

A YEAR TO GET IT RIGHT:

AMNESTY INTERNATIONAL'S

2017 HUMAN RIGHTS AGENDA

FOR CANADA

AMNESTY
INTERNATIONAL



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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.

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Together, we make a difference.

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INTRODUCTION

Rights,
equality, justice
and basic safety
are under siege in
many parts of
the world.



A YEAR TO GET IT RIGHT: AMNESTY INTERNATIONAL'S 2017 HUMAN RIGHTS AGENDA FOR CANADA

2017 stands to be a particularly consequential year for human rights. It is certainly a year during which there will be pressing need and considerable expectations for the Canadian government to act decisively at home and demonstrate leadership abroad with respect to a wide range of human rights concerns and challenges. That is the focus of this 15th edition of Amnesty International's Human Rights Agenda for Canada, *A Year to Get It Right*.

There will be much talk of anniversaries in Canada in 2017. Notably, of course, that includes the 150th anniversary of Confederation. During the year, therefore, there will be events and programs retracing Canada's history, highlighting the country's strengths, and celebrating the many local and global achievements of individual Canadians. These important contributions include promoting greater respect for human rights, which have been of considerable benefit across the country and around the world.

And there is cause for celebration. Canada as a nation and individual Canadians are indelibly etched in the global human rights landscape with respect to such endeavours as the drafting of the Universal Declaration of Human Rights, the advent of peacekeeping, embracing multiculturalism, banning landmines, establishing the International Criminal Court, protecting child soldiers, resettling refugees, and promoting gender equality.

But when it comes to human rights, our anniversary reflections must go much deeper as well and confront the reality of colonialism that lies at the heart of Confederation. That means acknowledging that Canada was

founded, 150 years ago, amidst and on the back of widespread human rights violations against Indigenous peoples. Those grave violations have continued throughout Canada's history, decades which the Truth and Reconciliation Commission and the Chief Justice of the Supreme Court of Canada have both recently described as being marked by policies that were intent on "cultural genocide".¹ The legacy of those cruel and deliberate violations remains unaddressed. Furthermore, ongoing violations continue to be a harsh reality for First Nations, Métis and Inuit women, men and young people throughout Canada.

Marking 150 years of Canadian history invites wider, critical self-reflection on human rights concerns even in areas where there has also been admirable progress. A meaningful and honest look at Canada's history should acknowledge exclusion, racism, sexism and other discrimination that have been particular low-points for Canada at various points over the decades of Confederation and continue to provoke considerable injustice today.

The need to ensure that the occasion of Canada@150 includes serious consideration of both the country's notable progress and deep failings on the human rights front is all the greater given that 2017 is also a year of significant human rights anniversaries. Nationally, it is 35 years since the Canadian Charter of Rights and Freedoms was adopted and 40 years since the Canadian Human Rights Act became law.

Both were seminal developments that have been of immeasurable benefit to human rights protection across Canada and have inspired similar constitutional and legal human rights measures in other countries.



Marking
150 years of
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Internationally, 2017 marks a decade since the UN Declaration on the Rights of Indigenous Peoples was adopted in 2007, a long overdue human rights development addressing one of the most notable gaps in the universal human rights system. The Declaration's adoption was disgracefully and aggressively opposed by the Canadian government at the time.²

As 2017 begins, globally there is much uncertainty and considerable trepidation that the incoming Donald Trump government in the United States may pursue a range of national and international policies and actions that set back and directly contravene fundamental human rights guarantees, including with respect to non-discrimination, women's equality, civilian protection, the rights of refugees and migrants, the prohibition on torture and free expression. That concern is even greater given similar political developments around the world, including several countries in Western Europe, which have seen divisive and xenophobic campaign rhetoric and platforms gain greater prominence and even prevail in recent national elections and referendums.

The prospect of diminished respect for human rights from key governments is particularly foreboding at a time when rights, equality, justice and basic safety are truly under siege in so many parts of the world. Civilians face unspeakable horrors in far too many countries, such as Syria, Iraq, Yemen and South Sudan. The abject failure of the international community to end the unfathomable, unrelenting carnage in Syria is an indictment of moral and political global leadership that will haunt our world for decades. And at a time when inconceivable numbers of civilians have died in conflict, the courageous and determined individual women, men and youth who stand up to defend human rights face vilification and attack like never before.

1 *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, June, 2015, http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf; *Chief Justice says Canada attempted 'cultural genocide' on aboriginals*, The Globe and Mail, May 28, 2015, <http://www.theglobeandmail.com/news/national/chief-justice-says-canada-attempted-cultural-genocide-on-aboriginals/article24688854/>.

2 On May 10, 2016, the government announced that Canada is now "a full supporter of the Declaration without qualification" and will "adopt and implement the declaration in accordance with the Canadian Constitution." There have been no such steps towards implementation, an outstanding concern discussed later in this Agenda at pg. 8. The Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs, *Speech delivered at the United Nations Permanent Forum on Indigenous Issues*, New York, May 10, 2016. <http://news.gc.ca/web/article-en.do?nid=1064009&tp=970>.

All of this very significantly puts human rights in the spotlight in Canada and for Canadians in 2017. Justin Trudeau's election in 2015 led to important changes in government policy and positions nationally and internationally in 2016 that demonstrate a strong commitment to human rights. Prime Minister Trudeau personally and Canada as a whole have come to be seen globally as championing human rights, particularly when it comes to women's human rights, refugee protection and diversity. Canada has significantly reengaged with the United Nations and multilateral bodies more generally. That has propelled Canada into positions of growing leadership that must be leveraged over the course of 2017.

But the new tone and renewed commitment to human rights has wavered, often significantly, particularly when economic interests are in play. Nowhere has that been more troubling than the failure to uphold the rights of Indigenous peoples consistently, when pipelines, mines and hydroelectric developments are at stake. Several decisions are expected in late 2016 and 2017 with respect to several controversial large-scale projects in or crossing the lands and territories of Indigenous peoples. The government can revert to Canada's longstanding willingness to put the rights of Indigenous peoples second to other interests; or can show historic leadership by charting a different course that is truly in keeping with the frequent promise of a new relationship with Indigenous peoples. Decisions taken with respect to three pipeline projects in November 2016 went in both directions, with approval of the Trans Mountain and Line 9 Pipelines while the Northern Gateway Pipeline was rejected.

Amnesty International's 2017 Human Rights Agenda for Canada lays out recommendations for action in seven areas:

- the rights of Indigenous peoples;
- gender equality;
- protecting refugees and migrants;
- the business of human rights;
- the right path to national security;
- living up to our human rights obligations; and
- championing human rights on the world stage.

2017 truly must be a year to get it right when it comes to human rights.



A NEW RELATIONSHIP? TIME TO UPHOLD THE RIGHTS OF INDIGENOUS PEOPLES

A history of injustice and betrayal

The persistent failure to recognize, respect and uphold the rights of First Nations, Inuit and Métis peoples constitutes Canada's most serious and disgraceful human rights failing. The Truth and Reconciliation Commission (TRC) concluded that more than a century of forced removal of Indigenous children from their families and cultures was part of a larger programme of "cultural genocide... a coherent policy to eliminate Aboriginal people as distinct peoples and to assimilate them into the Canadian mainstream against their will." Strikingly, the TRC's calls to action highlight not only the persistent failure to address these grave injustices of the past – and the legacy of marginalization, impoverishment and cultural loss left in their wake – but also the fact that many of these same injustices continue today in new guises.



A mountain of reports, court judgements and UN reviews on matters such as the widespread failure to restore use and control over lands wrongfully taken from Indigenous peoples, the persistent gap in living standards and quality of life between Indigenous and non-Indigenous people, the continued high rates of Indigenous children being put into state care, and the shockingly high rates of violence against Indigenous women and girls make it absolutely clear that the harms endured by Indigenous peoples are at their very core a human rights matter. No other

Canadian human rights concern has attracted anywhere near the degree of serious, consistent criticism and attention from international human rights bodies, experts and review processes: condemnation that has continued to mount over the past 25 years.

Canada is a party to six major UN human rights treaties³ each of which leads to a regular review of Canada's human rights record every 5 to 10 years. Two such reviews were held last year and concerns about the rights of Indigenous peoples were dominant each time. The Committee on the Elimination of Discrimination

3 *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, 660 U.N.T.S. 195 (entered into force 4 January 1969); *International Covenant on Civil and Political Rights*, 16 December 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (entered into force 23 March 1976); *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 U.N.T.S. 3, 6 I.L.M. 368 (entered into force 3 January 1976); *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 U.N.T.S. 13, 19 I.L.M. 33 (entered into force 3 September 1981); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 U.N.T.S. 85 (entered into force 26 June 1987); *Convention on the Rights of the Child*, 20 November 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456 (entered into force 2 September 1990).

against Women (CEDAW) noted that “indigenous women continue to suffer from multiple forms of discrimination, particularly as regards their access to employment, housing, education and health care and continue to live in poverty ... as reflected by high poverty rates, poor health, inadequate housing, lack of access to safe water and low school-completion rates.”⁴ The Committee on Economic, Social and Cultural Rights (CESCR) indicated it is concerned, “in spite of the pledge ... to address the situation of indigenous peoples, about the persisting socioeconomic disparities between indigenous and non-indigenous peoples, and by disparities in relation to poverty prevalence and access to basic rights, including housing, education and health-care services.”⁵

Recent reviews by the Human Rights Committee,⁶ Committee on the Rights of the Child,⁷ Committee against Torture,⁸ and the Committee on the Elimination of All Forms of Racial Discrimination⁹ have all similarly included extensive concerns and corresponding recommendations with respect to a range of human rights violations experienced by Indigenous peoples.

Canada’s failure to uphold the human rights of Indigenous peoples has consistently emerged as a dominant concern in virtually all visits to the country by UN human rights experts and committees in recent years.¹⁰ The UN Special Rapporteur on the rights of Indigenous peoples noted in his 2014 report of his mission to Canada the previous year, “it is difficult to reconcile Canada’s well-developed legal framework and general prosperity with the human rights problems faced by indigenous peoples in Canada, which have reached crisis proportions in many respects.”¹¹ The 2013 visits of the Committee on the Elimination of Discrimination against Women (CEDAW)¹² and the Inter-American Commission on Human Rights¹³ both found that Canada has failed to exercise the due diligence necessary to ensure the right of Indigenous women and girls to live free from violence and discrimination. The CEDAW Committee called this failing a “grave violation” of human rights.

Deep concern about Canada’s record with respect to the rights of Indigenous peoples has also been expressed by other governments, including many of our closest allies. When Canada’s human rights record was examined by governments as part of the UN Human Rights Council’s Universal Periodic Review process in 2013, 54 separate recommendations about addressing and improving respect for the rights of Indigenous peoples were made by 41 different governments.¹⁴

4 Committee on the Elimination of Discrimination against Women, *Concluding observations: Canada*, UN Doc. CEDAW/C/CAN/CO/8-9, November 18, 2016, para. 28 [CEDAW 2016].

5 Committee on Economic, Social and Cultural Rights, *Concluding observations: Canada*, UN Doc. E/C.12/CAN/CO/6, March 23, 2016, para. 19 [CESCR 2016].

6 Human Rights Committee, *Concluding observations: Canada*, UN Doc. CCPR/C/CAN/CO/6, August 13, 2015, paras. 9, 11, 16, 17, 18 and 19 [HRC 2015].

