

# **CANADA**

## **SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE**

**112TH SESSION OF THE HUMAN  
RIGHTS COMMITTEE (7 - 31 OCTOBER  
2014)**

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## INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Human Rights Committee (the Committee) in advance of the preparation of the List of Issues for the review of the periodic report of Canada, at its 112<sup>th</sup> session from 7 to 31 October 2014.

In this document, Amnesty International sets out its concerns about the implementation of the International Covenant on Civil and Political Rights (ICCPR) by Canada, including but not limited to, the rights of the Indigenous Peoples, national security and counter terrorism measures, refugees and migrant rights and the protection of the right to freedom of expression and peaceful assembly. The organization will provide additional information in advance of the 114<sup>th</sup> session in July 2015 when the Committee will review Canada's sixth periodic report.

## HUMAN RIGHTS IMPLEMENTATION

Canada's approach to implementing its international human rights obligations suffers from longstanding inadequacy. This concern has been raised repeatedly by United Nations (UN) treaty monitoring bodies, including this Committee in 2006:

The State Party should establish procedures, by which oversight of the implementation of the Covenant is ensured, with a view, in particular, to reporting publicly on any deficiencies. Such procedures should operate in a transparent and accountable manner, and guarantee the full participation of civil society, including indigenous peoples.<sup>1</sup>

In 2013, eighty-two countries made recommendations for human rights reform during Canada's second Universal Periodic Review (UPR) at the Human Rights Council.<sup>2</sup> The Canadian government's response was to accept the recommendations that were already being implemented by federal, provincial or territorial governments of their own initiative, but to reject recommendations outside of its already established agenda.<sup>3</sup> Canada's response to the UPR compounds a growing tendency to disengage from the UN whenever it is the subject of international human rights scrutiny.<sup>4</sup>

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<sup>1</sup> United Nations Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee – Canada*, 85th Sess, UN Doc CCPR/C/CAN/CO/5, (20 April 2006) [UN Human Rights Committee Concluding Observations, 2006], para. 6.

<sup>2</sup> United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Canada – Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 24th Sess, UN Doc A/HRC/24/11/Add.1, (17 September 2013) at para 3.

<sup>3</sup> Canada's dismissal response came across particularly strongly with respect to two important human rights recommendations that were the most frequently repeated by states in the course of the Review: the staggeringly high rates of violence against Indigenous women and girls in Canada; and Canada's failure to ratify the *Optional Protocol to the Convention against Torture*.

<sup>4</sup> Throughout the course of 2012 Canada criticized and derided UN Special Rapporteurs and

The Canadian government did, however, finally accept missions to Canada by the Inter-American Commission on Human Rights, the UN Committee on the Elimination of Discrimination against Women, and the UN Special Rapporteur on the rights of indigenous peoples in the second half of 2013. The UN Special Rapporteur's report of his visit was published in July 2014.<sup>5</sup>

## INDIGENOUS PEOPLES

### VIOLENCE AGAINST INDIGENOUS WOMEN (Arts 2, 3, 6, 26)

Indigenous women and girls in Canada face a significantly heightened risk of being subject to violence, including violence leading to death, as compared to other women and girls in the country. Amnesty International's research has repeatedly drawn attention to this grave human rights concern.<sup>6</sup> Indigenous women are five to seven times more likely than other women to die as a result of violence. The Native Women's Association of Canada has documented more than 580 cases of missing and murdered indigenous women in Canada, most within the last three decades.<sup>7</sup> Because of gaps in police and government reporting, the actual numbers may be much higher.

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Committees that examined or commented on Canada's human rights record. See, described in fuller detail, Amnesty International, *Empty Words and Double Standards: Canada's Failure to Respect and Uphold International Human Rights, Joint Submission to the United Nations Human Rights Council in Relation to the May 2013 Universal Periodic Review of Canada*, (October 2012) online, Amnesty International Canada:

[http://www.amnesty.ca/sites/default/files/upr16\\_ngo\\_coalition\\_submission\\_for\\_the\\_upr\\_of\\_canada\\_october\\_2012\\_eng.pdf](http://www.amnesty.ca/sites/default/files/upr16_ngo_coalition_submission_for_the_upr_of_canada_october_2012_eng.pdf).

<sup>5</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Addendum: The Situation of indigenous peoples in Canada*, 27th Sess, Un Doc A/HRC/27/52/Add.2 (4 July 2014) [Anaya Report].

<sup>6</sup> Amnesty International, *Stolen Sisters – A human rights response to violence and discrimination against Indigenous women in Canada*, AMR 20/003/2004, October, 2004; Amnesty International, *No More Stolen Sisters: The need for a comprehensive response to discrimination and violence against Indigenous women in Canada*, AMR 20/012/2009, September 2009; Amnesty International, *Canada: Summary of Recommendations from Amnesty International Briefing to the UN Committee on the Elimination of Racial Discrimination*, AMR 20/003/2012, February, 2012; Amnesty International, *Canada: Briefing to the UN Committee against Torture*, AMR 20/004/2012, May 2012; Amnesty International, *Violence against Indigenous women and girls in Canada: A summary of Amnesty International's concerns*, August 2013.

