jurisdictions in the country to ensure that the use of solitary confinement in all jurisdictions complies fully with international human rights obligations.

30. Advance reforms to uphold the right to protest at international meetings.

Concerned about the likelihood that policing and other security measures would lead to human rights violations, as has often been the case with summits and other major international meetings in Canada and other countries, Amnesty International and the Ligue des droits et libertés conducted a civil liberties observation mission at the time of the 2018 G7 Summit, which was held in La Malbaie, Quebec from June 7 to 9, with related protests and other activities also held in Quebec City.

In a detailed report, released after the Summit, the two organizations expressed concern that security measures had created a climate of fear and intimidation. Federal and provincial political figures, as well as police authorities, failed to uphold their obligation to guarantee conditions that would respect and uphold the rights to freedom of expression and peaceful assembly, including the right to protest. Instead, authorities contributed to a campaign of fear that preceded the Summit, through speeches linking protests and violence. They also put in place massive security measures, the scale and cost of which were not justified and which resulted in human rights violations against many protesters.¹⁹⁴ The two organizations have presented 17 recommendations to the federal and Quebec provincial governments, beginning with the need to reaffirm that police and security forces are obliged meaningfully to protect and guarantee the rights to freedom of speech and peaceful assembly, including the right to protest, during international meetings such as the G7 Summit.

RECOMMENDATION

The federal and Quebec provincial governments should take action to implement the 17 recommendations made by the G7 Summit civil liberties observation mission.

¹⁹² CERD, Concluding Observations, 2017, *supra* note 2 at para 15.

¹⁹³ UNCAT, Concluding Observations, 2018, *supra* note 41 at paras 14 and 15.

¹⁹⁴ Amnistie internationale Canada francophone and Ligue des droits et libertés, “Manifester sous intimidation : Rapport de mission d’observation du G7” (19 September 2019), online : <https://amnistie.ca/sinformer/publications/rapport/manifester-sous-intimidation-rapport-mission-dobservation-g7>.

31. Uphold international human rights protections regarding wearing and displaying religious symbols.

The recently elected provincial government in Quebec stated many times during the election campaign, as well as after the election, that it would introduce legislation banning religious symbols worn by persons in authority (such as judges and police officers); a ban that would also include teachers.¹⁹⁵ As this Human Rights Agenda was being finalized, Bill 22 was tabled.

Amnesty International has expressed concern that such a ban would infringe international human rights obligations that are binding on Quebec, including the freedoms of expression and religion and the prohibition on discrimination. International human rights law only allows limits on wearing or displaying religious symbols if the restrictions are prescribed by law, serve a precise and legitimate purpose recognized by international law and are necessary and in proportion to the intended goal. Amnesty International is of the view that explanations offered by the Quebec government to date do not accord with a legitimate goal authorized by international law and do not satisfy requirements of necessity and proportionality. Furthermore, even if the proposed Bill were to apply to all religious symbols, it is likely that the law would have a disproportionate impact on Muslim women who choose to wear the hijab, chador, niqab or burka.

RECOMMENDATION

The Quebec provincial government should only pursue law reform with respect to the wearing or displaying of religious symbols that is fully consistent with international human rights obligations regarding freedom of expression, freedom of religion and non-discrimination.



At a press conference on March 29, 2019, Quebec civil society groups, including Amnesty International, demanded that the Quebec government withdraw Bill 21 on secularism (“laïcité”).

¹⁹⁵ See the website of Coalition Avenir Québec, where the party commits to barring certain public employees from wearing religious symbols: “L’interdiction du port de signes religieux au personnel en position d’autorité, ce qui inclut les enseignants.” See Coalition Avenir Québec, “Identité et culture”, online: <https://coalitionavenirquebec.org/fr/blog/enjeux/identite-et-culture/>.



CANADA ON THE WORLD STAGE: Implementing international obligations, advancing rights-based foreign policy

2018 REPORT CARD

Amnesty International made nine recommendations to the government with respect to Canada's implementation of international obligations and the attention given to human rights in the country's international relations in *Shoring up Rights in a Turbulent Time*, the organization's 2018 Human Rights Agenda for Canada.



Work with Indigenous peoples organizations and civil society groups to move forward with the commitments made at the December 2017 ministerial human rights meeting to establish a new senior level mechanism, reform the existing Continuing Committee of Officials on Human Rights and develop both a protocol and stakeholder engagement strategy, all towards the goal of strengthened collaboration to implement Canada's international human rights obligations.

Despite commitments made by federal, provincial and territorial (FTP) governments at the December 2017 ministerial meeting, there has been minimal engagement with Indigenous peoples' organizations and civil society groups. In particular, despite repeated offers, governments did not take a collaborative approach to development the stakeholder engagement strategy. A draft of the protocol and the stakeholder engagement strategy was circulated by the FPT Continuing Committee of Officials on Human Rights on March 7, 2019 which Indigenous peoples' organizations and civil society are presently reviewing.



Pursue new approaches to ensuring effective international human rights implementation in conjunction with the 2018 Universal Periodic Review of Canada at the UN Human Rights Council and follow up to the 2016 and 2017 reviews of Canada's record by the UN Committees on the Elimination of Discrimination against Women, Rights of Persons with Disabilities and Elimination of Racial Discrimination.

There was one meeting in late March between Indigenous peoples' organizations, civil society groups and government representatives, ahead of Canada's third Universal Periodic Review in May 2018. There were a further series of meetings across the country¹⁹⁶ in June and July to discuss the recommendations made by other governments to Canada during the course of the UPR prior to the federal, provincial and territorial governments preparing Canada's response, which was tabled at the UN Human Rights Council in September. However, those sessions did not offer a meaningful opportunity to engage in concrete discussions about the feasibility and priority of the recommendations made to Canada. There were no meetings or any open and transparent process regarding follow-up to the 2016 and 2017 reviews by the UN Committees on the

¹⁹⁶ Vancouver, Winnipeg, Toronto, Ottawa, Montreal and Halifax.