7 Committee on the Rights of the Child, *Concluding observations: Canada*, UN Doc. CRC/C/CAN/CO/3-4, December 6, 2012, paras. 32, 42, 46, 65, 69, and 85 [CRC 2012].

8 Committee against Torture, *Concluding observations: Canada*, UN Doc. CAT/C/CAN/CO/6, June 25, 2012, para. 20 [CAT 2012].

9 Committee on the Elimination of All Forms of Racial Discrimination, *Concluding observations: Canada*, UN Doc. CERD/C/CAN/CO/19-20, April 4, 2012 paras. 10, 12, 17, 18, 19, 20, and 21 [CERD 2012].

10 See for example: Special Rapporteur on adequate housing, *Mission to Canada*, UN Doc. A/HRC/10/7/Add.3, February 17, 2009, paras 69-82; Special Rapporteur on the right to food, *Mission to Canada*, UN Doc. A/HRC/22/50/Add.1, December 24, 2012, paras 53-68.

11 Special Rapporteur on the rights of indigenous peoples, James Anaya, *The situation of indigenous peoples in Canada*, UN Doc. A/HRC/27/52/Add.2, July 4, 2014, para. 13.

12 Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada*, UN Doc. CEDAW/C/OP.8/CAN/1, March 30, 2015.

13 Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada*, IACHR Doc. OEA/Ser.L/V/II. Doc. 30/14, December 21, 2014.

14 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Canada*, UN Doc. A/HRC/24/11, June 28, 2013.

Over many years there has also been ample examination at national and provincial levels of a wide range of both overarching and specific concerns with respect to the situation of Indigenous peoples in Canada, very much including systemic failure to protect their rights. That has included Manitoba's Aboriginal Justice Inquiry (1991), the Task Force on the Criminal Justice System and its Impact on the Indian and Métis People of Alberta (1991), the Royal Commission on Aboriginal Peoples (1996), Manitoba's Aboriginal Justice Implementation Commission (2001), Saskatchewan's Commission on First Nations and Métis Peoples and Justice Reform (2004), Ontario's Ipperwash Inquiry (2007), and the Truth and Reconciliation Commission of Canada (2015). Most recently the National Inquiry into Missing and Murdered Indigenous Women and Girls began its work in September 2016.

This amounts to 25 years of study, inquiry and recommendations, the overwhelming bulk of which has been ignored. The final report from the Truth and Reconciliation Commission notes, for instance:

In 1996, the Report of the Royal Commission on Aboriginal Peoples urged Canadians to begin a national process of reconciliation that would have set the country on a bold new path, fundamentally changing the very foundations of Canada's relationship with Aboriginal peoples. Much of what the Royal Commission had to say has been ignored by government; a majority of its recommendations were never implemented.¹⁵

Notably, as well, while government intransigence and, in many instances, defiance has continued to stand in the way of meaningful change to address the rights violations experienced by Indigenous peoples, a growing number of historic Supreme Court of Canada rulings has strengthened the protection of their rights, very notably including rights with respect to lands, territories and resources.¹⁶ Unfortunately the potential benefit of these decisions has been limited by the slow pace of government implementation and a consistent pattern of attempting to interpret the rulings as narrowly as possible, forcing Indigenous peoples to go to court repeatedly on similar issues.



¹⁵ *Honouring the Truth, Reconciling for the Future*, Summary of the Final Report of the Truth and Reconciliation Commission of Canada, 2015, pg. 8, http://nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf.

¹⁶ *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010; *R. v. Powley*, 2003 SCC 43, [2003] 2 SCR 207; *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511; *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 SCR 256.

A new relationship?

With such a lengthy history of serious human rights violations, coupled with what has often been callous government inaction, Amnesty International has welcomed the public commitments to a new relationship with Indigenous peoples that have been made by Prime Minister Trudeau, relevant Ministers, and the government collectively. It is a promise that has been made repeatedly, including in the government's first Speech from the Throne in December 2015:

*Because it is both the right thing to do and a certain path to economic growth, the Government will undertake to renew, nation-to-nation, the relationship between Canada and Indigenous peoples, one based on recognition of rights, respect, co-operation and partnership.*¹⁷

That was identified as the key priority for Minister of Indigenous and Northern Affairs Carolyn Bennett:

*As Minister of Indigenous and Northern Affairs, your overarching goal will be to renew the relationship between Canada and Indigenous Peoples. This renewal must be a nation-to-nation relationship, based on recognition, rights, respect, co-operation, and partnership. I expect you to re-engage in a renewed nation-to-nation process with Indigenous Peoples to make real progress on the issues most important to First Nations, the Métis Nation, and Inuit communities – issues like housing, employment, health and mental health care, community safety and policing, child welfare, and education.*¹⁸

There have indeed been a number of very promising steps taken in that direction:

- In December 2015, Prime Minister Trudeau unconditionally accepted and committed to implementation of the 94 Calls to Action from the Truth and Reconciliation Commission.¹⁹
- In February 2016, Minister of Justice Jody Wilson-Raybould announced that the government would not appeal a landmark Canadian Human Rights Tribunal ruling that longstanding underfunding of child protection services on First Nations reserves constitutes systemic discrimination.²⁰
- Significant funding commitments to address pressing needs in Indigenous communities across the country were included in the March 2016 federal budget.²¹
- At the UN Permanent Forum on Indigenous Issues in May 2016, Minister Bennett announced Canada's support "without qualification" of the UN Declaration on the Rights of Indigenous Peoples.²²
- In August 2016, the Ministers of Indigenous and Northern Affairs, Justice and Status of Women jointly launched the National Inquiry into Missing and Murdered Indigenous Women and Girls, with the Inquiry beginning its work on September 1, 2016.²³

17 *Making Real Change Happen: Speech from the Throne to Open the First Session of the Forty-second Parliament of Canada*, December 4, 2015, <http://www.speech.gc.ca/en/content/making-real-change-happen>.

18 *Minister of Indigenous and Northern Affairs Mandate Letter*, <http://pm.gc.ca/eng/minister-indigenous-and-northern-affairs-mandate-letter>.

19 *Statement by Prime Minister on release of the Final Report of the Truth and Reconciliation Commission*, December 15, 2015, <http://www.pm.gc.ca/eng/news/2015/12/15/statement-prime-minister-release-final-report-truth-and-reconciliation-commission>

20 "I will not be seeking judicial review of this decision. This is part of the new relationship and necessary in terms of the spirit of reconciliation. While we cannot change history, we can address it, learn from it, move forward and lay the foundation for a better future." *Federal government won't appeal human rights ruling on First Nation child welfare*, APTN National News, February 22, 2016, <http://aptn.ca/news/2016/02/22/federal-government-wont-appeal-human-rights-ruling-on-first-nation-child-welfare/>.

21 "Budget 2016 proposes to invest \$8.4 billion over five years, beginning in 2016–17, to improve the socio-economic conditions of Indigenous peoples and their communities and bring about transformational change." Budget 2016, Chapter 3: A Better Future for Indigenous Peoples, March 22, 2016, <http://www.budget.gc.ca/2016/docs/plan/toc-tdm-en.html>.

22 *Canada officially adopts UN declaration on rights of Indigenous Peoples*, CBC News, May 10, 2016, <http://www.cbc.ca/news/indigenous/canada-adopting-implementing-un-rights-declaration-1.3575272>.

23 National Inquiry into Missing and Murdered Indigenous Women and Girls, <https://www.aadnc-aandc.gc.ca/eng/1448633299414/1448633350146>.

Disappointment and frustration grows

Against this backdrop of stirring promises and impressive commitments, however, concerns are growing about a failure to follow through with genuine implementation and concrete action.

There has been no indication of how the government intends to proceed with implementation of the UN Declaration on the Rights of Indigenous Peoples. While in opposition, Liberal MPs had supported a private member's bill calling for review and reform of Canadian laws to ensure their consistency with the standards set out in the Declaration, collaboration with Indigenous peoples in the creation of a national implementation plan, and regular reporting to Parliament on progress toward implementation. A nearly identical private members bill – Bill 262 – introduced before the current Parliament has not been supported by the government nor has the government set out an alternative framework to meet these objectives.²⁴



Annual vigil for missing and murdered Indigenous women and girls in Fort St John, British Columbia.

The failure to uphold and implement the Declaration has been brought into sharp focus by the government's decision to proceed with construction of the controversial Site C dam in the Peace River Valley in northeast British Columbia, despite widespread opposition from Indigenous peoples whose rights are jeopardized. Construction is proceeding even while legal challenges remain before the courts, in disregard of existing Treaty rights and the right of free, prior and informed consent enshrined in the Declaration.

The Terms of Reference for the National Inquiry into Missing and Murdered Indigenous Women and Girls do not explicitly extend to examining the conduct of police agencies. Minister Bennett has stressed that this is implicit and that there was no intention to limit the mandate of the Inquiry. Given the urgent importance of the Inquiry being able to robustly review systemic concerns about the adequacy of police investigations and accountability, it is concerning that affected families and communities must rely on informal assurances from the Minister rather than explicit provisions in the Terms of Reference.

Even more concerning, the only mechanism for unresolved cases to be re-examined is for the Commissioners to refer these cases back to the same police bodies that had carried out earlier investigations, regardless of any concerns over bias or the capacity of these police bodies. Families still seeking answers about their missing or murdered loved ones worry that they will not have any effective recourse. That reality of systemic failures of the police and justice system, including for Indigenous women who allege having themselves experienced violence at the hands of police, has been painfully illustrated by the decision to only proceed with two formal charges with respect to 37 complaints of sexual violence and other abuse brought forward by Indigenous women in northern Quebec.²⁵

²⁴ Bill C-262, *United Nations Declaration on the Rights of Indigenous Peoples Act*, <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=8210051>.

²⁵ Amnesty International, *Police and governments must do more to earn the trust of Indigenous women in Canada: Amnesty International supports call for an inquiry into relations between police and Indigenous peoples in Quebec*, November 21, 2016, <http://www.amnesty.ca/news/police-and-governments-must-do-more-earn-trust-indigenous-women-canada-amnesty-international>.

While the decision to launch the Inquiry has been welcomed widely by families of murdered and missing Indigenous women and by frontline and national Indigenous organizations across the country, there is growing disquiet that the existence of the Inquiry might serve to deter immediate action by federal, provincial and territorial governments to improve safety for Indigenous women and girls across the country. There are urgently needed measures that are already well-known to government and that can and should be acted on immediately, even as the Inquiry proceeds. These include eliminating gaps in funding for women's shelters and social programs serving First Nations, Inuit and Métis women and girls fleeing violence, as well as improvements in gathering police data on the Indigenous identity of missing and murdered women and, more broadly, victims of violent crime. Responses to date, such as increased funding for First Nations shelters on reserves, have been inadequate to address these needs, leaving many profound gaps where rights remain unprotected.