<sup>7</sup> Native Women's Association of Canada, "Fact Sheet: Violence Against Aboriginal Women" online: < [http://www.nwac.ca/files/download/NWAC\\_3E\\_Toolkit\\_e\\_0.pdf](http://www.nwac.ca/files/download/NWAC_3E_Toolkit_e_0.pdf)>. See also Amnesty International, *Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada* (London, Amnesty International, 2004) online: < <http://www.amnesty.org/en/library/asset/AMR20/001/2004/en/48f05a31-d589-11dd-bb24-1fb85fe8fa05/amr200012004en.pdf>>.

UN treaty bodies, including the Human Rights Committee,<sup>8</sup> the Committee against Torture,<sup>9</sup> the Committee on the Elimination of Discrimination against Women,<sup>10</sup> the Committee on the Elimination of Racial Discrimination,<sup>11</sup> the Committee on the Rights of the Child;<sup>12</sup> Special Procedures mandate holders,<sup>13</sup> including the Special Rapporteur on the Rights of Indigenous Peoples James Anaya;<sup>14</sup> and 24 states in the 2013 Universal Periodic Review of Canada<sup>15</sup>, have all expressed concern about violence and discrimination experienced by Indigenous women and girls, and have made recommendations to the Canadian government for reform.

This was one of the central issues prompting investigatory visits to Canada in 2013 by the Inter-American Commission on Human Rights, the Committee on the Elimination of Discrimination against Women, and the Special Rapporteur on the Rights of Indigenous Peoples.

These UN bodies and experts, and also Indigenous women's organizations across Canada, have all called for a comprehensive, coordinated national plan of action, including a nationwide inquiry, and improvements in data collection on violence against Indigenous women. In March 2014, a Parliamentary Committee Report vaguely called for "further examination" of the issues without giving any indication of how or when such examination would take place,

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<sup>8</sup> UN Human Rights Committee *Concluding Observations*, 2006, *supra* note 1.

<sup>9</sup> United Nations Committee against Torture, *Concluding Observations of the Committee against Torture: Canada*, 48th Sess, UN Doc CAT/C/CAN/CO/6 (25 June 2012) at para 20 [UN Committee against Torture *Concluding Observations*, 2012].

<sup>10</sup> United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada*, 42nd Sess, UN Doc CEDAW/C/CAN/CO/7 (7 November 2008).

<sup>11</sup> United Nations Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*, 70th Sess, UN Doc CERD/C/CAN/CO/1, (25 May 2007); United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, 80th Sess, UN Doc CERD/C/CAN/CO/19-20 (4 April 2012) at para 17 [UN Committee on the Elimination of Racial Discrimination *Concluding Observations*, 2012].

<sup>12</sup> United Nations Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Canada*, 61st Sess, UN Doc CRC/C/CAN/CO/3-4 (5 October 2012) at para. 47.

<sup>13</sup> See United Nations Commission on Human Rights, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum: Mission to Canada, 61st Sess, UN Doc E/CN.4/2005/88/Add.3 (2 December 2004) [Stavenhagen Report]; See also United Nations Commission on Human Rights, Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Addendum: Mission to Canada, 60th Sess, UN Doc E/CN.4/2004/18/Add.2 (1 March 2004).

<sup>14</sup> Anaya Report, *supra* note 5.

<sup>15</sup> United Nations Human Rights Council, Report of the Working Group of the Universal Periodic Review: Canada, 24th Sess, UN Doc A/HRC/24/11 (28 June 2013).

and ignoring concrete proposals presented by Indigenous women's organizations and families of missing and murdered women.<sup>16</sup>

### **INDIGENOUS LAND RIGHTS (Arts 1, 27)**

UN treaty bodies and experts have on several occasions commented that disputes over Indigenous peoples' ownership of and rights to control and benefit from their traditional lands remain persistently unresolved, and called on the Canadian government to take concrete and urgent steps to restore and respect Indigenous land and resource rights.<sup>17</sup>

The federal government predicts that more than 600 major resource development projects will get underway across Canada in the next decade. Many of these projects have the potential to significantly threaten lands and waters that are vital to the cultures and economies of First Nations, Inuit and Métis peoples.<sup>18</sup>

As noted by the Human Rights Committee in 1999, "the right to self-determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence."<sup>19</sup> The federal government has not established adequate formal mechanisms to ensure that Indigenous Peoples are meaningfully consulted and their rights appropriately protected when such projects affect their traditional territories. The government points to environmental impact assessments as a key means for Indigenous Peoples' voices to be heard when projects are considered, even as new legislation has reduced the likelihood of projects being subject to such reviews.<sup>20</sup>

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<sup>16</sup> Canada, Special Committee on Violence Against Indigenous Women, *Invisible Women: A Report on Missing and Murdered Indigenous Women in Canada*, 2nd Sess, 41st Parl, (March 2014) (Chair: Stella Ambler) online: < <http://www.parl.gc.ca/content/hoc/Committee/412/IWFA/Reports/RP6469851/IWFArp01/IWFArp01-e.pdf> >.

<sup>17</sup> United Nations Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN Doc E/C.12/1/Add/31 (10 December 1998) [UN CESCR Concluding Observations, 1998]; United Nations Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, UN Doc CCPR/C/79/Add.105 (7 April 1999) [UN Human Rights Committee *Concluding Observations*, 1999]; Stavenhagen Report, *supra* note 13; Anaya Report, *supra* note 5 at para 78.

<sup>18</sup> Government of Canada, "Responsible Resource Development Creates Jobs for Canadians" Canada's Economic Action Plan (19 February 2013) online: < <http://actionplan.gc.ca/en/blog/responsible-resource-development-creates-jobs> >.