Elimination of Discrimination against Women (CEDAW), Rights of Persons with Disabilities (CRPD) and Elimination of Racial Discrimination (CERD). Canada's interim report back to CERD regarding four priority recommendations¹⁹⁷ identified by the Committee was submitted on March 4, 2019, over six months overdue.



Convene a follow up FPT ministerial human rights meeting in December, 2018.

There was no follow-up FPT ministerial human rights meeting held in December 2018, which could have coincided with the 70th anniversary of the adoption of the Universal Declaration of Human Rights. As of writing this report there has been no announcement as to when such a meeting will be held.



Conclude FPT consultations with an eye to acceding to the Optional Protocol to the Convention against Torture (OPCAT) and Optional Protocol to the UN Convention on the Rights of Persons with Disabilities (OPCRPD) before the end of 2018.

There has been no clear public reporting on the status of these consultations. Apparently, a review of OPCAT, which was being overseen by the Department of Justice, has been completed and next steps with respect to accession are to be determined by Global Affairs Canada. It is nearly three years since the federal government's clear May 2016 commitment to move towards accession to OPCAT. In fact, the government appears to have backed away from that commitment. In a September 2018 response to the numerous UPR recommendations urging Canada to complete the accession process for OPCAT and OPCRPD, the federal government indicated that "FPT governments are currently considering the potential accession to the OP-CAT and OP-CRPD, but a decision on Canada's accession has not yet been determined."¹⁹⁸



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Nearly 3 years after former Foreign Affairs Ministers stated that Canada would move towards acceding to the Optional Protocol to the Convention against Torture, it remains uncertain whether and when Canada will take that step.



Address shortcomings in Bill C-47 so as to ensure that Canadian accession is in full conformity with the terms of the Arms Trade Treaty (ATT).

Bill C-47 received Royal Assent on 13 December 2018, following reviews by Foreign Affairs Committees in both the House of Commons and the Senate. Alongside other civil society organizations, Amnesty International identified a number of shortcomings in Bill C-47, which fail to conform to obligations in the Arms Trade Treaty. The organizations welcomed the government's decision to amend the Bill while it was before the House, to

¹⁹⁷ Those four recommendations, all of which appear in this Human Rights Agenda, are the Site C dam, the Mount Polley mining disaster, the Canada/US Safe Third Country Agreement and immigration detention.

¹⁹⁸ Report of the Working Group on the Universal Periodic Review, Canada, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, UN Doc. A/HRC/39/11/Add.1, (18 September 2018), at paras. 5 and 6. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/278/42/PDF/G1827842.pdf?OpenElement>.

enshrine the ATT's human rights criteria in statute rather than leaving them to regulation, but were disappointed that no changes were made to address the longstanding exclusion of arms sales to the United States from Canadian scrutiny and review.¹⁹⁹ Consultations are currently underway with respect to regulations identified in Bill C-47. It is anticipated that Canada will be in a position to accede to the Arms Trade Treaty sometime in 2019.²⁰⁰



Initiate consultations with respect to UN and Inter-American human rights treaties not yet ratified by Canada.

Despite having joined the Organization of American States (OAS) in 1990, Canada is not party to any of the OAS' human rights treaties, 29 years later. At the Summit of the Americas in Peru in April, 2018, Prime Minister Justin Trudeau announced that Canada will begin the process of joining one of those treaties, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará).²⁰¹



Launch public consultations to develop a global human rights strategy or action plan, including an overarching feminist framework; commitments to consistent, universal advocacy; increased public information about Canada's assessment of human rights situations around the world; and priority initiatives where Canada can make concrete contributions.

While a variety of guidelines, action plans, policies and strategies that touch on human rights matters have been adopted in recent years, Canada continues to lack a comprehensive, overarching global human rights strategy or action plan. While the government often claims to pursue a feminist foreign policy, beyond the Feminist International Assistance Policy – which deals with only one dimension of the country's foreign relations – no such policy has been expressly developed or publicly released. There have been frequent recommendations from civil society groups to elaborate and launch a clearly enunciated feminist foreign policy.²⁰² There has been no discernible progress in making Canada's assessments of human rights situations in countries around the world regularly and consistently available to the public.



Strengthen implementation of the 2016 Voices at Risk guidelines for human rights defenders, including identifying a high-level government champion; ensuring priority attention to land and environmental, women, LGBTI, Indigenous and other defenders who face heightened risks; providing increased resources; and delivering regular training in Canada and missions abroad.

The government launched a process of reviewing and updating the Voices at Risk Guidelines in the fall of 2018. It is expected that the revised version of the Guidelines will be released soon and will include a number

199 Amnesty International, Bill C-47 passes Parliament: Canada one step closer to joining Arms Trade Treaty, but further reforms still needed, (14 December 2018). <https://www.amnesty.ca/news/bill-c-47-passes-parliament-canada-one-step-closer-joining-arms-trade-treaty-further-reforms>.

200 As of 1 March, 2019, 100 governments are parties to the Arms Trade Treaty and a further 35 have signed but not yet ratified it. Canada is among 59 states which have not signed, ratified or acceded.

201 Prime Minister concludes his participation at the VIII Summit of the Americas, (14 April 2018). <https://www.newswire.ca/news-releases/prime-minister-concludes-his-participation-at-the-viii-summit-of-the-americas-679785243.html>.

202 The New Era of Canadian Feminist Foreign Policy, Canadian International Council, 18 December 2017, <https://thecic.org/en/the-new-era-of-canadian-feminist-foreign-policy/>; What a real feminist policy looks like, OpenCanada, (12 May 2017), <https://www.opencanada.org/features/what-real-feminist-foreign-policy-looks/>.