The decision not to contest the Canadian Human Rights Tribunal's finding of racial discrimination in respect to funding for on-reserve child protection was very welcome, particularly given the years of legal wrangling in which the government had sought to have the Tribunal's jurisdiction and the case thrown out. However, the government has failed to comply with the Tribunal's order that the government take immediate remedial action. This has necessitated further hearings and directions from the Tribunal ordering the government to take action.²⁶

Resource development, gender and Indigenous rights

Intensive energy development in the Peace River region in northeast British Columbia is a microcosm of the Canadian resource economy. Oil and gas extraction, coal mining, and hydroelectric development help fuel the provincial economy and create high paying jobs that attract workers from across the country. In actively promoting intensive development in the northeast, federal and provincial officials have emphasized these benefits, while largely ignoring serious—and sometimes deadly—unintended consequences for wellness and safety that disproportionately impact the lives of the Indigenous peoples who live there, particularly Indigenous women and girls.

Amnesty International's research, and a wealth of other studies by government agencies and independent researchers, has demonstrated the role of large-scale resource extraction, and the very large numbers of outside workers necessary to sustain the pace of development, in inflated local prices for necessities like housing, straining local services and infrastructure, and fueling problems of drug and alcohol abuse and violent crime in host communities. All of these strains further increase the risks to women who are already marginalized and impoverished. Governments have failed to allocate sufficient resources



The Site C hydroelectric dam is being built in the heart of the Peace River region, BC, Canada.

²⁶ First Nations Child and Family Caring Society of Canada, *Federal Government's failure to comply with Three Legal Orders to End Racial Discrimination Against 163,000 First Nations Children and their Families*, Submission to House of Commons Standing Committee on Finance, September 19, 2016, <https://fncaringsociety.com/sites/default/files/Standing%20Committee%20on%20Finance%20-%20EN.pdf>.

to services necessary to address an emerging crisis in host communities like Fort St. John. Indigenous peoples whose lands and resources provide the basis for the wealth generated in the region, are excluded from a meaningful role in decision-making and bear a greater burden, including disproportionately high rates of violence against Indigenous women and girls. The situation in the Peace River region is a cautionary example and reminder of a troubling combination of factors that undermine respect for Indigenous and gender rights in countless communities across the country faced with the boom and the strains of intensive resource development.

Federal policies and approaches to approving resource development projects, largely through environmental impact assessment processes, ignore gender impacts and take a narrow and impoverished view of the government's obligations to uphold Indigenous rights. Reforms to the Environmental Assessment Act in 2012 reduced the likelihood of projects being subject to public review and hid the government's final decision behind the screen of Cabinet secrecy.

RECOMMENDATION

Deliver on the promise of a renewed relationship between Canada and Indigenous peoples that is based on recognition of rights, respect, cooperation and partnership by:

- stopping construction of the Site C dam;
- reforming the Canadian Environmental Assessment Act and related laws and policies to ensure that in decisions about resource development:
 - Indigenous peoples have a say in the design of assessments concerning their rights;
 - where Indigenous peoples have developed their own systems of assessment and decision-making, these systems are recognized and supported; and
 - no decisions are made that are contrary to Canada's legal obligations toward Indigenous peoples, as set out in treaties, the Canadian Constitution and international human rights law.
- incorporating the right to free, prior and informed consent in Canadian law; and
- announcing plans for the development of an implementation framework for the UN Declaration on the Rights of Indigenous Peoples.

RECOMMENDATION

Demonstrate a firm commitment to immediate action to improve protection of the rights of Indigenous women and children by:

- working with the provincial and territorial governments to ensure that First Nations, Inuit, and Métis women and girls have access to adequately funded, culturally appropriate emergency shelters and transition houses no matter where they live;
- instituting protocols for improved gathering of police data regarding the First Nations, Inuit or Metis identity of victims of violent crime including missing and murdered women; and
- complying without further delay with all outstanding Canadian Human Rights Tribunal rulings and directions with respect to discrimination against First Nations children.



STRONG ACTION NEEDED FOR GENDER EQUALITY IN CANADA AND AROUND THE WORLD



Canadian citizen Dr. Homa Hoodfar was a prisoner of conscience imprisoned in Iran for 112 days. She returned home to Canada on September 29, 2016.

The need is great

Widespread gender-based violence and discrimination continues to be among the most cruel and systemic human rights challenges the world faces. In Iran, a crackdown against women's human rights advocates included the unjust imprisonment of Canadian academic Homa Hoodfar for more than three months in 2016.²⁷ Central American refugee women and girls escaping insecurity at home all too often face danger and abuse as they flee.²⁸ In Nigeria, the fate of nearly 200 adolescent girls abducted by Boko Haram militants in 2014 remains unknown.²⁹ Women and girls from El Salvador to Burkina Faso and many other parts of the world lack access to sexual and reproductive health information and services. On every continent transgender individuals experience staggeringly high levels of violence and discrimination.³⁰ Around the

world courageous women's human rights defenders face threats and violence when they mobilize and speak out.³¹ The recent US presidential election was marked by upsetting setbacks in the national discourse about sexual assault, harassment, sexual and reproductive rights, and gender equality more widely.³² And in Canada there was outcry last November when Quebec prosecutors announced that charges would be laid in only 2 of 37 complaints made primarily by Indigenous women, alleging sexual violence and other abuse at the hands of provincial police.³³

27 Amnesty International, *Iran: Women's rights activists treated as 'enemies of the state' in renewed crackdown*, August 10, 2016, <https://www.amnesty.org/en/latest/news/2016/08/iran-womens-rights-activists-treated-as-enemies-of-the-state-in-renewed-crackdown/>.

28 Amnesty International, *Home Sweet Home? Honduras, Guatemala, and El Salvador's Role in a Deepening Refugee Crisis*, October 14, 2016, <https://www.amnesty.org/en/documents/amr01/4865/2016/en/>.

29 Amnesty International, *Nigeria's forgotten children*, October 18, 2016, <https://www.amnesty.org/en/latest/news/2016/10/nigerias-forgotten-children/>.

30 Amnesty International, *Europe: Transgender people face discrimination and inhuman treatment*, February 4, 2014, <https://www.amnesty.org/en/latest/news/2014/02/europe-transgender-people-face-discrimination-and-inhuman-and-degrading-treatment/>.

31 Amnesty International, *A risky business: Stories of women human rights defenders in the Americas*, December 9, 2015, <https://www.amnesty.org/en/latest/news/2015/12/a-risky-business-stories-of-women-human-rights-defenders-in-the-americas/>.

32 *Africa leads outcry over setback for feminism after Trump victory*, The Guardian, November 10, 2016, <https://www.theguardian.com/world/2016/nov/10/liberia-president-ellen-johnson-sirleaf-hillary-clinton-defeat-donald-trump-women-rights-equality>

33 Amnesty International, *Police and governments must do more to earn the trust of Indigenous women in Canada: Amnesty International supports call for an inquiry into relations between police and Indigenous peoples in Quebec*, November 21, 2016, <http://www.amnesty.ca/news/police-and-governments-must-do-more-earn-trust-indigenous-women-canada-amnesty-international>.



Women hold a candlelight vigil after a gang rape in Delhi.

Gender-based human rights violations continue at such an unrelenting scale because they are ignored and accepted. They remain largely unaddressed because entrenched impunity shields national governments from meaningful repercussions on the world stage and protects the individuals responsible for violence and abuse from facing consequences within national justice systems.

Canada's role

While Canada's own domestic record has been far from perfect, especially with respect to ensuring effective protection of the rights of Indigenous women and girls, Canada has traditionally been a champion of gender equality, both through measures adopted domestically and action taken globally. That has included enshrining gender equality in the Canadian Charter of Rights and Freedoms in 1985, and years of leadership with respect to an important annual resolution at the UN Human Rights Council (and previously the UN Commission on Human Rights) dealing with violence against women.

Amnesty International³⁴ and many other organizations had, however, drawn frequent attention to concerns that Canada's commitment to women's human rights and gender equality had slipped considerably under the previous government, particularly when it came to championing the full range of sexual and reproductive rights that are so absolutely essential to advancing gender equality.

Renewed Canadian leadership

Prime Minister Trudeau's government has come to power with a strong commitment to women's human rights and gender equality. Feminism has been embraced widely across the government, including by the Prime Minister personally. That is evident both nationally and internationally. For instance, there was considerable praise, in Canada and in other countries, for the decision to ensure gender parity in the federal Cabinet. Prime Minister Trudeau has quickly established a strong reputation as a champion of gender equality on the world stage, including through high profile participation in events associated with last year's session of the UN Commission on the Status of Women.

34 Amnesty International, *Jobs, Security, ... and Human Rights for All: A Human Rights Agenda for Canada*, pgs, 19-20, December, 2014, <https://www.amnesty.ca/sites/amnesty/files/canadahumanrightsagenda16december14.pdf>

Importantly, there have been many welcome indications that this is not just a change of tone and language, but a prioritization of important and long overdue substantive changes and initiatives:

- Introduction of government legislation to enshrine gender identity and gender expression as prohibited grounds of discrimination in the Canadian Human Rights Act and protected grounds under Criminal Code hate crimes provisions. Bill C-16 was adopted by the House of Commons on November 18, 2016 and is presently before the Senate.³⁵
- Launch of the National Inquiry into Missing and Murdered Indigenous Women and Girls.³⁶
- Development of a federal strategy on gender-based violence, which will be released in 2017.³⁷
- Canada actively sought membership and was elected to serve a term on the UN Commission on the Status of Women beginning in 2017, the first time Canada has been a member of the Commission since 2007.³⁸

More is needed

While there have been many promising developments over the past year with respect to women's human rights and gender equality, there is still much more that needs to be done. A range of troubling shortcomings in our domestic human rights record need immediate and substantial attention, and the need for even stronger international leadership from the Canadian government is evident and pressing.

There is little doubt that the most serious ongoing domestic shortcoming with respect to women's human rights continues to be the alarming levels of violence and discrimination experienced by Indigenous women and girls across the country. The government's decision to establish the National Inquiry into Missing and Murdered Indigenous Women and Girls is welcome. However, Amnesty International is concerned that the failure to explicitly include examination of police policies and conduct in the inquiry's Terms of Reference, and the lack of meaningful mechanisms to ensure unsolved or unresolved cases can be impartially re-investigated, means that crucial issues may remain unexamined and not acted on.

Action to end this human rights scourge must not be deferred until the inquiry concludes its work in 2018. Hundreds of recommendations from investigations and studies conducted by parliamentary committees and international human rights bodies remain unimplemented and provide a starting point for developing actions that can be put in place now.³⁹

For example, the government can work with First Nations, Inuit, and Métis women and organizations to ensure substantive equality in access to all government services and programs, including women's shelters and other culturally-relevant programs to prevent violence, both on and off reserve, to ensure the safety of Indigenous women and girls, and support Indigenous violence survivors. Routine collection and publication

35 Amnesty International and others, *Human rights groups applaud House of Commons support for transgender rights bill*, November 18, 2016, <http://www.amnesty.ca/news/human-rights-groups-applaud-house-commons-support-transgender-rights-bill>.

36 Discussed in greater detail in section dealing with the rights of Indigenous peoples.

37 The Minister of Status of Women's Mandate Letter includes a commitment to: "work with experts and advocates to develop and implement a comprehensive federal gender violence strategy and action plan, aligned with existing provincial strategies." Minister of Status of Women Mandate Letter, <http://pm.gc.ca/eng/minister-status-women-mandate-letter>. An Advisory Council to assist with development of the federal strategy was established in June, 2016 and public consultations were held throughout the summer: *About the Federal Strategy on Gender-based Violence*, <http://www.swc-cfc.gc.ca/violence/strategy-strategie/index-en.html>.