<sup>19</sup> UN Human Rights Committee *Concluding Observations*, 1999 *supra* note 17 at para 8.

<sup>20</sup> E.g. In April 2014, the British Columbia government quietly passed two Orders in Council to amend the *Reviewable Projects Regulation*, BC Reg 370/2002, that removed the requirement of conducting an environmental assessment of new and modified natural gas processing plants and ski and all-season resorts. These amendments were enacted without any consultation with affected Indigenous communities. As a result of subsequent protests from affected First Nations communities, the day after the

Despite the Human Rights Committee's previous findings in 1990 and 2006 that resource development on the territory of the Lubicon Cree in Alberta, without the community's consent constitutes an ongoing violation of the Lubicon's rights,<sup>21</sup> the government has still not reached a settlement with the community. In the meantime, licenses continue to be granted to allow resource extraction on or near the disputed territories.<sup>22</sup>

On 17 June 2014, the federal government conditionally approved the construction of the Northern Gateway Pipeline in British Columbia without the consent of affected First Nations.<sup>23</sup> If the project goes ahead, it would lead to pipeline construction across roughly 1000 rivers and streams in the traditional territories of Indigenous peoples in Alberta and British Columbia. In New Brunswick, moving forward on fracking projects without Indigenous consent resulted in clashes between the Royal Canadian Mounted Police (RCMP) and members of the Elsipogtog Mi'kmaw Nation this year.<sup>24</sup>

A few positive developments are worth noting. On 26 February 2014, the federal government rejected plans to open the New Prosperity Mine in British Columbia, recognizing the severe and irreversible impacts that the project would have on the culture and traditional practices of the Tsilhqot'in people. Taseko Mines Ltd. has sought judicial review of the rejection.<sup>25</sup> Further, on 26 June, 2014 the Supreme Court of Canada released a landmark unanimous decision recognizing the right of the Tsilhqot'in people to own, control, and enjoy the benefits of approximately 2,000 km<sup>2</sup> of land at the heart of their traditional territory in central British

amendments were passed, British Columbia Environment Minister Mary Polak acknowledged that the First Nations communities had not been consulted, apologized, and announced that the amendments would be rescinded: See CBC News, "B.C. rescinds environmental assessment exemption" (16 April 2014) online: < <http://www.cbc.ca/news/canada/british-columbia/b-c-rescinds-environmental-assessment-exemption-1.2613053>>.

<sup>21</sup> United Nations Human Rights Committee, *Communication No 167/1984 (B Ominayak and the Lubicon Lake Band v Canada)* UN Doc CCPR/C/38/D/167/1984 (decision of 26 March 1990); HR Committee *Concluding Observations*, 2006, *supra* note 1.

<sup>22</sup> E.g. December 2013, a Calgary court issued an injunction allowing Penn West Petroleum Ltd. to proceed with fracking operations on the Lubicon Nation's territory. The Lubicon are appealing the decision to the Alberta Court of Appeal: See CBC News, "Lubicon Lake Nation appeals protest-ending court injunction" (4 January 2014) online: < <http://www.cbc.ca/news/canada/edmonton/lubicon-lake-nation-appeals-protest-ending-court-injunction-1.2484381>>.

<sup>23</sup> See Laura Payton and Susana Mas, "Northern Gateway pipeline approved with 209 conditions" CBC News (17 June 2014) online: < <http://www.cbc.ca/news/politics/northern-gateway-pipeline-approved-with-209-conditions-1.2678285>>.

<sup>24</sup> See Daniel Schwartz, "N.B. fracking protests and the fight for aboriginal rights" CBC News (19 October 2013) online: < <http://www.cbc.ca/news/canada/n-b-fracking-protests-and-the-fight-for-aboriginal-rights-1.2126515>> [Schwartz].

<sup>25</sup> See CBC News, "Taseko seeks new review of New Prosperity mine rejection" (26 March 2014) online: < <http://www.cbc.ca/news/canada/british-columbia/taseko-seeks-new-review-of-new-prosperity-mine-rejection-1.2587442>>.

Columbia.<sup>26</sup>

### **DISCRIMINATION AGAINST FIRST NATIONS CHILDREN (Arts 2, 24)**

The federal government's underfunding of services for First Nations children living on reserves has created a crisis situation for these children and their families. The federal government's budget for children's services in First Nations communities is at least 22 percent less per child than what the provincial government dedicates for child welfare services in other, non-native, communities.<sup>27</sup> This is despite often greater needs<sup>28</sup> and the higher costs of delivering services in small and remote First Nations communities. As a result, First Nations parents and communities are often unable to provide needed care to children living on reserves. Rather than assisting these families to address the underlying causes of neglect and improve the situation for children within communities through culturally appropriate social and other services, the underfunding of services has led to more First Nations children being taken away from their families today than at the height of the residential school era.<sup>29</sup>

In 2007, the Assembly of First Nations and the First Nations Child and Family Caring Society filed a complaint before the Canadian Human Rights Tribunal that the underfunding of child welfare services for children living on reserves is discriminatory under the *Canadian Human Rights Act*.<sup>30</sup> In March 2013, the Federal Court of Appeal rejected the government's position that it should be shielded from complaints of discrimination because the actions of the federal government should not be compared to those of provincial governments (which are responsible for all other child welfare services in Canada other than those provided to First Nations children living on reserves).<sup>31</sup> The case was remitted to the Tribunal for redetermination and is still underway.