Saudi blogger Raif Badawi, whose wife and three children are all Canadian citizens, has been unjustly imprisoned in Saudi Arabia since 2012.

of annexes highlighting the situation of particular groups of human rights defenders, including women human rights defenders, LGBTI rights defenders, Indigenous rights defenders and human rights defenders working on cases involving business operations and economic interests. There are some plans to increase the training offered with respect to the Guidelines, but details

are not yet available. There has not been a 'high level champion' named for the Guidelines, nor have extra financial resources been devoted to their implementation. There has not been progress in instituting a process for facilitating emergency resettlement of human rights defenders facing situations of urgent risk, a key need identified by human rights defenders.



Develop new and innovative strategies on behalf of Canadians and other individuals with close Canadian connections who have been imprisoned abroad unjustly for lengthy periods and continue to be at risk of serious human rights violations, including Huseyin Celil, Wang Bingzhang and Li Xiaobo in China, Bashir Makhtal in Ethiopia, Mohammed el-Attar in Egypt, Saeed Malekpour in Iran and Raif Badawi in Saudi Arabia.

Bashir Makhtal was released and returned to Canada in April 2018, after more than 11 years of imprisonment in Ethiopia. However, in general the number of cases of Canadian citizens, permanent residents and other individuals with close Canadian connections imprisoned in situations involving serious human rights concern increased over the past year. At present, Amnesty International is monitoring 20 cases involving prisoners with Canadian citizenship or other close Canadian connections in China, Egypt, Iran, Saudi Arabia, Sudan, Syria, Turkey and the United States. In May 2018 the Auditor General of Canada released a report examining the provision of consular services²⁰³ and, in November 2018, the House of Commons Standing Committee on Foreign Affairs and International Development released the report from its study of consular services.²⁰⁴ In response, the government is working to strengthen service standards regarding prisoners deemed to be at heightened vulnerability. However, released prisoners, lawyers and civil society have made key recommendations for consular reform which have not been taken up, including enshrining the right to consular assistance in law, instituting an independent oversight body for consular services and developing clear and consistent guidelines for cases of permanent residents and other non-citizens with close Canadian connections.

²⁰³ Auditor General of Canada, Consular Services to Canadians Abroad – Global Affairs Canada, http://www.oag-bvg.gc.ca/internet/English/parl_oag_201805_07_e_43039.html.

²⁰⁴ Strengthening the Canadian Consular Services Today and for the Future, <http://www.ourcommons.ca/Content/Committee/421/FAAE/Reports/RP10186936/faaerp21/faaerp21-e.pdf>.



AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR 2019

CANADA ON THE WORLD STAGE

32. Elaborate a comprehensive Feminist Foreign Policy.

The government frequently asserts that Canada has a feminist foreign policy, without being able to point to a document that articulates and describes that policy's content and scope. It is not enough to list a number of different guidelines, action plans, and strategies and assert that taken together they amount to a feminist foreign policy. By way of example, Sweden has a clearly articulated feminist foreign policy, with an accompanying handbook, training for civil servants, and high-level champions supporting implementation.²⁰⁵ Canada needs something similar.



Eleven Saudi women activists who peacefully advocated for women's right to drive in the country are now facing prosecution in the country.

Notably, among the many pieces that are frequently relied upon, there continues to be no overarching human rights strategy for Canada, a document that would necessarily be at the heart of any understanding of a feminist foreign policy. Also problematic are evident contradictions that are inconsistent with a feminist approach. On the one hand Canada has shown strong support for imprisoned women human rights defenders in Saudi Arabia and increasing levels of aid for women and girls impacted by the civilian toll of the conflict in Yemen (in which Saudi forces bear responsibility for widespread war crimes). But on the one hand, while continuing to allow the sale of billions of dollars of armoured vehicles to Saudi Arabia on the other.

RECOMMENDATION

The federal government should consult widely to develop and launch a clearly enunciated and comprehensive feminist foreign policy with a clear human rights strategy at its core, covering foreign affairs, development assistance, defense, and trade, that is inclusive of LGBTI rights, to support Canada in taking a consistently feminist approach to its foreign policy.

²⁰⁵ Handbook Sweden's feminist foreign policy, <https://www.government.se/4abf3b/contentassets/fc115607a4ad4bca913cd8d11c2339dc/handbook-swedens-feminist-foreign-policy> ; Sweden's feminist foreign policy – examples from three years of implementation, <https://www.government.se/4ab455/contentassets/654bcc72d8f44da087386b4906043521/swedens-feminist-foreign-policy-examples-from-three-years-of-implementation.pdf>

33. Rapidly and substantially strengthen efforts to address the grave and mounting human rights implications of climate change.

Climate change affects the rights to life, health, housing, water and sanitation, among others. It disproportionately affects those who are more marginalized or subject to discrimination, but nobody can consider themselves exempt from the risks associated with climate change. Recent examples such as the 2017 and 2018 wildfires in British Columbia and extreme heat waves in eastern Canada are painful evidence²⁰⁶ of the human rights impacts of climate change at the current global warming level of ‘just’ 1°C above pre-industrial levels. Rising water temperatures have already affected wild fish sources that Indigenous peoples rely on for food, culture and livelihoods across Canada; and food security and species survival are at further risk from increasing global warming.²⁰⁷ Diminishing sea ice has affected Indigenous peoples’ access to and use of the coastal environment.²⁰⁸



Students hold placards as they demonstrate against climate change in central Athens, on International Women's Day March 8, 2019.