38 *Canada elected to United Nations Commission on the Status of Women*, April 7, 2016, <http://news.gc.ca/web/article-en.do?nid=1047489>.

39 Pippa Feinstein & Megan Pearce, *Master List of Report Recommendations Organized by Theme*, February 2015, <http://www.leaf.ca/wp-content/uploads/2015/02/Master-List-of-Recommendations.pdf>

of consistent, reliable, disaggregated data on rates of violence against Indigenous women, including the number of missing person cases, would be a positive step. Establishing local committees of law enforcement and community representatives that can, under conditions of confidentiality, review cases concerning violence against women, missing persons, and other sensitive cases, would provide greater assurance to victims of violent crime and their family members that all cases are handled without bias.

During its October 2016 review of Canada's women's rights record, the UN Committee on the Elimination of Discrimination against Women (CEDAW) noted that:

*Indigenous women continue to suffer from multiple forms of discrimination, particularly as regards their access to employment, housing, education and health care and continue to live in poverty ... as reflected by high poverty rates, poor health, inadequate housing, lack of access to safe water and low school-completion rates.*⁴⁰

CEDAW remains concerned that there is no action plan for implementing 37 outstanding recommendations it issued following its comprehensive inquiry into violence against Indigenous women and girls in Canada in 2013.⁴¹ The Committee also makes a specific stand-alone recommendation that Canada act to remove all remaining provisions in the Indian Act that are discriminatory on the basis of sex, an unresolved legacy of earlier laws that stripped women of Indians status when they married men who did not have status, but did not similarly strip men of their status when marrying non-status women.⁴²

Overall levels of violence against women and girls in Canada remain stubbornly stable. While development of a federal strategy on gender-based violence is welcome, more action is needed to end violence against all women and girls in Canada. What is needed is a comprehensive, coordinated, well-resourced national action plan on violence against women, with specific measures to end violence against Indigenous women and girls, including actions to decrease resource development-related risks of violence to women and girls in northern communities.

Once federal legislation protecting the rights of transgender individuals passes into law, there will be a need for corresponding legal and policy changes. That will include policies and protocols to harmonize the use of gender markers on provincial and federal personal identification documents.

Recognizing the violence and discrimination that women continue to face in so many parts of the world, ongoing threats to the safety and security of women's human rights defenders, and the valuable contributions that women-led and women's rights organizations abroad play in promoting gender equality,



Amnesty is calling for national action plan to address violence against women.

40 CEDAW 2016, *supra* note 4, para. 28.

41 *Ibid*, paras. 26-27.

42 *Ibid*, paras. 12-13.

as Canada concludes its International Assistance Review and prepares the 2017 federal budget, it will be important to ensure that overseas development assistance support is firmly rooted in gender equality principles, including robust and dedicated support to grassroots women's organizations, and that support is provided for a full range of sexual and reproductive health and information services.

CEDAW's report outlined a range of recommendations to Canada on issues of access to justice and the impact of the overseas operations of Canadian companies on women's human rights to the women, peace and security agenda and women in the justice system. With an eye to encouraging greater compliance and implementation, the Committee calls on the federal parliament, as well as provincial and territorial legislatures, to become more engaged in follow-up to the review, and to take action to implement CEDAW's recommendations with regard to more meaningful dissemination and increased public education about women's rights, and better mechanisms for coordination among federal, provincial and territorial governments.

RECOMMENDATION

Enact necessary reforms to full implement Bill C-16 protections with respect to gender identity and gender expression.

RECOMMENDATION

Build upon the anticipated gender-based violence strategy and develop a national action plan on violence against women.

RECOMMENDATION

Take concrete action to end violence against Indigenous women and girls without delay, including increased support for both on and off reserve, culturally-relevant programming for First Nations, Inuit and Metis women escaping violence.

RECOMMENDATION

Ensure that a strong commitment to gender equality, including robust support for women-led, women's rights organizations and women's human rights defenders, is at the heart of Canadian diplomacy, bilateral relations and development programming.

RECOMMENDATION

In consultation with Indigenous women's organizations and civil society, work with provincial and territorial governments to develop a plan of action for implementation of the recommendations of the October 2016 CEDAW review.



RESPONDING TO A GLOBAL REFUGEE CRISIS

The crisis

The numbers have become truly staggering. The world faces a crisis of displacement, the scale of which has not been experienced since the end of the Second World War. Twenty-one million people have fled their homes as refugees. A further 44 million people remain in dangerous and precarious conditions, internally displaced within their own countries. The combined total of 65 million displaced people means that roughly 1 of every 112 people in the world have been forced to flee their homes.⁴³

Overwhelming levels of displacement caused by 5 ½ years of armed conflict and massive human rights violations in Syria are at the heart of the current global crisis. An estimated 13.5 million Syrians, close to 60% of the country's population of 23 million, have been forced to flee. 4.8 million Syrians are refugees and another 8.7 million are thought to be internally displaced within Syria.⁴⁴ There are approximately 2.7 million Syrian refugees in Turkey alone.⁴⁵



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The world faces the biggest refugee crisis since Second World War.

The scale of displacement from and within Syria is so dramatic it has overshadowed other emergency situations around the world. For instance, after more than three years of civil war, the numbers of South Sudanese refugees who have fled to neighbouring countries now stands at 1.2 million, approximately 10 percent of the world's newest country's population.⁴⁶ Closer to home, the rampant violence and other human rights abuses propelling hundreds of thousands of Central Americans to embark on dangerous journeys through Mexico in an effort to reach the United States is rarely thought of as a refugee crisis, but that is entirely what it is.⁴⁷

43 UNHCR, *Figures at a glance*, <http://www.unhcr.org/figures-at-a-glance.html>.

44 UNHCR, *Syria Emergency*, <http://www.unhcr.org/syria-emergency.html>.

45 *Ibid.*

46 UNHCR, *South Sudan Emergency*, http://data.unhcr.org/SouthSudan/regional.php#_ga=1.1896889.945326417.1480047412.

47 Amnesty International, *Central America turns its back on hundreds of thousands fleeing 'war-like' violence*, October 14, 2016, <http://www.amnesty.ca/news/central-america-turns-its-back-on-hundreds-of-thousands-fleeing-war-like-violence>.

While the numbers are staggering, the true nature of the global refugee crisis lies even more dramatically in the restrictive measures, unrelenting enforcement and disturbing xenophobia and hate that have become the hallmarks of government and societal responses to refugees in countries around the world. Far more time, attention and resources go to efforts to interdict, turn back and confine refugees than to ensure their safety and foster conditions of respect for their rights. As a result, desperate journeys to safety for refugees have become increasingly perilous and thousands have lost their lives drowning in the Mediterranean and the Bay of Bengal, or at the hands of criminal gangs in Mexican rainforests or the Sinai desert. Hatred and fear of refugees has grown rapidly, fueled by politicians eager to pander to those sentiments for political gain.

The global imbalance in responding to the world's refugee crisis is both inequitable and unsustainable. Eighty-six percent of the world's refugees are hosted by low and middle income countries.⁴⁸ None of the top ten refugee hosting countries in the world are in the Global North.⁴⁹ A September 2016 high-level UN meeting failed to agree to a new binding process for equitable sharing among all states of the responsibility to protect refugees. A two year process to negotiate and agree a new approach is underway.

Canada's role

Over the past several years, Amnesty International had expressed growing concern that Canadian refugee policy had become increasingly restrictive and punitive, including cuts to health care for refugees and refugee claimants, designating lists of so-called “safe” countries of origin and a mandatory detention regime for groups of “irregular arrivals”. Over the course of 2013-2015 Canada's commitment to resettling Syrian refugees was far below what was possible, needed and expected.

The Trudeau government has, however, made very substantial changes over the course of 2016 that have demonstrated a much stronger commitment to refugee protection. A 2015 election promise to resettle 25,000 Syrian refugees to Canada has been met and exceeded.⁵⁰ The positive tone set by the Prime Minister and Minister of Immigration, Refugees and Citizenship John McCallum has gained worldwide attention and there is growing interest from several other governments in studying Canada's refugee resettlement programs.

There have been other encouraging developments as well. Cuts to health care coverage for refugees and refugee claimants were reversed and coverage restored in April 2016. One problematic consequence of the designated countries of origin list has been addressed through restoring access to appeal hearings. There was disappointment, however, that levels set for refugee resettlement in 2017 are considerably lower than



Amnesty Canada volunteer Stephanie Tran welcomes refugees.

48 Amnesty International, *8 Ways to Solve the World Refugee Crisis*, <https://www.amnesty.org/en/latest/campaigns/2015/10/eight-solutions-world-refugee-crisis/>.

49 As of October 2015: Turkey, Pakistan, Lebanon, Iran, Ethiopia, Jordan, Kenya, Chad, Uganda and China. Amnesty International, *Global Refugee Crisis – by the numbers*, October 2015, <https://www.amnesty.org/en/latest/news/2015/10/global-refugee-crisis-by-the-numbers/>.

50 As of December 19, 2016, 38,713 Syrian refugees had been resettled to Canada since November 2015. *#WelcomeRefugees: Key Figures*, <http://www.cic.gc.ca/english/refugees/welcome/milestones.asp>.

hoped. While the levels for private sponsorship have been set three times higher than before the unusually high numbers in 2016, government sponsorship has not increased over pre-2016 levels, remaining at 7,500 with an additional 1,500 through joint private/government agreements.⁵¹

Maintaining momentum

Against a global backdrop of restricting refugee rights and limiting options for finding safety, it is vital that Canada maintain the momentum begun over the past year; momentum that seeks to maximize refugee protection and promote diversity and tolerance. With concerns mounting about the possibility of incoming President-elect Donald Trump rapidly pursuing law and policy reforms as well as enforcement actions that will impact dramatically on the rights and safety of refugees and migrants in the United States, it will be even more important that Canada stand firm as a champion of the rights of refugees and migrants.

Domestically there is unfinished business to attend to. Access to essential health care has been restored for refugees and refugee claimants but is still denied to individuals who do not have immigration status in Canada. The UN's Human Rights Committee and Economic, Social and Cultural Rights Committee have both recently called on Canada to ensure equal access to essential health care, regardless of immigration status.⁵² The decision to allow refugee claimants coming from designated countries of origin to have access to appeal hearings is a good first step, but needs to be followed by abolishing this discriminatory list entirely. Amnesty International has, for instance, repeatedly drawn attention to how problematic it is that Mexico, which continues to face a serious human rights crisis, and central European countries with notorious records of failing to protect the rights of their Roma communities, are on the list.

There also remains a long-standing need to reform Canada's practice with respect to the inadmissibility provisions in the Immigration and Refugee Protection Act which apply to foreign nationals, including refugee claimants. The 2013 Supreme Court of Canada decision in *Ezokola*⁵³ established a test for determining whether an individual should be excluded from refugee protection for complicity in crimes under international law. The Court ruled that it is not enough to simply belong to a group that commits such offences; it is necessary to voluntarily and knowingly make a significant contribution to those crimes. The test in *Ezokola* however has not been applied to similarly situated people who are found to be inadmissible to Canada. Amnesty International believes the ruling in *Ezokola* must be imported and applied to individuals facing inadmissibility proceedings in Canada.