### **VIOLENCE AGAINST WOMEN (ARTS 2, 3)**

In addition to the lack of progress in addressing staggeringly high rates of violence against

<sup>26</sup> *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44.

<sup>27</sup> Marlyn Bennett, "Canadian Aboriginal Welfare Crisis Demands Action" (2007) Adoptalk 4 online: <<http://www.fncaresociety.ca/sites/default/files/docs/Bennett-Adoptalk-07.pdf>>.

<sup>28</sup> Deplorable socioeconomic conditions on reserves, including poverty, poor housing, and often lack of access to clean water impact children in the areas of health, education, criminal justice, and addictions: See Fred Wien, Cindy Blackstock, John Loxley and Nico Trocmè, "Keeping First Nations children at home: A few Federal policy changes could make a big difference" (2007) 3:1 First Peoples Child and Family Review 10.

<sup>29</sup> See CBC News, "First Nations children still taken from parents: Analysis finds more First Nations children in care than at height of residential school system" (2 August 2011) online: <<http://www.cbc.ca/news/politics/first-nations-children-still-taken-from-parents-1.1065255>>.

<sup>30</sup> RSC 1985, c H-6.

<sup>31</sup> *Canada (Attorney General) v Canadian Human Rights Commission*, 2013 FCA 75.

Indigenous women in Canada, there has been little or no progress in reducing violence against non-Indigenous women and girls. Since publishing its groundbreaking survey on violence against women two decades ago, the Government of Canada has moved backwards, collecting less and less information about violence against women and girls.<sup>32</sup> In a recent report, however, the Canadian Centre for Policy Alternatives estimated that rates of physical and sexual violence against women have risen by 2.4 percent for the adult population, while fewer and fewer of those crimes are being reported to the police.<sup>33</sup> The study found that “on any given day, more than 8,256 women and children will seek protection from a shelter or transition home.”<sup>34</sup>

In 2013, Canada frequently undermined the protection of sexual and reproductive rights in other countries, in important UN fora dealing with violence against women. At the UN Human Rights Council in June 2013, Canada drafted the annual resolution on violence against women, themed around sexual violence, and neglected to include language adopted at the March 2013 UN Commission on the Status of Women outlining the full range of sexual and reproductive health services that should be made available to survivors of sexual violence.<sup>35</sup> In September 2013 at the UN General Assembly, Canada called for more action on early and forced marriage, and backed a United Kingdom initiative condemning sexual violence in conflict.<sup>36</sup> However, one week later, contrary to its international declarations, Canada stated publicly that it would not fund safe abortion services for rape survivors in its overseas aid projects.<sup>37</sup>

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<sup>32</sup> See Carol Goar, “Women struggle in information vacuum: Campaign to end violence against women stymied by lack of up-to-date information” *The Star* (23 September 2013) online: <[http://www.thestar.com/opinion/commentary/2013/09/23/women\\_struggle\\_in\\_information\\_vacuum\\_goar.html](http://www.thestar.com/opinion/commentary/2013/09/23/women_struggle_in_information_vacuum_goar.html)>.

<sup>33</sup> Kate McInturff, *The Gap in the Gender Gap: Violence Against Women in Canada* (Canadian Centre for Policy Alternatives, 2013) online: [https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2013/07/Gap\\_in\\_Gender\\_Gap\\_VAW.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2013/07/Gap_in_Gender_Gap_VAW.pdf)

<sup>34</sup> *Ibid* at 11.

<sup>35</sup> Government of Canada, *Draft Resolution: Accelerating Efforts to eliminate all forms of violence against women: preventing and responding to rape and other forms of sexual violence* (10 June 2013) online: <<http://blog.unwatch.org/wp-content/uploads/Resolution1.pdf>>.

<sup>36</sup> See Foreign Affairs, Trade and Development Canada, “Address by Minister Baird to the 68th Session of the United Nations General Assembly” (30 September 2013) online: <<http://www.international.gc.ca/media/aff/speeches-discours/2013/09/30a.aspx>>.

<sup>37</sup> See CBC News, “Canada won’t fund abortion in cases of war rape, child marriage” (4 October 2013) online: <<http://www.cbc.ca/news/politics/canada-won-t-fund-abortion-in-cases-of-war-rape-child-marriage-1.1912822>>.

## TORTURE

### OPTIONAL PROTOCOL TO THE UN CONVENTION AGAINST TORTURE (Art 7)

While Canada has ratified the UN *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and criminalized torture and ill-treatment in law, the government has yet to take any steps to sign the 2002 *Optional Protocol to the Convention Against Torture*. In 2006, the Canadian government pledged to consider ratifying the *Optional Protocol* when it was running for election to the Human Rights Council. That commitment was taken up again during the 2009 Universal Periodic Review. However, at the 2013 UPR Canada stated that there was no “current plan” to ratify.<sup>38</sup>

### SOLITARY CONFINEMENT (Arts 7, 10.1)

The practice of solitary confinement has become widespread in Canada as a “standard tool of population management to maintain the safety and security of the institution.”<sup>39</sup> On any given day, about 850 of the 14,700 offenders in federal institutions are in segregation units, and the proportion in provincial institutions may be even higher.<sup>40</sup> According to Correctional Services Canada data, the average length of stay in segregation between 2006 and 2011 was 40 days, and 13 percent of segregated inmates stayed more than four months.<sup>41</sup>