The urgency to act on climate change has become even clearer after the UN Intergovernmental Panel on Climate Change (IPCC) stated in October 2018 that emissions must be cut by more than half from 2010 levels by 2030 to avoid reaching a 1.5°C temperature rise above pre-industrial levels.²⁰⁹ Failing to do so will seriously jeopardize human rights.

Although Canada portrays itself as a world leader on climate change. The Country's Pan-Canadian Framework on Clean Growth and Climate

206 2018 now worst fire season on record as B.C. extends state of emergency. CBC, 28 August, 2018, <https://www.cbc.ca/news/canada/british-columbia/state-emergency-bc-wildfires-1.4803546> ; 2018 B.C. wildfire season is officially the worst on record, Vancouver Courier, 29 August, 2018, <https://www.vancourier.com/news/2018-b-c-wildfire-season-is-officially-the-worst-on-record-1.23416761> ; Heat wave smashes records around the world – a look at the sizzling temperatures, Global News, 4 July 2018, <https://globalnews.ca/news/4311444/heat-wave-weather-across-the-world/> ; New research predicts heat waves in Canada could become more frequent – and five times more deadly, National Post, (9 August 2018), <https://nationalpost.com/news/canada/new-research-predicts-heat-waves-in-canada-could-become-more-frequent-and-five-times-more-deadly> .

207 Implications of a 2°C global temperature rise for Canada's natural resources, WWF, http://d2akr19rvxl3z3.cloudfront.net/downloads/wwf_globalwarming_implicationsoncanadanaturalresources_brochure.pdf ; Fish, and fishermen, are already moving to survive climate change, Oceana Canada, (16 May 2018), <https://oceana.ca/en/blog/fish-and-fishermen-are-already-moving-survive-climate-change> .

208 Lemmen, D.S., Warren, F.J., James, T.S. and Mercer Clarke, C.S.L. editors (2016): Canada's Marine Coasts in a Changing Climate, Government of Canada, Ottawa, ON, https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/earthsciences/files/pdf/NRCAN_fullBook%20%20accessible.pdf ; Livia Albeck-Ripka, Why Lost Ice Means Lost Hope for an Inuit Village, New York Times, 25 November, 2017, <https://www.nytimes.com/interactive/2017/11/25/climate/arctic-climate-change.html> .

209 IPCC, 2018: Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, Maycock, M. Tignor, and T. Waterfield (eds.)]. World Meteorological Organization, Geneva, Switzerland, 6 October, 2018, <https://www.ipcc.ch/sr15/chapter/summary-for-policy-makers/> .

Change²¹⁰ does not go far enough or as quickly as needed to reach this target. Without significant further action, it is difficult to see how Canada will avoid contributing to catastrophic climate change. For instance:

- Canada produces the highest per person greenhouse gas emissions in the G20 and has the G20's highest energy use per capita.²¹¹
- Canada continues to support the expansion of fossil fuels production, especially the Alberta oil sands and related infrastructure (such as pipelines).
- According to the International Institute for Sustainable Development, Canada provides hundreds of millions of dollars in fossil fuel subsidies.²¹²
- Mandatory carbon pricing is a step in the right direction but it faces sustained and well-funded corporate resistance and legal challenge from some provinces;²¹³ it must ensure that low-income households are not disproportionately affected.
- Responses to climate change must be consistent with the protection and promotion of human rights.²¹⁴ Alternative energy projects that displace Indigenous peoples or contaminate the lands and waters on which they depend, are neither 'green' nor 'clean'.²¹⁵

In the face of this urgent threat to human rights and, in fact, to humanity, it is imperative that Canada adopt the most ambitious measures possible to reduce greenhouse gas emissions within the shortest possible timeframe, both nationally and through international cooperation and assistance.

RECOMMENDATIONS

(a) Federal, provincial and territorial governments must align their emissions reduction targets for 2030 with the imperative to limit the increase of global average temperature to 1.5°C above pre-industrial levels.

(b) The federal government must work with provincial and territorial government, Indigenous peoples' organizations and civil society to make urgently needed improvements to Canada's Pan-Canadian Framework on Clean Growth and Climate Change and relevant laws, consistent with Canada's obligations under the Paris Agreement and human rights law, as well as the UN's Sustainable Development Goals.

(c) Federal, provincial and territorial governments must ensure that approval of natural resource and other major development projects ensures Canada is able to meet its climate change, other environmental and international human rights obligations.

(d) Federal, provincial and territorial governments must identify and pursue alternative energy sources that are less destructive to the climate and which can be pursued with the free, prior and informed consent, and active participation, of First Nations, Inuit and Métis peoples.

210 Pan-Canadian Framework on Clean Growth and Climate Change, <https://www.canada.ca/en/services/environment/weather/climatechange/pan-canadian-framework/climate-change-plan.html>.

211 Canadians produce three times more greenhouse gas emissions than G20 average, The Globe and Mail, (14 November 2018), <https://www.theglobeandmail.com/canada/article-canada-found-to-produce-most-greenhouse-gas-emissions-per-person-among/>; Climate Transparency, G20 Brown to Green Report 2018, <https://www.climate-transparency.org/wp-content/uploads/2019/01/2018-BROWN-TO-GREEN-REPORT-FINAL.pdf>.

212 International Institute for Sustainable Development, Government handouts of public money to fossil fuel industry undermine climate solutions – study, (17 September 2018), <https://www.iisd.org/media/government-handouts-public-money-fossil-fuel-industry-undermine-climate-solutions-study>.

213 Political and Constitutional Divisions Do Not Excuse Failure to Comply with Human Rights Obligations Related to Climate Change, 12 February, 2019, <https://www.amnesty.ca/news/political-and-constitutional-divisions-do-not-excuse-failure-comply-human-rights-obligations>.