There is urgent need for reforms in the area of immigration detention. The "designated foreign nationals" provisions introduced in 2012 require mandatory detention of designated "irregular arrivals" without any assessment of the personal circumstances of individuals who have been designated. Those provisions, which include other discriminatory and punitive measures as well, should be repealed. There is also a clear need for legal and policy reforms to ensure that immigration detention truly becomes a measure of last resort, that children are never subject to immigration detention, and that independent oversight is put in place for the Canada Border Services Agency, which is responsible for the management of immigration detention facilities.

It will be particularly crucial that Canada ramp up its leadership for refugee rights on the world stage over the course of 2017. That includes continuing to speak out positively – both domestically and internationally – about the responsibility to protect refugees and the tremendous benefits refugees provide to countries

51 Government of Canada, *Key Highlights 2017 Immigration Levels Plan*, <http://news.gc.ca/web/article-en.do?nid=1145319>.

52 HRC 2015, *supra* note 6, para 12; CESCR 2016, *supra* note 5, para 50.

53 *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40, [2013] 2 SCR 678.

receiving them. There will be a crucial need for consistent, strong messages of support for refugees from senior members of government. Canada must also be prepared to press other governments to refrain from violating the rights of refugees. That pressure must extend to close friends and allies, such as Australia, which must be urged to close the cruel refugee prison camp on the Pacific island of Nauru.

Canada is currently Chair of the UNHCR's Executive Committee, which offers clear opportunities for global leadership. As negotiations among governments proceed with respect to a new approach to sharing the responsibility for refugee protection globally, Canada can and should push other countries to prioritize protecting refugees over restricting their rights and safety.

RECOMMENDATION

Repeal the designated foreign nationals and designated countries of origin provisions that were enacted as part of the 2012 reforms of Canadian refugee law.

RECOMMENDATION

Extend essential health care to all individuals in Canada, regardless of immigration status.

RECOMMENDATION

Reform inadmissibility provisions in the Immigration and Refugee Protection Act to conform to the requirements of voluntarily and knowingly making a significant contribution to the commission of an offence, established by the Supreme Court of Canada in its *Ezokola* judgement.

RECOMMENDATION

Reform immigration detention to prohibit detaining children and individuals with mental health problems and more generally ensuring that detention is truly a measure of absolute last resort.

RECOMMENDATION

Institute independent oversight of the Canada Border Services Agency.

RECOMMENDATION

Play a lead role in negotiations to establish a global rights-based mechanism for sharing responsibility for refugee protection. Set an example to follow by substantially increasing the levels for refugee resettlement to Canada for the year 2018.



HUMAN RIGHTS AND THE ECONOMY

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Community leader Ermitaño Reyes López surrounded by family after his sentencing. He was given a three-year sentence for his part in a public protest, but he was released because of the time he had already served in preventative detention. Mr. Reyes is concerned about a hydro-electric power plant under construction in his community in Guatemala.

On average three environmental defenders were killed each week during the course of 2015.

A deadly business

The tension in the relationship between business and human rights has become evident in very real and personal terms. This year, the UN's Special Rapporteur on human rights defenders, Michel Forst, issued a report noting that killings and other grave human rights abuses against environmental human rights defenders has become a "truly global crisis".⁵⁴ He noted that on average three environmental defenders were killed each week during the course of 2015⁵⁵ and that the majority "facing threats are those who oppose land grabbing, extractive industries, the industrial timber trade and large-scale development projects."⁵⁶

The Special Rapporteur's report mirrors concerns documented by Amnesty International, including our research indicating that Guatemala and Honduras, in particular, have become the deadliest countries in the world in which to be an environmental or land defender, with dramatic increases in "stigmatization, threats,

54 Report of the Special Rapporteur on the situation of human rights defenders Michel Forst, UN Doc. A/71/281, August 3, 2016, para. 26.

55 *Ibid*, para. 1.

56 *Ibid*, para. 31.

attacks, killings and lack of justice faced by individuals and communities fighting to protect the environment from large-scale mining, logging and hydroelectric projects” in those two countries.”⁵⁷ The killing in Honduras in March, 2016 of globally respected land and environmental defender and Indigenous leader Berta Cáceres brought this disturbing reality into the global spotlight.

In December 2016, the Canadian government issued its first set of Guidelines⁵⁸ for support to human rights defenders around the world. The Guidelines note 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 specify that “support for these human rights defenders should be provided as outlined in these guidelines, regardless of the nationality of the company in question.” That includes the prospect that “depending on the facts of a given case, there may be an impact on the support that the mission offers to the Canadian company in question, including denying or withdrawing trade advocacy support.”

Canada’s global footprint

There is no other Canadian industry that has as much of a global footprint as Canada’s extractives industry. Canadian mining, oil and gas companies operate in over 100 countries, and that means an increasing number of those companies are negotiating, exploring, digging and pumping in countries that are amid armed conflict, are facing widespread human rights violations, or have little previous experience with powerful multinational companies. Those companies have long benefited from extensive government support and assistance, as promoting the Canadian mining sector abroad has become a central dimension of Canada’s international trade policy. The unfortunate consequence is that just as mining has become a strong Canadian brand within the global economy, mining-related human rights abuses and violence have also increasingly become associated with that brand.⁵⁹



Angélica Choc, woman human rights defender who opposes the mining project of Mina Félix, Cobán, Alta Verapaz, Guatemala. Ms Choc is fighting for justice for the 2009 murder of her husband by company security forces.

Individuals and communities who have suffered human rights abuses associated with the operations of Canadian mining companies have found it difficult, if not impossible, to obtain justice. Options within their own countries have generally been non-existent or ineffective. And when they have brought their search for justice to Canada they have faced ineffective processes, barriers and dead-ends.⁶⁰ Notably, five lawsuits have been launched in the courts in Ontario and British Columbia against three separate

57 Amnesty International, ‘We are defending the land with our blood’: *Defenders of the Land, Territory and Environment in Honduras and Guatemala*, September, 2016, <http://www.amnesty.ca/news/hondurasguatemala-attacks-rise-world%E2%80%99s-deadliest-countries-environmental-activists>.

58 Government of Canada, *Voices at risk: Canada’s guidelines on supporting human rights defenders*, December, 2016, http://international.gc.ca/world-monde/world_issues-enjeux-mondiaux/rights_defenders_guide_defenseurs_droits.aspx?lang=eng.

59 Justice and Corporate Accountability Project, *The “Canada Brand”: Violence and Canadian Mining Companies in Latin America*, November 20, 2016, <https://justice-project.org/the-canada-brand-violence-and-canadian-mining-companies-in-latin-america/>.

60 *Cyanide spills: the Omai gold mine dam rupture in Guyana*, in Amnesty International, *Injustice Incorporated: Corporate abuses and the human right to remedy*, March, 2014, at pgs. 56-81, <https://www.amnesty.org/en/documents/POL30/001/2014/en/>.

Canadian companies by individuals who allege serious human rights abuses associated with the companies' operations in Guatemala and Eritrea. These cases are likely to drag on for several years and are being aggressively opposed by the companies concerned at every stage.

That is why civil society organizations in Canada, working closely with communities around the world that have been affected by Canadian mining operations, have for many years pressed the Canadian government to enact legal and policy reforms that will strengthen the human rights accountability of Canadian extractive companies for their overseas operations. Amnesty International has joined the Canadian Network on Corporate Accountability's *Open for Justice Campaign*, pushing for two consequential reforms: the establishment of an Extractive Sector Ombudsperson and legislated access to Canadian courts for individuals and communities who experience human rights abuses associated with the overseas operations of Canadian companies.⁶¹



Amnesty International Canada's Secretary General, Alex Neve, speaks at a demonstration on Parliament Hill calling for the creation of an extractive sector Ombudsperson.

Notably, the substantial impact Canadian companies have on human rights overseas and the lack of an effective corporate accountability framework in Canada has attracted a significant amount of attention and associated recommendations from UN human rights bodies. In fact, over the past four years, each of the UN Committee on the Elimination of Discrimination against Women,⁶² the Committee on Economic, Social and Cultural Rights,⁶³ the Human Rights Committee,⁶⁴ the Committee on the Rights of the Child⁶⁵ and the Committee on the Elimination of All Forms of Racial Discrimination⁶⁶ have called on Canada to strengthen legislation so as to, as the Human Rights Committee has described it, “ensure that all Canadian corporations under its jurisdiction, in particular mining corporations, respect human rights when operating abroad.”⁶⁷

61 *Open for Justice*, Canadian Network on Corporate Accountability, <http://cnca-rcrce.ca/campaigns-justice/>.

62 CEDAW 2016, *supra* note 4, paras. 18-19.

63 CESCR 2016, *supra* note 5, paras. 15-16.

64 HRC 2015, *supra* note 6, para. 6.

65 CRC 2012, *supra* note 7, paras. 28-29.

66 CERD 2012, *supra* note 9, para. 14.

67 HRC 2015, *supra* note 6, para 6.

Canada has not yet taken steps to develop a National Action Plan for implementation of the UN Guiding Principles on Business and Human Rights, which were adopted by the UN Human Rights Council in June, 2011.

During the 2015 federal election campaign the Liberal Party committed to “set up an independent ombudsman office to advise Canadian companies, consider complaints made against them, and investigate those complaints where it is deemed warranted.”⁶⁸ That commitment was not, however, taken up in any of the Ministerial Mandate letters and was not referenced in the 2016 Throne Speech. No public consultations have been launched with respect to the possible establishment of an Ombudsperson. Similarly there has been no progress with respect to legislated access to courts or the development of a National Action Plan for the UN Guiding Principles.

No trade in human rights

The failure to enact an effective corporate accountability framework is of even greater concern when considered against the backdrop of Canada’s ambitious pursuit of bilateral and multilateral trade deals which do not incorporate meaningful human rights safeguards into Canadian trade policy.

There was one potentially promising development in 2010 with the precedent-setting addition of a human rights review mechanism to the Canada-Colombia Free Trade Agreement (CCOFTA). Its implementing legislation included a requirement that the government conduct an annual assessment of the deal’s impact on human rights and table a report in Parliament regarding the results. However, the five assessment reports to-date, including this year,⁶⁹ have been so limited in scope and methodology as to be essentially meaningless. The reports have not looked at, let alone evaluated, human rights concerns linked to Canadian extractive investment projects in Colombia that the free trade agreement was explicitly designed to promote, including the effects and gendered impacts of these projects on vulnerable sectors of Colombian society such as Indigenous peoples, Afro-descendent communities and subsistence farmers, amongst others.

Amnesty International has also raised concern that Canada is considering ratification of what would be the country’s most substantial trade deal, the Trans-Pacific Partnership (TPP), in the absence of any human rights safeguards or commitment to conduct regular human rights impact assessments. Most recently, President-elect Donald Trump has indicated support for a renegotiation of the North American Free Trade Agreement (NAFTA), which does not presently include any human rights provisions. Prime Minister Trudeau has indicated that Canada would be prepared to enter those discussions, but has made no reference to human rights as a topic to be included in any negotiations.

These failures to make human rights a meaningful priority in Canada’s approach to the TPP, NAFTA and CCOFTA, amongst other free trade agreements with countries where grave human rights violations are widespread, reflect an approach that treats trade and human rights as separate, unrelated matters.