In 2012, the UN Committee against Torture expressed its concern at Canada’s use of “solitary confinement, in the forms of disciplinary and administrative segregation, often extensively prolonged, even for persons with mental illness.”<sup>42</sup> The Committee recommended that Canada “limit the use of solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review,” and “abolish the use of solitary confinement for persons with serious or acute mental illness.”<sup>43</sup>

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2011 affirmed that being confined in isolation produces severe – and sometimes irreversible – physical and psychological effects, and can amount to torture.<sup>44</sup>

<sup>38</sup> Amnesty International Canada, “Canada gives Human Rights the Cold Shoulder: Disgraceful Response to UN Human Rights Review Contains No New Commitments” Amnesty International Canada (19 September 2013) online: < <http://www.amnesty.ca/news/news-releases/canada-gives-human-rights-the-cold-shoulder-disgraceful-response-to-un-human-righ>>.

<sup>39</sup> Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2011-2012* (2012) online: < <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20112012-eng.aspx>> [OCI Report].

<sup>40</sup> Kirk Makin, “Canadian Prisons ‘Out of Step’ on Solitary Confinement,” *The Globe and Mail* (21 March 2013).

<sup>41</sup> OCI Report, *supra* note 40.

<sup>42</sup> UN Committee against Torture *Concluding Observations*, 2012, *supra* note 9 at para 19.

<sup>43</sup> *Ibid.*

<sup>44</sup> United Nations Human Rights Council, *Interim Report of the Special Rapporteur of the Human Rights*

The tragic effects of such practices in Canada have been widely publicized in the case of Ashley Smith, a mentally ill teenager who, in 2007, after being held in solitary confinement for almost four years, died by self-inflicted strangulation under the watch of guards and supervisors. In 2013, a jury in the inquest into Ms. Smith's death determined that it was a homicide.<sup>45</sup> In 2010, 24-year-old Edward Snowshoe killed himself after 38 days of being held in isolation at the federal Edmonton Institution. Prior to that, he had already spent 134 days in solitary confinement and tried to kill himself on three occasions at a different institution.<sup>46</sup>

## **NATIONAL SECURITY AND COUNTER TERRORISM MEASURES**

### **OMAR KHADR CASE (Arts 2.3, 9, 14)**

Canadian citizen Omar Khadr was apprehended by US forces in Afghanistan in July 2002, when he was 15 years old. He was held in detention at Guantánamo Bay from October 2002 to September 2012, when he was transferred to Canada. Mr. Khadr is currently being held at the maximum security Edmonton Institution. Numerous judicial rulings and allegations of human rights violations have yet to be remedied and/or independently investigated.

The Supreme Court of Canada has twice concluded that Canadian officials were complicit in the violation of Mr. Khadr's rights by interviewing him with the knowledge that he had been subjected to treatment, characterized by the Federal Court of Appeal as cruel and abusive, in order to make him less resistant to interrogation.<sup>47</sup> These human rights violations have never been remedied. The government refuses to acknowledge that Mr. Khadr was a child soldier at the time of the July 2002 incident, and is appealing a recent decision by the Alberta Court of Appeal concluding that Mr. Khadr should be serving a youth sentence, and should not be in a federal prison.<sup>48</sup>

### **ABDULLAH ALMALKI, AHMAD ABOU-ELMAATI AND MUAYYED NUREDDIN (Arts 2.3, 7, 9)**

In 2006 this Committee called on Canada to ensure a public and independent inquiry into "all cases of Canadian citizens who are suspected terrorists or suspected to be in possession of information in relation to terrorism, and who have been detained in countries where it is feared that they have undergone or may undergo torture and ill-treatment," specifying that the "inquiry should determine whether Canadian officials have directly or indirectly

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*Council on torture and other cruel, inhuman or degrading treatment or punishment*, 66th Sess, UN Doc A/66/268 (5 August 2011) at para 25.

<sup>45</sup> *Re Smith* (2013) online: <

<sup>46</sup> "He needed help. He got none" *The Globe and Mail* (14 July 2014).

<sup>47</sup> *Canada (Prime Minister) v Khadr*, 2010 SCC 3; *Canada (Prime Minister) v Khadr*, 2009 FCA 246 at para 50, [2010] 1 FCR 73; *Canada (Justice) v Khadr*, 2008 SCC 28, [2008] 2 SCR 125.

<sup>48</sup> *Khadr v Edmonton Institution*, 2014 ABCA 225.

facilitated or tolerated their arrest and imprisonment.”<sup>49</sup> In 2008 a judicial inquiry found that Canadian officials bore some responsibility for serious human rights violations, including torture, experienced by Abdullah Almalki, Ahmad Abou-Elmaati, and Muayyed Nureddin when they were detained in Syria and in the case of Abou-Elmaati, also Egypt.<sup>50</sup> Yet the Canadian government has forced the three men into protracted litigation rather than provide an official apology and compensation. The UN Committee against Torture raised this as a priority concern in its 2012 Concluding Observations.<sup>51</sup>