214 UN's Sustainable Development Goals, Vision 2030 and the Paris Climate Change Accord, Paris Agreement, UNFCCC, Paris, 12 December 2015, https://unfccc.int/sites/default/files/english_paris_agreement.pdf; Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, Resolution adopted by the General Assembly on 25 September 2015, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

215 See the section on the Site C dam, in the section on rights of Indigenous peoples.

(e) Federal, provincial and territorial governments should commit and work to end the use of all fossil fuels (coal, oil and gas) and to shift to 100% renewable energy by 2040, including an end to fossil fuel subsidies.

(f) Federal, provincial and territorial governments must promote a just transition to a zero-carbon economy which respects, protects and fulfils human rights, including ensuring that low-income and marginalized peoples in Canada will not disproportionately bear the financial burden of transition.

(g) The federal government should commit adequate resources to funding and supporting human rights-consistent climate initiatives in countries which would not be able to effectively mitigate and adapt to climate change alone, and should provide support to people whose rights have been negatively affected by climate change in countries in the Global South.²¹⁶

34. Cancel the Saudi light-armoured vehicle deal and strengthen Canadian arms control standards

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Amnesty International is calling on Prime Minister Justin Trudeau to scrap a deal to sell light-armoured vehicles, like the one shown here in Afghanistan in 2006, to Saudi Arabia.

The ongoing sale of \$15 billion worth of Canadian manufactured light-armoured vehicles (LAVs) to Saudi Arabia, despite extensive evidence that Saudi-led coalition forces continue to be responsible for widespread war crimes in the conflict in Yemen, has become a matter of considerable concern to Canadians. As public criticism of Saudi Arabia's human rights record grew in late 2018, following the murder of journalist Jamal

Khashoggi in Turkey in October, Prime Minister Justin Trudeau indicated that the government was looking at possible options for cancelling the deal. However, more than five months later there has been no progress towards that goal. It is time to end the Saudi LAV deal.

Meanwhile, Canadian arms control standards have been revised to ready the country to accede to the 2013 UN Arms Trade Treaty. However, Bill C-47, adopted by Parliament in December 2018, maintains highly problematic gaps in Canadian arms control. At least 50% of Canadian arms sales are to the United States, and are not subject to arms control scrutiny. As well, several key agencies and departments, very notably the Canadian Commercial Corporation, are not covered by the arms control process, even though they play an important role in arranging and financing arms deals with foreign governments. Going forward it is crucial that these gaps be addressed through regulatory and policy means, until there is another opportunity for law reform.

RECOMMENDATIONS

(a) The federal government should immediately withdraw export permits authorizing the sale of Canadian-manufactured light-armoured vehicles to Saudi Arabia.

(b) The federal government should launch consultations to identify and address areas where Canadian arms control standards fail to conform to obligations in the UN Arms Trade Treaty.

216 Canada's Feminist International Assistance Policy, Global Affairs Canada, https://international.gc.ca/world-monde/issues_development-enjeux_developpement/priorities-priorites/policy-politique.aspx?lang=eng#5.

35. Strengthen consular services to better protect Canadian citizens and others with close Canadian connections imprisoned and at risk of human rights violations in other countries.

Following up on the 2018 reports on consular services from the Auditor General and the House of Commons Standing Committee on Foreign Affairs and International Development, the federal government should commit to initiating reforms in at least four areas: (1) improved service standards to ensure faster and more effective consular attention in cases involving human rights risks; (2) enshrining the right to consular support, provided equally to all citizens, in Canadian law; (3) establishing an independent oversight body for consular cases; and (4) developing guidelines to ensure consistent and transparent support in cases of Canadian permanent residents and other individuals with close Canadian connections.

RECOMMENDATION

The federal government should initiate law and policy reform to strengthen consular services in detention cases involving concerns about serious human rights violations.

36. Set a date for the next meeting of federal, provincial and territorial ministers responsible for human rights.

When federal, provincial and territorial (FPT) ministers responsible for human rights met in December 2017, the first such meeting in 29 years, they committed to ensuring a more coordinated and effective approach to implementing the country's international human rights obligations. Those commitments include developing a senior level mechanism, a protocol, a stakeholder engagement strategy and holding similar meetings in the future. There has, however, been little discernible progress since. Agreeing to a time for a follow-up ministerial meeting would provide impetus and focus for advancing this reform agenda. The timing of the 2019 federal election is such that it is unlikely that such a meeting would be convened in 2019, but governments should agree to hold a further meeting before the end of 2020 and announce that date as soon as possible.

RECOMMENDATION

The federal government should consult with provincial and territorial governments to set a date before the end of 2020 for an FPT ministerial human rights meeting that follows-up on the meeting held in December 2017.

37. Accelerate the process of signing on to international human rights treaties, particularly those currently under review dealing with the arms trade, torture, persons with disabilities, enforced disappearances and violence against women.

Despite expressing strong intention to pick up the pace of Canada's accession to and ratification of international human rights treaties, which has lagged significantly in recent years, the current government has not officially signed on to any such treaties over the past 3 ½ years. None of the commitments to move toward joining the Arms Trade Treaty, the Optional Protocol to the Convention against Torture, the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the Convention on Enforced Disappearances within the UN system, as well as the Convention on the Prevention, Punishment, and Eradication of Violence Against Women within the Inter-American system, have yet to be completed, with only the Arms Trade Treaty looking likely to wrap up in the near future. Steps should be taken to accelerate accession to or ratification of

those five treaties, with regular, public status reports. At least 10 other important human rights treaties²¹⁷ within the UN and Inter-American systems are not yet even being considered for possible accession or ratification. Those discussions should at least be initiated.

RECOMMENDATION

The federal government should accelerate the process of ratifying or acceding to all international human rights treaties presently under review, initiate discussions with respect to all other international human rights treaties and institute a process of public reporting on the status of all human rights treaties to which Canada is not yet a party.