Notably, in their 2016 human rights reviews of Canada, both the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights called on Canada to “ensure that trade and investment agreements negotiated by Canada recognize the primacy of its international human rights obligations over investors’ interests.”⁷⁰

68 Canadian Network on Corporate Accountability, Parliamentary Report Card, <http://cnca-rcrce.ca/wp-content/uploads/2016/03/Parliamentary-Report-Card-Corporate-Accountability-for-Canadas-mining-oil-and-gas-sectors-sept-20151.pdf>.

69 *Annual Report Pursuant to the Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia*, July 20, 2016. http://www.canadainternational.gc.ca/colombia-colombie/bilateral_relations_bilaterales/rep-hrft-co_2015-dple-rapp.aspx?lang=eng.

70 CEDAW 2016, *supra* note 4, para. 19(d); CESCR 2016, *supra* note 5, para. 16.

RECOMMENDATION

Adopt a requirement that all existing and prospective trade and investment agreements be subjected to regular independent, impartial, transparent, comprehensive human rights impact assessments that comply with UN benchmarks.

RECOMMENDATION

Institute an effective human rights accountability framework to govern the overseas operations of Canadian companies which includes:

- an Extractive Sector Ombudsperson that is independent, empowered to conduct investigations and make recommendations and reports publicly;
- legislated access to courts in cases alleging human rights abuses associated with Canadian corporate activity abroad; and
- a National Action Plan for implementation of the UN Guiding Principles on Business and Human Rights.

RECOMMENDATION

Act on UN human rights treaty body recommendations⁷¹ to:

- require Canadian companies to carry out human rights gender impact assessments;
- prevent Canadian transnational companies from negatively impacting the rights of Indigenous peoples outside Canada; and
- hold Canadian companies accountable for overseas human rights harms.

RECOMMENDATION

Work with civil society to ensure Guidelines for support to human rights defenders are applied so as to safeguard defenders whose advocacy is associated with the human rights impact of the operations of Canadian companies.

71 CEDAW 2016, *supra* note 4, para. 18(a); CERD 2012, *supra* note 9, para. 14.




GETTING NATIONAL SECURITY RIGHT

*Would I approve waterboarding? In a heartbeat. I would approve more than that. It works. And if it doesn't work, they deserve it anyway for what they do to us.*⁷²

*I would bring back waterboarding, and I'd bring back a hell of a lot worse than waterboarding.*⁷³

*"Don't tell me it doesn't work — torture works. Half these guys [say]: 'Torture doesn't work.' Believe me, it works.*⁷⁴

Debate about national security and human rights has intensified sharply once again, in the lead up to Donald Trump assuming the US presidency in January 2017. He has made it very clear, repeatedly, that he endorses the use of waterboarding and other interrogation techniques which he describes as “a lot worse.” He has frequently commented that “torture works”. The prospect of a return to White House policies that endorse torture would be a dramatic setback in the effort to ensure that human rights protection is not sold short in the name of national security. These developments are of grave concern given the extent to which US national security policies and practices have direct and often dramatic impact in other countries and set a tone and example which other governments will inevitably follow.



The prospect of a return to White House policies that endorse torture would be a dramatic setback.

Further to a 2015 election promise, the Canadian government launched public consultations into Canada's national security framework in September, 2016, noting that the “responsibility to uphold the Constitution of Canada, and to ensure all laws respect the rights and freedoms we enjoy as people living in a free and democratic country is as equally fundamental as the responsibility to protect safety and security.”⁷⁵ At the same time, however, longstanding human rights shortcomings in Canada's national security laws and policies remain unaddressed, a number of individuals who have experienced national security-related human rights violations have not received redress, and new concerns continue to emerge, particularly with respect to electronic surveillance and privacy.⁷⁶

72 Donald Trump on waterboarding: ‘Even if it doesn’t work they deserve it’, The Guardian, November 24, 2015, <https://www.theguardian.com/us-news/2015/nov/24/donald-trump-on-waterboarding-even-if-it-doesnt-work-they-deserve-it>.

73 Trump Leads GOP Charge Embracing Torture: “I’d Bring Back a Hell of a Lot Worse Than Waterboarding”, Democracy Now, February 8, 2016, https://www.democracynow.org/2016/2/8/trump_leads_gop_charge_embracing_torture.

74 Trump says ‘torture works,’ backs waterboarding and ‘much worse’, Washington Post, February 17, 2016, https://www.washingtonpost.com/politics/trump-says-torture-works-backs-waterboarding-and-much-worse/2016/02/17/4c9277be-d59c-11e5-b195-2e29a4e13425_story.html.

75 Our Security, Our Rights: National Security Green Paper, 2016, <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ntnl-scrtr-grn-ppr-2016/ntnl-scrtr-grn-ppr-2016-en.pdf>.

76 In November, 2016 the Federal Court ruled that CSIS had illegally retained electronic data about people for more than ten years, even though it was not relevant to threats to Canada's security. CSIS broke law by keeping sensitive metadata, Federal Court rules, The Canadian Press, November 3, 2016, <http://www.cbc.ca/news/politics/csis-metadata-ruling-1.3835472>.



Amnesty Stop Torture demonstration on Parliament Hill, calling on Canada to be a strong international voice for torture prevention.

With concern growing about anticipated renewed backsliding on human rights in US national security practices, over the course of 2017 it will be more important than ever that Canada demonstrate that our approach to national security is grounded in firm respect for human rights.

Righting past wrongs

Amnesty International has repeatedly highlighted that central to anchoring a strong commitment to human rights in Canada's national security framework is accounting for and redressing national security-related human rights violations from the past. Numerous judicial inquiries and court rulings have highlighted serious human rights violations that have occurred in relation to Canadian national security investigations or operations, within Canada and abroad. The compensation and official apology provided to Maher Arar in 2007⁷⁷ and Benamar Benatta in 2015⁷⁸ are rare instances of redress being provided to individuals who have experienced serious national security-related human rights violations – including torture, unlawful arrest, arbitrary detention and unfair trials – for which Canadian officials bear some responsibility.

77 "Harper's apology 'means the world': Arar", CBC News, January 26, 2007, www.cbc.ca/news/canada/harper-s-apology-means-the-world-arar-1.646481.

78 Benamar Benatta reaches settlement with Canadian government, March 9, 2015, <http://champlaw.ca/Benatta>.



Notably Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin have not been compensated for the many ways that actions of Canadian officials contributed to the human rights violations they experienced, as documented in a 2008 judicial inquiry report from former Supreme Court of Canada Justice Frank Iacobucci.⁷⁹ Omar Khadr has had no redress for violations of his rights under the Canadian Charter of Rights and Freedoms, upheld in unanimous 2008⁸⁰ and 2010⁸¹ Supreme Court of Canada judgements. Other unresolved cases include Abousfian Abdelrazik⁸² and individuals subject to immigration security certificates.

A human rights-based approach to national security

Without security, human rights remain precarious. That is particularly so with respect to the rights of those individuals and communities who traditionally face greater levels of marginalization and inequality. In a climate of increased violence and insecurity they are inevitably at heightened risk of being threatened and attacked. Situations of insecurity frequently serve directly or indirectly as an excuse to target political opponents, ethnic and religious minorities, human rights defenders, independent journalists, migrants and others. Similarly, human rights violations stand to deepen insecurity, including when violations are justified in the name of security. Allowing torture, discrimination or unfair trials as part of a counter-terrorism strategy leaves greater numbers of survivors, victims and their families and deepens the sense of disenfranchisement that can be fertile ground for extremism and support for terrorist groups.

Human rights violations committed as part of an effort to bolster national security – whether that declared intention is genuine or a pretext – inevitably lead to both greater injustice and heightened insecurity. Governments frequently theoretically endorse the notion that rights and security must go hand in hand; while adopting laws, enacting policies, approving practices or allowing extralegal operations that do precisely the opposite. The reforms that will follow the current review of Canada's national security framework, offer an opportunity to demonstrate a commitment to human rights that goes beyond rhetoric and is in fact a matter of enforceable legal obligation.

Amnesty International's submission⁸³ to the national security review outlines the components of a human rights-based approach to national security with three principal elements:

- Regard for human rights is recognized as a foundational pillar to Canada's national security framework.

79 The Honourable Frank Iacobucci, Q.C., *Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin*, October 2008.

80 *Canada (Justice) v. Khadr*, 2008 SCC 28, [2008] 2 SCR 125.

81 *Canada (Prime Minister) v. Khadr*, 2010 SCC 3, [2010] 1 SCR 44.

82 To date Abousfian Abdelraziq has not yet received compensation despite findings that Canada was complicit in human rights abuses he suffered. See *Abdelraziq v. Canada (Minister of Foreign Affairs)*, 2009 FC 580, [2010] 1 FCR 267 at paras 156(i) & 156(iv) (wherein the Federal Court found that "CSIS was complicit in the detention of Mr. Abdelraziq by the Sudanese authorities in 2003" and that his right under the Charter of Rights to enter Canada had been unjustifiably breached; Security Intelligence Review Committee, *Annual Report 2012-2013: Bridging the Gap*, p. 28 (wherein the SIRC found that in the context of an interview with Abdelraziq in Sudanese custody, "CSIS inappropriately and, in contravention of CSIS policy, disclosed personal and classified information").

83 Amnesty International, *Getting Security Right: Proposals for a human rights based approach to national security in Canada*, October, 2016, <http://www.amnesty.ca/sites/amnesty/files/Amnesty%20International%20Submission%20-%20A%20human%20rights-based%20approach%20to%20national%20security.pdf>.

- Human rights safeguards are central to the framework, including:
 - binding incorporation of national and international human rights obligations in all national security laws; and
 - national security agencies are subject to both robust parliamentary review and comprehensive, integrated expert, independent review.
- National security laws and policies are reformed to meet Canada's international human rights obligations, including:
 - the unconditional ban on deportations to a serious risk of torture;
 - immigration security proceedings meet fair trial norms;
 - Ministerial Directions with respect to intelligence sharing are consistent with the unequivocal prohibition on torture;
 - terrorism-related offences and definitions of security threats protect protest and free expression rights;
 - CSIS threat reduction warrants do not authorize human rights violations;
 - repeal of the criminal offence of promoting the commission of acts of terrorism "in general";
 - information-sharing meets privacy and other human rights requirements;
 - 'no-fly' list appeal provisions meet requirements of fairness; and
 - recognizance with conditions provisions allowing detention without charge are abolished.

RECOMMENDATION

Appoint a judge or other independent expert expeditiously to review and resolve, consistent with international human rights principles, all pending legal cases involving claims for redress related to human rights violations arising in the context of national security operations.

RECOMMENDATION

Adopt a national security framework that recognizes regard for human rights as a foundational pillar, incorporates human rights safeguards and ensures full conformity with international human rights obligations.



INTERNATIONAL OBLIGATIONS: COMMITTING AND IMPLEMENTING

The need for reform

There are two key imperatives that are central to the effectiveness of the international human rights system. First, states must commit to, or assume, the obligations they adopt through treaties, declarations and other instruments. Second, they must follow up with meaningful implementation that ensures that those obligations will in-fact be respected and enforced domestically.

For the most part Canada has played an active role in supporting the development of the international human rights regime. While there have been notable exceptions, such as the Declaration on the Rights of Indigenous Peoples and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Canada has generally engaged constructively as new instruments have been proposed, negotiated and adopted. Canada has ratified many of the key UN human rights treaties, but the rate of taking up those obligations had slowed considerably under the previous government. Canada has only ratified one new treaty in the past ten years, the Convention on the Rights of Persons with Disabilities in 2010. The processes for discussing and agreeing treaty ratification between the federal, provincial and territorial governments are unclear and largely *ad hoc*.