### **INTELLIGENCE GATHERING AND TORTURE (Art 7)**

In 2006, the Report of the Commission of Inquiry into the Actions of Canadian Officials in relation to Maher Arar<sup>52</sup> was released. The Report recommended that “information should never be provided to a foreign country where there is a credible risk that it will cause or contribute to a use of torture.”<sup>53</sup> Despite this recommendation, in 2011 a Ministerial Direction was issued to the Canadian Security Intelligence Service (CSIS), the RCMP, the Canadian Border Services Agency (CBSA) and other government agencies and departments, which allows for information to be shared with a foreign country even when there is a substantial risk it would lead to torture.<sup>54</sup> The Ministerial Direction also allows, in exceptional circumstances, for those agencies to make use of information that was likely derived through torture. The UN Committee against Torture has called on Canada to revise the Ministerial Direction and bring it into conformity with international norms.<sup>55</sup>

A second report, issued as part of the Maher Arar Inquiry in December 2006, recommended a new approach to ensuring proper review of agencies involved in national security activities.<sup>56</sup> The recommendation for more thorough, effective and integrated review of

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<sup>49</sup> UN Human Rights Committee *Concluding Observations*, 2006, *supra* note 1 para. 16.

<sup>50</sup> *Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Alkali, Ahmad Abou-Elmaati and Muayyed Nureddin* (Ottawa: Public Works and Government Services, 2008) online: < [http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/internal\\_inquiry/2010-03-09/www.iacobucciinquiry.ca/pdfs/documents/final-report-copy-en.pdf](http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/internal_inquiry/2010-03-09/www.iacobucciinquiry.ca/pdfs/documents/final-report-copy-en.pdf)>.

<sup>51</sup> UN Committee against Torture *Concluding Observations*, 2012, *supra* note 9.

<sup>52</sup> Maher Arar, a Canadian citizen, was travelling home to Canada from visiting relatives in Tunisia in 2002. While changing planes in New York, he was detained by U.S. authorities and was later transferred secretly to Syria, where he was held for a year and tortured before he was released without charge and allowed to return home to Canada.

<sup>53</sup> *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Report of the Events Relating to Maher Arar: Analysis and Recommendations* (Ottawa: Public Works and Government Services, 2006) Recommendation 14 at 346 online: < [http://www.pch.gc.ca/cs-kc/arar/Arar\\_e.pdf](http://www.pch.gc.ca/cs-kc/arar/Arar_e.pdf)>.

<sup>54</sup> Minister of Public Safety Vic Toews, “Ministerial Direction to the Canadian Security Intelligence Service: Information Sharing With Foreign Entities” (28 July 2011) online: <<http://cips.uottawa.ca/wp-content/uploads/2012/04/PS-ATIP-A-2011-00297-March-2012-InformationSharing.pdf>>.

<sup>55</sup> UN Committee against Torture *Concluding Observations*, 2012, *supra* note 9 at para 17.

<sup>56</sup> *Commission of Inquiry into Actions of Canadian Officials in Relation to Maher Arar, A New Review*

national security activities has not been adopted.

### **STATE IMMUNITY ACT (Art 2.3)**

Individuals, including Canadian citizens and permanent residents, who have experienced human rights violations in other countries are unable to sue those governments for compensation in Canadian courts because the *State Immunity Act*<sup>57</sup> bars such lawsuits. That law was challenged before the Supreme Court of Canada in March 2014 in a case stemming from the 2003 detention, torture and death in Iranian custody of Zahra Kazemi.<sup>58</sup> The Supreme Court's judgement in the case is presently reserved.

### **CANADIANS DETAINED ABROAD (Arts 2, 6, 7, 9)**

There is growing concern that the government advocates for the protection of the rights of Canadian citizens detained abroad, and access to effective remedies to end torture, arbitrary arrest and unlawful imprisonment of Canadian citizens, in an inconsistent fashion. In some cases the Canadian government has forcefully demanded that wrongfully imprisoned Canadians be freed or that concerns about torture and ill-treatment be addressed.<sup>59</sup> In other cases, Canada's efforts have been more muted. Despite assurances that the government is taking action, there has been much less visible indication of Canada's advocacy on behalf of Huseyin Celil or Bashir Makhtal, serving life sentences in China and Ethiopia, respectively, after blatantly unfair trials.<sup>60</sup> Canadian efforts to support the clemency bid of Ronald Smith,

*Mechanism for the RCMP's National Security Activities* (Ottawa: Public Works and Government Services, 2006) online: < [http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/arar-ef/policy\\_review\\_report-e/PolicyReviewDec12-English.pdf](http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/arar-ef/policy_review_report-e/PolicyReviewDec12-English.pdf)>.

<sup>57</sup> RSC 1985, c S-18.

<sup>58</sup> *Estate of the Late Zahra (Ziba) Kazemi, et al v Islamic Republic of Iran, et al* SCC Docket # 35034. Decision not yet released.