38. Develop and adequately resource an implementation plan for the Voices at Risk Human Rights Defenders Guidelines

The Voices at Risk Human Rights Defenders Guidelines were adopted by the government in December 2016,²¹⁸ but they have not been implemented consistently across Canadian missions around the world. A process of reviewing and updating the Guidelines was initiated in the fall of 2018 and it is expected that an updated version of Voices at Risk will be released soon. Including a number of new annexes focusing on the situation of specific groups of human rights defenders who face heightened vulnerability and particular needs. The update is welcome, however significant challenges remain in ensuring that the Guidelines are adequately resourced, championed at senior political levels and applied consistently in all circumstances. There is also a need to offer more reliable means of emergency relocation or resettlement for human rights defenders who face immediate peril and need to leave the country.²¹⁹

RECOMMENDATION

The federal government should establish an Advisory Group including human rights defenders from all world regions to assist in the development of an implementation plan for the Voices at Risk Human Rights Defenders Guidelines.








217 Optional Protocol to the Convention on the Rights of the Child on a communications procedure, A/RES/66/138 of 19 December 2011 (entered into force on 14 April 2014), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPICCR.aspx>; Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, A/RES/63/117 of 10 December 2008, https://www.ohchr.org/Documents/HRBodies/CESCR/OPProtocol_en.pdf; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Assembly resolution 45/158 of 18 December 1990, <https://www.ohchr.org/Documents/ProfessionalInterest/cmw.pdf>; 1954 Convention relating to the Status of Stateless Persons, UNHCR, <https://www.unhcr.org/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html>; American Convention On Human Rights “Pact of San Jose, Costa Rica” (B-32), Treaty Series no. 36, November 22, 1969, https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf; Additional Protocol To The American Convention On Human Rights In The Area of Economic, Social And Cultural Rights “Protocol of San Salvador”, adopted in San Salvador on November 17, 1988, <http://www.oas.org/juridico/english/treaties/a-52.html>; International Convention for the Protection of All Persons from Enforced Disappearance, New York, 20 December 2006, <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>; Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/57/199, adopted on 18 December 2002 (entered into force on 22 June 2006), <https://www.ohchr.org/en/professionalinterest/pages/opcat.aspx>; Inter-American Convention To Prevent and Punish Torture, Treaty Series no. 679, December, 1985 (entered into force on 28 February, 1987), <http://www.oas.org/juridico/english/treaties/a-51.html>; Inter-American Convention On The Prevention, Punishment And Eradication of Violence Against Women “Convention of Belem Do Para”, 9 June, 1994 (entered into force on March 5, 1995), <http://www.oas.org/juridico/english/treaties/a-61.html>; Inter-American Convention Against All Forms of Discrimination And Intolerance (A-69),), 5 June, 2013, http://www.oas.org/en/sla/dil/inter_american_treaties_A-69_discrimination_intolerance_signatories.asp; Inter-American Convention On The Elimination of All Forms of Discrimination Against Persons With Disabilities, 8 June, 1999 (entered into force 14 September, 2001), <http://www.oas.org/juridico/english/treaties/a-65.html>; Inter-American Convention On Forced Disappearance of Persons, 9 June 1994 (entered into force 28 March, 1996), <http://www.oas.org/juridico/english/treaties/a-60.html>.

218 Government of Canada, Voices at risk, *supra* note 117.

219 See Recommendation 20 in the section dealing with the Rights of Refugees and Migrants.








AMNESTY INTERNATIONAL'S 2018 HUMAN RIGHTS REPORT CARD







UPHOLD THE RIGHTS OF INDIGENOUS PEOPLES	GRADE
Suspend all construction on the Site C dam.	RED 
Adopt a legislative framework for implementation of the UN Declaration on the Rights of Indigenous Peoples to guide and ensure collaboration with Indigenous peoples, reform law and policy, elaborate a national action plan, and bring about Parliamentary and public accountability.	GREEN 
Integrate provisions for the right of free, prior and informed consent, consistent with international human rights standards, into all decisions affecting the land rights of Indigenous peoples.	ORANGE 
Ensure that the decision-making process around large-scale resource development projects includes meaningful gender-based analysis of possible impacts and necessary mitigation.	AMBER 
Ensure all First Nations, Métis, and Inuit people fleeing violence have access to culturally-relevant programming, emergency shelters, and transition houses.	ORANGE 
Adopt policies and protocols surrounding officer recruitment, training, and deployment to increase the numbers of experienced officers serving remote and northern First Nations, Métis, and Inuit communities; ensure all officers have appropriate training to ensure gender-sensitive, culturally-competent response to community needs; and reduce the high turn-over rates that create barriers to building trust and positive working relations with these communities.	RED 
Fully implement the Canadian Human Rights Tribunal ruling calling for the elimination of discrimination in provision of child and family services to First Nations.	AMBER 



A group of Indigenous women launch the Women's March on Parliament Hill, January 19, 2019.

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TAKE ACTION ON GENDER EQUALITY, AT HOME AND ABROAD	GRADE
Develop and enact a National Action Plan on Gender-Based Violence, building on the federal strategy to address gender-based violence and applying to all federal, provincial and territorial jurisdictions, with an intersectional focus and special provisions addressing the disproportionate levels of violence experienced by Indigenous women, girls, and two-spirit people.	RED 
Develop and promote a clear, public articulation of Canada's intersectional feminist foreign policy which is centred on the most marginalized women, girls and LGBTI people; empowers, supports and protects women and LGBTI rights defenders; and transforms Canada's bilateral and multilateral engagement to uproot the power relationships and structures at the core of gender inequality.	ORANGE 
Institute public service capacity-building to support implementation of Canada's feminist commitments.	ORANGE 
Increase development assistance funding to 0.7% of gross national income.	RED 
Call for a Parliamentary Committee study on intersex rights to identify areas for law and policy reform.	RED 