Canada's record with respect to taking up and implementing international obligations domestically has long been problematic. The system in place largely dates-back to the late 1970's, when Canada ratified the two International Covenants. At its heart is a committee of mid-level officials drawn from federal, provincial and territorial governments, known as the Continuing Committee of Federal, Provincial and Territorial Officials Concerned with Human Rights. The Continuing Committee does not carry out its work publicly or issue public reports of any sort. Its main purpose is to coordinate discussions and exchange of information about international human rights matters among the country's fourteen federal, provincial and territorial governments.

The Continuing Committee's effectiveness has been significantly hampered by a lack of transparency and accountability and the fact that it is not a body with any decision-making powers. Governments do not come together with any regularity at a level of officials empowered to make decisions. In fact, there has not been a ministerial level human rights meeting in Canada since 1988.

Consequently, there is no reliable and consistent means of ensuring recommendations from the various international level human rights reviews and missions dealing with Canada's human rights record are effectively implemented. UN human rights bodies have expressed growing frustration over the years with respect to the lack of an effective system for ensuring proper coordination among governments in Canada



Canada's Foreign Minister Stéphane Dion announced that the Optional Protocol against Torture will not be optional anymore. May 2016.



and the consequent reality that the implementation of many important human rights recommendations is stalled.

There are numerous references throughout this report to recommendations that have been made to Canada by various UN human rights bodies and experts, many of which have been outstanding for well over twenty years. There are, in fact, a large number of UN human rights

recommendations that have been directed at Canada over the years, many of which Amnesty International has repeatedly urged governments in Canada to implement. In addition to those highlighted elsewhere in this Human Rights Agenda, those include recommendations with respect to safe water for Indigenous communities,⁸⁴ solitary confinement,⁸⁵ restricting the advocacy activities of charitable organizations,⁸⁶ exploitation and abuse of domestic caregivers⁸⁷ and the State Immunity Act bar on lawsuits seeking redress in Canada for serious human rights violations committed by foreign governments abroad.⁸⁸

There have been several positive developments over the course of 2016 which may lay the ground for improvements with respect to committing to and implementing Canada's international human rights obligations. The government has, for instance, announced that ratification of at least two treaties, the Optional Protocol to the UN Convention against Torture and the Optional Protocol to the Convention on the Rights of Persons with Disabilities, is being actively pursued. The Continuing Committee held a session with a broad group of civil society and Indigenous Peoples organizations during its annual meeting in September, 2016.

Time for a new approach

At the time of the examination of Canada's human rights record under the UN Human Rights Council's Universal Periodic Review process in 2013, 59 Indigenous organizations and civil society groups endorsed a common position urging governments in Canada to take bold steps to address this longstanding concern through adoption of an *International Human Rights Implementation Act*.⁸⁹ Moving forward will necessitate political leadership, political level decision-making and political agreement. That in turn requires bringing federal provincial and territorial ministers together to discuss and launch a process for overhauling Canada's approach to international human rights implementation.

Moving forward with commitments

The Trudeau government made a 2015 campaign commitment to ratify the UN Arms Trade Treaty. There were initial indications of an intention to do so by the end of 2016. That timeline was not met and the process of considering necessary legal, regulatory and policy reforms continues.

84 CESCR 2016, *supra* note 5, paras. 43-44; CERD 2012, *supra* note 9, para. 19.

85 CEDAW 2016, *supra* note 4, paras. 48-49; HRC 2015, *supra* note 6, para. 14; CAT 2012, *supra* note 8, para. 19.

86 HRC 2015, *supra* note 6, para. 15.

87 CEDAW 2016, *supra* note 4, paras. 38-39; CESCR 2016, *supra* note 5, paras. 27-28.

88 CAT 2012, *supra* note 8, para. 15.

89 *Empty Words and Double Standards: Canada's failure to uphold and respect international human rights*, Joint Submission to the United Nations Human Rights Council in relation to the May 2013 Universal Periodic Review of Canada, October, 2012, http://www.amnesty.ca/sites/amnesty/files/upr16_ngo_coalition_submission_for_the_upr_of_canada_october_2012_eng.pdf.

In May, 2016 Foreign Affairs Minister Stéphane Dion announced that Canada will move to ratify the Optional Protocol to the UN Convention against Torture, an important treaty adopted by the UN in 2002 that seeks to prevent torture through national and international level prison inspections. Given that ratification would have consequences for the substantial number of prisons that come under provincial and territorial jurisdiction, there are now discussions underway among relevant inter-governmental departments.

The government has also announced it intends to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities, which would allow individuals complaints against Canada to be filed with the Committee on the Rights of Persons with Disabilities.

There are a range of other human rights treaties are yet to be ratified by Canada, including the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Convention for the Protection of All Persons from Enforced Disappearance, the Option Protocol to the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocol to the Convention on the Rights of the Child. As well, Canada has not ratified any of the human rights treaties of the Organization of American States, despite having been a member of the OAS for more than 25 years.

RECOMMENDATION

Convene a meeting of federal, provincial and territorial Ministers responsible for human rights during 2017 to initiate a process of law reform leading to effective, coordinated, transparent and accountable implementation of international human rights obligations.

RECOMMENDATION

Work towards early ratification of the Optional Protocol to the Convention against Torture, the Arms Trade Treaty and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

RECOMMENDATION

Initiate consultations with respect all UN and OAS human rights treaties that have not been ratified by Canada.

RECOMMENDATION

Work with civil society groups, Indigenous Peoples organizations, and provincial and territorial governments to develop plans for implementing outstanding UN human rights recommendations, including with respect to safe water for Indigenous communities, restricting the use of solitary confinement, removing restrictions on the advocacy activities of charitable organizations, and repealing the State Immunity Act bar on human rights lawsuits.



INTERNATIONAL RELATIONS: PUT HUMAN RIGHTS AT THE HEART OF FOREIGN POLICY

The need is great

As this Human Rights Agenda is being finalized, the world is haunted by the agony of unrelenting bombardment, death and horrifying civilian hardship in Aleppo, Syria. Equally haunting as the levels and nature of the violence has been the utter inability of the international community to take action to end it. Throughout close to six years of opposition, protest, conflict and eventual all-out civil war in Syria, the UN Security Council has been deadlocked; effective action blocked by actual and threatened vetoes by Russia and China.



Beleaguered residents walk through debris from an airstrike in northern Aleppo earlier this year.

The Canadian government has spearheaded a last-ditch attempt to push for UN level action on Syria by turning to the General Assembly instead of the Security Council.⁹⁰ A General Assembly resolution would not be binding but would add to the sense of shame directed at Russia, China and other countries that have opposed numerous important Security Council resolutions over the years. But still the world watches, waits and agonizes, as suffering in Aleppo and other parts of Syria deepens by the day.

Syria is but one example of many troubling human rights crises and challenges the world faces in 2017.

Armed conflict, marked by unspeakable violence against civilians, rages on

in northern Iraq, Yemen, South Sudan, the Central African Republic, Libya and elsewhere. Particularly troubling has been the extent to which it has become commonplace for hospitals and other health facilities to be routinely targeted for attack.

These conflicts and other situations of grave human rights abuse around the world have provoked a refugee and internal displacement crisis, the extent of which the world has not seen since the Second World War. Sadly, most countries have responded to the crisis by turning refugees away, on the high seas and at the border.

⁹⁰ Global Affairs Canada, *Canada leads on efforts to mobilize UN on Syria*, October 19, 2016, http://www.international.gc.ca/media/aff/news-communiques/2016/10/19a.aspx?lang=eng&_ga=1.129878156.1488296917.1479154962; *Uniting for Peace in Syria: Global civil society appeal to UN member states*, December 1, 2016, <http://www.amnesty.ca/news/uniting-peace-syria-global-civil-society-appeal-un-member-states>.

Deeply disturbing currents of racism and xenophobia are on the rise in many countries and have been at the forefront of numerous elections and referendums, including the 2016 US presidential election. A growing number of politicians pander to and encourage those sentiments. The politics of suspicion, fear and hate have fueled intolerance, violence and other human rights violations.

Almost twenty years since the UN adopted the important Human Rights Defender Declaration in 1998 it has, in many respects, never been more difficult, challenging and dangerous to be a human rights defender. On every continent, human rights defenders are vilified and killed for their work. They face unfounded criminal charges and lawsuits. Governments enact new laws banning and restricting funding sources for human rights groups. Among those facing the greatest risk are women human rights defenders, LGBTI right defenders and defenders working on issues related to land and environmental rights.

The ongoing climate change crisis that threatens the entire planet is now increasingly understood and accepted to be not only an environmental concern but one of the most serious human rights problems of our time.

A role for Canada

This is the time for strong leadership, new initiatives and renewed determination on the world stage to halt and reverse the many recent setbacks and attacks against universal human rights protection. Many human rights positions adopted and advanced during the years of Stephen Harper's government had been seen as polarizing and obstructive. However, the Trudeau government took a number of important steps over the course of 2016 that demonstrate a significantly re-engaged commitment to the international human rights system, bilaterally and multilaterally:

- The heads of Canada's diplomatic missions around the world have been told that they must make "the promotion of human rights, freedoms and inclusion part of their core objectives and these priorities will be included in their annual performance commitments."⁹¹
- An Office of Human Rights, Freedom and Inclusion has been established within Global Affairs Canada.
- Canada has increased its financial contribution to the Office of the UN High Commissioner for Human Rights.
- Canada has demonstrably increased its concern and support for human rights defenders, including adopting new Guidelines and ensuring active senior level engagement with local activists during foreign visits.
- Canada was voted onto the UN Commission on the Status of Women, is serving as Chair of the Executive Committee of the UN High Commissioner for Refugees, and successfully backed a Canadian, Marcia Kran, for election to the UN Human Rights Committee. Five Canadians currently hold positions within the UN's Special Procedures system of human rights experts, though their candidacies were not promoted by the government.
- Problematic positions taken within the UN and other multilateral bodies with respect to a range of important issues, including sexual and reproductive rights, the rights of Indigenous peoples, the death penalty and the right to safe water, have been reversed.
- After many years of inaction with respect to treaty ratification, consultations are underway with provincial

91 *Reinvigorating Canada's human rights agenda*, May 17, 2016, <http://www.international.gc.ca/media/aff/news-communiques/2016/05/17a.aspx?lang=eng>.

and territorial governments about ratifying two important UN human rights treaties⁹² and it is anticipated that Canada will ratify the Arms Trade Treaty in 2017.

- There has been more consistent high level government support in cases involving imprisonment and human rights violations against Canadians or others with close Canadian connections in foreign countries.⁹³ However, several Canadians or other individuals with close Canadian connections remain imprisoned and have experienced serious human rights violations abroad, including Wang Bingzhang⁹⁴ and Huseyin Celil⁹⁵ in China, Bashir Makhtal⁹⁶ in Ethiopia, Saeed Malekpour⁹⁷ in Iran and Raif Badawi⁹⁸ in Saudi Arabia.

Room for improvement

Alongside these encouraging developments, there are at the same time a number of areas of ongoing and even deepening concern, often involving the intersection of human rights considerations with trade and economic interests.