<sup>59</sup> E.g., The September 2013 freeing of Hamid Ghassemi-Shall from imprisonment and possible execution in Iran: Ministry of Foreign Affairs, Trade and Development Canada, "Ministers Baird and Ablonczy Call on Iran to Halt Execution and to Release Canadian Hamid Ghassemi-Shall" (15 April 2012) online: < <http://www.international.gc.ca/media/aff/news-communiques/2012/04/15b.aspx?lang=eng>>; Also, in the October 2013 freeing of Tarek Loubani and John Greyson from imprisonment in Egypt, the government issued five public statements: Ministry of Foreign Affairs, Trade and Development Canada, "Canada Concerned by Arrest of Two Canadians in Egypt" (18 August 2013) online: < <http://www.international.gc.ca/media/state-etat/news-communiques/2013/08/18a.aspx?lang=eng> >, "Statement by the Honourable Lynne Yelich on Two Canadians Detained in Egypt" (29 August 2013) online: < <http://www.international.gc.ca/media/state-etat/news-communiques/2013/08/29a.aspx?lang=eng> >, "Statement by Baird and Yelich on the Two Canadians Detained in Egypt" (10 September 2013) online: < <http://www.international.gc.ca/media/aff/news-communiques/2013/09/10a.aspx?lang=eng> >, "Statement by Minister of State Yelich on Two Canadians Detained in Egypt (15 September 2013) online: < <http://www.international.gc.ca/media/state-etat/news-communiques/2013/09/15a.aspx?lang=eng> >, and "Statement by Minister of State Yelich on Return of Dr. Loubani and Mr. Greyson to Canada" (11 October 2013) online: < <http://www.international.gc.ca/media/state-etat/news-communiques/2013/10/11a.aspx?lang=eng> >.

<sup>60</sup> See Omar El Akkad, "As Ottawa fumbled, Canadian languished in China's court system" *The Globe*

on death row in Montana, can be described as reluctant at best.<sup>61</sup> Canadian journalist Mohamed Fahmy, recognized by Amnesty International to be a prisoner of conscience, has been sentenced to seven years imprisonment in Egypt. Canadian permanent resident Khaled al-Qazzaz has also been detained without charge or trial in Egypt since early July 2013. The Canadian government has remained relatively silent with respect to these cases.<sup>62</sup>

### **LISTING OF TERRORIST ORGANIZATIONS (Arts 2, 14, 22)**

On 29 April 2014, the Minister of Public Safety and Emergency Preparedness announced that the government listed the International Relief Fund for the Afflicted and Needy – Canada (IRFAN – Canada), a Muslim relief organization, as a terrorist entity under Canada's *Criminal Code*.

The process to appeal the placement on a terrorist list significantly undermines an organization's ability to know the case against it, and to be able to respond. There is a lower threshold for the admissibility of evidence examined by the judge,<sup>63</sup> the case is heard in private and in the absence of the applicant organization or their counsel,<sup>64</sup> and the applicant organization is only entitled to receive a summary of the evidence viewed by the judge.<sup>65</sup> The listing scheme does not provide entities with an opportunity to make submissions or respond in any way until *after* the initial decision has been made. It is only once the decision to list has been made public that there is a right to challenge the decision. IRFAN is currently appealing its listing to the Federal Court of Canada.

### **REVOCAION OF CITIZENSHIP (Art 2, 14, 26)**

Bill C-24, the *Strengthening Canadian Citizenship Act*,<sup>66</sup> became law on 19 June 2014. The Bill gives the federal government new powers to revoke Canadian citizenship in some cases when individuals are convicted of specified crimes related to terrorism and similar offences.

and Mail (10 February 2012) online: < <http://www.theglobeandmail.com/news/politics/as-ottawa-fumbled-husseyin-celil-languished-in-chinas-court-system/article4171496/>>; David McDougall, "Canadian jailed four years in Ethiopia fears for his life" The Globe and Mail (20 January 2011) online: < <http://www.theglobeandmail.com/news/world/canadian-jailed-four-years-in-ethiopia-fears-for-his-life/article562596/>>.

<sup>61</sup> See Bill Graveland, "Montana could save Canadian on death row" The Star (22 February 2009) online: < [http://www.thestar.com/news/canada/2009/02/22/montana\\_could\\_save\\_canadian\\_on\\_death\\_row.html](http://www.thestar.com/news/canada/2009/02/22/montana_could_save_canadian_on_death_row.html)>.

<sup>62</sup> See Thomas Walkom, "Stephen Harper's blasé reaction to Mohamed Fahmy verdict reflects double standard" The Star (25 June 2014) online: < [http://www.thestar.com/news/canada/2014/06/25/stephen\\_harpers\\_blas\\_reaction\\_to\\_mohamed\\_fahmy\\_verdict\\_reflects\\_double\\_standard\\_walkom.html](http://www.thestar.com/news/canada/2014/06/25/stephen_harpers_blas_reaction_to_mohamed_fahmy_verdict_reflects_double_standard_walkom.html)>.

<sup>63</sup> *Criminal Code*, RSC 1985, c C-46, s. 83.05(6.1).

<sup>64</sup> *Ibid*, s. 83.05(6)(a).

<sup>65</sup> *Ibid*, s. 83.05(6)(b)

<sup>66</sup> 2nd Sess, 41st Parl, 2013 (assented to 19 June 2014) SC 2014, c 22.

The new provisions distinguish between Canadians who have no other nationality and individuals who carry one or more nationalities in addition to their Canadian citizenship. In effect, this creates a two-tier citizenship and the perception that some citizens are “true” Canadians while others are viewed as inherently suspicious or disloyal.