PROTECT REFUGEES AND MIGRANTS	GRADE
Suspend the 2004 Canada/US Safe Third Country Agreement, so that refugee claimants are permitted to make claims at Canadian border posts and not forced to make potentially dangerous irregular border crossings from the United States into Canada.	RED 
Repeal discriminatory and punitive measures in the Immigration and Refugee Protection Act, including the Designated Country of Origin and Designated Foreign Nationals provisions.	RED 
Provide required resources to the Immigration and Refugee Board to ensure fair and expeditious processing of "legacy claims" referred for hearings before legislative reforms in December 2012; as well as the growing caseload related to increased number of claims from individuals crossing into Canada from the United States.	AMBER 
Work with provincial and territorial governments to guarantee adequate and sustained levels of legal aid funding to ensure access to counsel for refugees and vulnerable migrants in refugee and immigration proceedings.	AMBER 
Revise refugee resettlement levels with an aim to reaching 20,000 government-sponsored refugees on an annual basis by 2020.	AMBER 
Champion adoption of an effective Global Compact on Refugees including a credible and comprehensive responsibility sharing model for the financing, hosting and resettlement of the global refugee population.	AMBER 

HUMAN RIGHTS AND THE ECONOMY	GRADE
Move rapidly to appoint a well-resourced, independent Canadian Ombudsperson for Responsible Enterprise with a robust investigatory mandate to ensure human rights accountability for Canadian companies operating abroad and remedy for those harmed.	ORANGE II
Take concrete steps towards a progressive trade agenda that upholds Canada's human rights obligations and duty to protect human rights from both state and non-state actors, consistently champions meaningful consultation with and the free, prior and informed consent of Indigenous Peoples, and includes strong corporate accountability measures as well as a commitment to carry out independent, impartial and comprehensive human rights impact assessments of trade deals using UN benchmarks.	ORANGE II
Consistently implement the Voices at Risk guidelines for supporting human rights defenders facing threats and attacks, in accordance with their requests, including defenders who may be challenging human rights impacts they believe to be associated with the operations of Canadian extractive companies.	ORANGE II

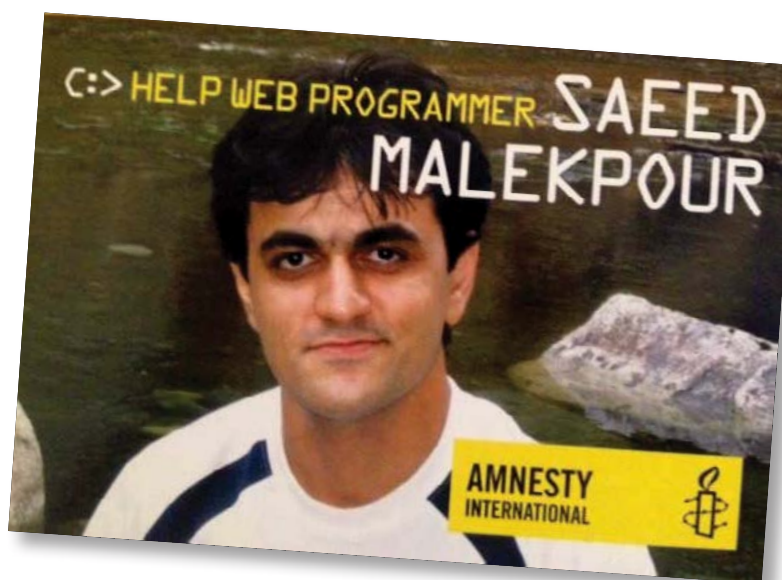
GETTING NATIONAL SECURITY RIGHT	GRADE
Address provisions in Bill C-59 which continue to give rise to human rights concerns, including repeal of the immigration security certificate process, amendments to the no-fly list appeal provisions and introduction of stronger safeguards with respect to information sharing.	ORANGE II
Amend the Immigration and Refugee Protection Act to meet the international human rights obligation absolutely to prohibit the return of anyone to a country where they face a serious risk of torture.	RED X

INTERNATIONAL OBLIGATIONS: COMMITTING AND IMPLEMENTING	GRADE
Work with Indigenous peoples organizations and civil society groups to move forward with the commitments made at the December 2017 ministerial human rights meeting to establish a new senior level mechanism, reform the existing Continuing Committee of Officials on Human Rights and develop both a protocol and stakeholder engagement strategy, all towards the goal of strengthened collaboration to implement Canada's international human rights obligations.	ORANGE II
Pursue new approaches to ensuring effective international human rights implementation in conjunction with the 2018 Universal Periodic Review of Canada at the UN Human Rights Council and follow up to the 2016 and 2017 reviews of Canada's record by the UN Committees on the Elimination of Discrimination against Women, Rights of Persons with Disabilities and Elimination of Racial Discrimination.	ORANGE II
Convene a follow up FPT ministerial human rights meeting in December, 2018.	RED X

Conclude FPT consultations with an eye to acceding to the Optional Protocol to the Convention against Torture and Optional Protocol to the UN Convention on the Rights of Persons with Disabilities before the end of 2018.	RED 
Address shortcomings in Bill C-47 so as to ensure that Canadian accession is in full conformity with the terms of the Arms Trade Treaty.	ORANGE 
Initiate consultations with respect to UN and Inter-American human rights treaties not yet ratified by Canada.	ORANGE 