The government has issued permits allowing a \$15 billion deal to sell light armoured vehicle to Saudi Arabia, that had been approved by the former government, to go ahead. There has been no assessment released to the public indicating why the deal was approved despite Saudi Arabia's record of widespread human rights violations in the country and responsibility for extensive war crimes in neighbouring Yemen.



In February 2016, Canada Minister of Foreign Affairs Stéphane Dion reaffirmed Canada's commitment to upholding human rights at a meeting in Ottawa with Zeid Ra'ad Al Hussein, the UN High Commissioner for Human Rights. (Minister Dion also affirmed Canada's opposition to use of the death penalty in all cases).

There is clear interest in expanding Canada's economic relationship with China but without an overall human rights strategy for the Canada-China relationship that would encompass all of Canada's dealings with China.

92 *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 18 December 2002, 42 I.L.M. 26 (entered into force 22 June 2006), dealing with torture prevention; and the *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, 19 December 2011, A/HRC/RES/17/18 (entered into force 14 April 2014) which provides an international complaints mechanism for individuals who allege that their rights under the Convention have been violated.

93 Homa Hoodfar was released from prison in Iran and Kevin Garratt was freed in China. Salim Alaradi was released from prison in the United Arab Emirates. Khaled Al-Qazzaz and his family were able to leave Egypt. In all of these cases there were significant high-level interventions from the Prime Minister, Minister of Foreign Affairs, Parliamentary Secretary to the Minister of Foreign Affairs (Consular Affairs) or other senior officials.

94 Imprisoned in China and serving life prison sentence following an abduction from Vietnam in June 2002. Wang Bingzhang was an active pro-democracy activist in China. He completed a PhD at McGill University and many members of his immediate and extended family are Canadian citizens.

95 An Imam and leader in the Uyghur community, Canadian citizen Huseyin Celil was arrested in Uzbekistan in 2006 while visiting his wife's family, he was later summarily deported to China later that year. He was initially sentenced to life imprisonment, which was commuted to a twenty year term in 2016.

96 Canadian citizen Bashir Makhtal is the grandson of a man who was active in Ogaden opposition groups and activities in Ethiopia. He was arrested at the Kenya/Somalia border and then summarily expelled to Ethiopia in January 2007. He is serving a life prison term.

97 Saeed Malekpour is a Canadian permanent resident who was arrested in Iran in 2008 on allegations that his computer program had been used by others to upload pornography. He has been sentenced to a life prison term.

98 Raif Badawi is a prominent Saudi Arabian blogger serving a ten year prison term. He had also been sentenced to 1000 lashes, to be administered 50 at a time. He did receive a first round of 50 lashes in January 2015, but nothing further since that time. His wife and three children are Canadian permanent residents living in Sherbrooke, Quebec.

Canada continues to nationally and internationally advance the position that economic, social and cultural rights (ESCR) are not susceptible to the same level of legal enforcement as civil and political rights. As a result, Canada has not initiated consultations to consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which provides an individual UN-level complaint mechanism for alleged ESCR violations.⁹⁹

In general, it is difficult to obtain clear information about Canada's assessment of human rights concerns in other countries. Regular human rights assessments prepared by Canadian diplomats are not released publicly, unlike many other governments. Details of the human rights assessments carried out with respect to controversial arms deals are also not made available to the public. As noted elsewhere in this Human Rights Agenda, the yearly assessments of human rights impacts arising from Canada's free trade deal with Colombia have been weak and devoid of any substantive and serious analysis.

Elsewhere in this Human Rights Agenda concerns have been raised about the lack of a commitment to human rights in Canada's international trade deals, a weak policy framework governing the overseas operations of Canadian extractives companies, and a failure to ensure that strong promises internationally to respect Indigenous rights translate into concrete commitments domestically when decisions are being made about resource and other major economic developments in Indigenous peoples' lands and territories.

Concerns also continue about a hesitation to take a strong stand with respect to Israel's human rights record. Some of the extremes of the previous government's refusal to recognize Israel's responsibility for human rights violations have moderated. Notably, the government restored funding for the UN agency that provides relief and protection to Palestinian refugees in the region.¹⁰⁰ But there remains reluctance to countenance criticism of Israel, well-illustrated in the government's decision to support a 2016 opposition Conservative Party motion condemning individuals that promote the Boycott, Divestment, Sanctions (BDS) movement.¹⁰¹

Consistent and transparent human rights leadership

In the face of a deeply worrying global context of growing disregard for universal human rights, building on the positive momentum set by the Canadian government with respect to many international human rights concerns in 2016 and taking account of the various human rights milestone and anniversaries Canada faces in 2017, this can and should truly be a year for human rights in Canadian foreign policy. Amnesty International urges the government to strengthen the country's human rights diplomacy in a number of important ways.

RECOMMENDATION

Develop a "whole of government" Human Rights Action Plan to guide Canada's bilateral and multilateral efforts to advance human rights protection, and report regularly on progress in advancing the Action Plan.

99 The Optional Protocol was adopted by the United Nations on December 10, 2008. Eight years later, Canada has not taken any steps to consider possible ratification. Only 22 countries have ratified to date. Several close Canadian allies, including France, Italy, Portugal and Spain have done so.

100 *Minister Bibeau announces new funding to support the needs of vulnerable Palestinian refugees*, November 16, 2016, <http://news.gc.ca/web/article-en.do?nid=1154819>.

101 *Tory motion condemning Israel boycott passes with Liberal support*, The Globe and Mail, February 22, 2016, <http://www.theglobeandmail.com/news/politics/tory-motion-condemning-israel-boycott-passes-with-liberal-support/article28844262/>.

RECOMMENDATION

Move forward with reviews and the development of guidelines in key areas, including:

- a human rights strategy for the Canada-China relationship; and
- reforms to consular practices dealing with cases of Canadians and other Canadian-connected individuals facing serious human rights violations abroad.

RECOMMENDATION

Bring greater consistency to the positions taken with respect to human rights concerns around the world and demonstrate that consistency by:

- withdrawing approval for the Saudi Arabian light armoured vehicles deal; and
- expressing concern, including publicly, about human rights violations committed by the Israeli government.

RECOMMENDATION

Make 2017 the year to resolve longstanding troubling cases of Canadians and other individuals with Canadian connections who are imprisoned and facing human rights violations abroad, particularly in China, Ethiopia, Iran and Saudi Arabia.

RECOMMENDATION

Commit to greater transparency with respect to Canada's human rights diplomacy by:

- releasing regular human rights reports assessing conditions in other countries; and
- providing much more substantive information to the public with respect to human rights assessments related to specific situations, such as arms deals and trade agreements.



CONCLUSION AND SUMMARY OF RECOMMENDATIONS

Amnesty International's 2017 Human Rights Agenda for Canada, *A Year to Get it Right*, is released following the federal government's first full year in power. The title of this year's agenda reflects the gravity of what is at stake, nationally and internationally, and the importance of Canada's role on the world stage. Around the globe, human rights crises abound, from Syria and Iraq to Yemen and South Sudan. Human rights defenders are increasingly placed in jeopardy for the exercise of their critical work. Xenophobia, intolerance and injustice are of mounting concern as populist leaders world-wide pander to fear and suspicion and openly discredit universally-held human rights obligations. Domestically, promise of a new relationship with Indigenous peoples in Canada has yet to translate into clear and concrete decisions that consistently respect and uphold their rights.

In 2017 Canada can and must build on the significant human rights progress seen in many areas over the course of 2016, and also address the many areas where additional work is still sorely needed. Amnesty International has presented the government with 35 recommendations associated with 7 key areas of human rights concern and opportunity.

RECOMMENDATIONS

UPHOLD THE RIGHTS OF INDIGENOUS PEOPLES

P. 10

Halt construction of the Site C dam in northeast BC.

Reform resource project approval processes to respect Indigenous rights and comply with Canada's legal obligations.

Incorporate the right to free, prior and informed consent in Canadian law.

Announce plans for implementation of UN Declaration on the Rights of Indigenous Peoples.

Ensure all First Nations, Inuit, and Métis women and girls have access to emergency shelters and transition houses.

Ensure police gather data regarding the First Nations, Inuit and Metis identity of victims of violent crime.

Comply with Canadian Human Rights Tribunal rulings regarding discrimination against First Nations children.

RECOMMENDATIONS

TAKE ACTION ON GENDER EQUALITY IN CANADA AND ABROAD

P. 15

- Fully implement Bill C-16 on gender identity or expression.
- Develop a national action plan on violence against women in Canada.
- Increase support for First Nations, Inuit and Métis women escaping violence.
- Put gender equality at the heart of Canadian diplomacy and development programming.
- Implement recommendations from Canada's 2016 review by UN Committee on the Elimination of Discrimination against Women.

RECOMMENDATIONS

RESPONDING TO A GLOBAL REFUGEE CRISIS

P. 19

- Repeal discriminatory provisions in domestic refugee protection laws.
- Extend essential healthcare to all individuals in Canada, regardless of immigration status.
- Reform inadmissibility provisions consistently to conform to principles in Supreme Court's Ezokola judgement.
- Ensure immigration detention is a last resort and never applied to children or people with mental illness.
- Institute independent oversight of the Canada Border Services Agency.
- Lead effort to establish global mechanism to more equitably share responsibility for addressing the world's refugees crisis.
- Substantially increase Canada's refugee resettlement commitments for 2018.

RECOMMENDATIONS

HUMAN RIGHTS AND THE ECONOMY

P. 24

- Ensure Canada's current and future trade agreements are subject to human rights impact assessments.
- Ensure Canadian companies can be held accountable for human rights violations related to their operations abroad, including by establishing an Extractive Sector Ombudsperson.
- Protect human rights defenders abroad who face risks for advocacy associated with operations of Canadian companies.

RECOMMENDATIONS

GETTING NATIONAL SECURITY RIGHT

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Ensure pending legal cases seeking redress for national security-related human rights violations are expeditiously resolved.

Adopt a national security framework that recognizes regard for human rights as a foundational pillar, incorporates human rights safeguards and ensures full conformity with Canada's international human rights obligations.

RECOMMENDATIONS

INTERNATIONAL OBLIGATIONS: COMMITTING AND IMPLEMENTING

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Hold a meeting of federal, provincial and territorial ministers to initiate reforms to process for implementing Canada's international human rights obligations.

Work toward early ratification of Optional Protocol to the Convention against Torture, Arms Trade Treaty and Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Initiate consultations regarding UN and OAS human rights treaties not yet ratified by Canada.

Implement outstanding human rights recommendations issued by UN committees.

RECOMMENDATIONS

INTERNATIONAL RELATIONS: PUT HUMAN RIGHTS AT THE HEART OF FOREIGN POLICY

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Develop a whole-of-government action plan to advance human rights protection globally.

Develop a human rights strategy for Canada-China relationship.

Strengthen consular practices for cases of Canadians and Canadian-connected individuals facing human rights violations overseas.

Withdraw approval for the Saudi Arabian light armoured vehicles deal.

Express public concern about human rights violations committed by the Israeli government.

Resolve longstanding cases of Canadians and Canadian-connected individuals wrongfully imprisoned abroad.

Commit to greater transparency with respect to Canadian human rights diplomacy.



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A YEAR TO GET IT RIGHT:

AMNESTY INTERNATIONAL'S

2017 HUMAN RIGHTS AGENDA

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