INTERNATIONAL RELATIONS: PUT HUMAN RIGHTS AT THE HEART OF FOREIGN POLICY	GRADE
Launch public consultations to develop a global human rights strategy or action plan, including an overarching feminist framework; commitments to consistent, universal advocacy; increased public information about Canada's assessment of human rights situations around the world; and priority initiatives where Canada can make concrete contributions.	RED 
Strengthen implementation of the 2016 Voices at Risk guidelines for human rights defenders, including identifying a high-level government champion; ensuring priority attention to land and environmental, women, LGBTI, Indigenous and other defenders who face heightened risks; providing increased resources; and delivering regular training in Canada and missions abroad.	AMBER 
Develop new and innovative strategies on behalf of Canadians and other individuals with close Canadian connections who have been imprisoned abroad unjustly for lengthy periods and continue to be at risk of serious human rights violations, including Huseyin Celil, Wang Bingzhang and Li Xiaobo in China, Bashir Makhtal in Ethiopia, Mohammed el-Attar in Egypt, Saeed Malekpour in Iran and Raif Badawi in Saudi Arabia.	ORANGE 

Canadian permanent resident Saeed Malekpour has been unjustly imprisoned in Iran since 2008 and is serving a life prison term.



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SUMMARY OF 2019 RECOMMENDATIONS

Summary of Amnesty International's 2019 Human Rights Recommendations to Federal, Provincial and Territorial Governments in Canada

UPHOLD THE RIGHTS OF INDIGENOUS PEOPLES

1. Take comprehensive action to address violence against First Nations, Inuit, and Métis women, girls and two-spirit people.
2. Protect and revitalize Indigenous languages.
3. Address the continuing impact and legacy of mercury poisoning at Grassy Narrows.
4. Enact Bill C-262's legislative framework for implementation of the UN Declaration on the Rights of Indigenous Peoples.
5. Commit to full recognition and protection of free, prior and informed consent as a central element to upholding the rights of Indigenous Peoples.
6. Work to ensure that Bill C-69 is adopted by Parliament.
7. Ensure substantive equality for Indigenous children
8. Uphold the rights of Indigenous land defenders.
9. Suspend further construction of the Site C dam.

TAKE ACTION ON GENDER EQUALITY, AT HOME AND ABROAD

10. Develop a National Action Plan to Prevent and Address Gender-Based Violence.
11. Substantially boost levels of financial support for women's movements in Canada.
12. Reform Canadian law to protect the human rights of sex workers.
13. Increase support to women's and LGBTI movements around the world.
14. Strengthen human rights protections for intersex people.
15. Take concrete action to end sterilization without consent.

PROTECT THE RIGHTS OF REFUGEES AND MIGRANTS

16. Suspend the Canada/US Safe Third Country Agreement.
17. Commit to sustained annual increases in government-sponsored refugee resettlement towards a target of 20,000.
18. Pursue a human-rights centred approach to reform of the Immigration and Refugee Board.
19. Uphold the right of access to essential healthcare for all migrants and repeal medical-related inadmissibility in Canadian immigration law.
20. Institute an emergency relocation program for human rights defenders at risk.
21. Reform immigration detention to meet international standards and ensure independent oversight.

HUMAN RIGHTS AND THE ECONOMY

22. Appoint the Canadian Ombudsperson for Responsible Enterprise, with no further delay and with necessary powers to conduct independent and effective investigations.
23. Enact human rights due-diligence supply chain legislation.
24. Commit to carrying out comprehensive and independent human rights impact assessments of free trade agreements.
25. Take action to ensure redress, justice and accountability for the Mount Polley mine disaster.

JUSTICE, POLICING, NATIONAL SECURITY AND HUMAN RIGHTS

26. Take action to address anti-Black racism in policing, justice and corrections.
27. Reform national security laws and policies to guard against torture and other human rights violations.
28. Take steps to ensure appropriate redress for and full review of past cases of national security and military-related human rights violations.
29. Bring the use of solitary confinement in Canada into full conformity with international norms.
30. Advance reforms to uphold the right to protest at international meetings.
31. Uphold international human rights protections regarding wearing and displaying religious symbols.

CANADA ON THE WORLD STAGE:

Implementing international obligations, advancing rights-based foreign policy

32. Elaborate a comprehensive Feminist Foreign Policy.
33. Rapidly and substantially strengthen efforts to address the grave and mounting human rights implications of climate change.
34. Cancel the Saudi light-armoured vehicle deal and strengthen Canadian arms control standards.
35. Strengthen consular services to better protect Canadian citizens and others with close Canadian connections imprisoned and at risk of human rights violations in other countries.
36. Set a date for the next meeting of Federal, Provincial and Territorial ministers responsible for human rights.
37. Accelerate the process of signing on to international human rights treaties, particularly those currently under review dealing with the arms trade, torture, persons with disabilities, enforced disappearances and violence against women.
38. Develop and adequately resource an implementation plan for the Voices at Risk Human Rights Defenders Guidelines.

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Anielle Franco, sister of Brazilian activist Marielle Franco who was murdered for her advocacy work, at the historic summit of women foreign ministers in Montreal in September 2018.

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Amnesty International activists, with solidarity butterflies from supporters across Canada, marched along with families of the disappeared in Mexico City in May 2018.

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

Our vision is for all people 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.

Until everyone can enjoy all of their rights, we will

continue our efforts. We will not stop until everyone can live in dignity; until every person's voice can be heard; until no one is tortured or executed.

Our members are the cornerstone of these efforts. They take up human rights issues through letter-writing, online and off line campaigning, demonstrations, vigils and direct lobbying of those with power and influence.

Locally, nationally and globally, we join together to mobilize public pressure and show international solidarity.

Together, we make a difference.

Amnesty International Canada (English Branch)

312 Laurier Avenue East,
Ottawa, ON K1N 1H9
1-800-AMNESTY (1-800-266-3789)
www.amnesty.ca

Amnistie internationale Canada francophone

50 rue Ste-Catherine Ouest, bureau 500,
Montréal QC H2X 3V4
1-800-565-9766
www.amnistie.ca