Additionally, the new revocation procedure fails to uphold the international standards that guarantee fair hearings.<sup>67</sup> The Minister of Citizenship and Immigration is not required to provide details of the grounds on which he or she is making the decision. There is also no basis on which to appeal the decision. The necessity of stringent due process standards in decisions concerning the acquisition, deprivation or revocation of nationality has been recognized by the UN Human Rights Council.<sup>68</sup>

A Notice of Application to challenge the constitutionality of the citizenship revocation provisions has been filed at the Federal Court of Canada.<sup>69</sup>

### **SECURITY CERTIFICATES AND SPECIAL ADVOCATES (Arts 9, 14)**

Non-citizens can be arrested, detained, and ordered deported from Canada pursuant to security certificates issued under the *Immigration and Refugee Protection Act (IRPA)*.<sup>70</sup>

In 2008, the Supreme Court of Canada determined that the security certificate regime was unconstitutional as it deprived the appellant, Adil Charkaoui, of the ability to know and meet the case against him.<sup>71</sup> The federal government responded by amending the *IRPA* to introduce a new system of special advocates whose role would be to represent individuals subject to security certificates.<sup>72</sup> In its 2012 Concluding Observations, the Committee against Torture raised concerns that the new system prevents special advocates from properly knowing the case against their clients or from making a full answer or defence, as (1) they have very limited ability to conduct cross-examinations or to seek evidence independently in support of their clients; (2) individuals subject to security certificates only have access to a summary of the evidence against them, and cannot directly discuss their content with their special advocate; and (3) evidence obtained by torture has been reportedly used against

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<sup>67</sup> Amnesty International, *Bill C-24: Amnesty International's concerns regarding proposed changes to the Canadian Citizenship Act* (9 June 2014) online: , <[http://www.amnesty.ca/sites/default/files/c24\\_brief\\_amnesty\\_international\\_canada.pdf](http://www.amnesty.ca/sites/default/files/c24_brief_amnesty_international_canada.pdf)>.

<sup>68</sup> United Nations Human Rights Council, *The right to a nationality: women and children*, 20th Sess, Res 20/4, UN Doc A/HRC/20/5 (3 August 2012) at paras 2,10.

<sup>69</sup> See Tonda MacCharles, “Rocco Galati launches court fight against Citizenship Act changes” *The Star* (25 June 2014) online: <[http://www.thestar.com/news/canada/2014/06/25/rocco\\_galati\\_launches\\_citizenship\\_act\\_legal\\_challenge.html](http://www.thestar.com/news/canada/2014/06/25/rocco_galati_launches_citizenship_act_legal_challenge.html)>.

<sup>70</sup> SC 2001, c 27 [*IRPA*].

<sup>71</sup> *Charkaoui v Canada (Citizenship and Immigration)*, 2008 SCC 38, [2008] 2 SCR 326.

<sup>72</sup> *IRPA*, *supra* note 71 s 85.

individuals subject to security certificates.<sup>73</sup> The Committee also expressed concern that the security certificate process leads to indeterminate and often prolonged detention without charge.<sup>74</sup>

In May 2014, the Supreme Court of Canada upheld the constitutionality of the special advocate regime.<sup>75</sup> The decision contained no reference to any relevant international legal sources, despite the fact that numerous interveners provided submissions to the Court on Canada's international obligations in the case.

## REFUGEE AND MIGRANT RIGHTS

### DEPORTATION TO TORTURE (Art 7)

On multiple occasions, the UN Human Rights Committee and the UN Committee Against Torture have pressed Canada to amend its legislation to implement the unconditional ban on removing anyone to a country they would face the risk of torture or cruel, inhuman or degrading treatment, which amounts to a grave breach of article 7 of ICCPR.<sup>76</sup> The two Committees have also been critical of Canada in individual cases of deportation to a real risk of torture or cruel, inhuman or degrading treatment.<sup>77</sup>

The *IRPA*, however, still allows for individuals who are found to pose a risk to national

<sup>73</sup> UN Committee against Torture *Concluding Observations*, 2012, *supra* note 9 para 12.

<sup>74</sup> *Ibid* para 12(c).

<sup>75</sup> *Canada (Citizenship and Immigration) v Harkat*, 2014 SCC 37.

<sup>76</sup> UN Human Rights Committee *Concluding Observations*, 1999, *supra*, note 17 para 13; UN Committee against Torture, *Report of the Committee Against Torture*, 25th Sess, UN Doc A/56/44 (12 October 2001) at para 59; UN Committee against Torture, *Conclusions and Recommendations of the Committee Against Torture: Canada*, 34th Sess, UN Doc CAT/C/CR/34/CAN (7 July 2005) at para 5; UN Human Rights Committee *Concluding Observations*, 2006, *supra* note 1 para 15; UN Committee against Torture *Concluding Observations*, 2012, *supra* note 9 at para 9.

<sup>77</sup> The Committee against Torture made two requests in 2006 that Canada suspend its deportation of Bachan Singh Sogi to India: See United Nations Committee against Torture, *Communication No 297/2006: Bachan Singh Sogi v Canada Decision* 39th Sess, UN Doc CAT/C/39/D/297/2006 (16 November 2007) at paras 1.2-1.4 [*Communication No 297/2006*]. Canada proceeded with the deportation, justifying it on the basis that Mr. Singh posed a threat to national security in Canada. The Committee against Torture criticized Canada's use of this justification in November 2007 and its 2012 review: *Ibid*, *Communication No 297/2006* at paras 10.2, 10.11; UN Committee against Torture, *Concluding Observations*, 2012, *supra* note 8 at para 10; Also, in 2011, the Human Rights Committee found that Canada's attempt to deport Somali national Jama Warsame would violate his right to life and to be free from torture: United Nations Human Rights Committee, *Communication No 1959/2010: Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights*, 102nd Sess, UN Doc CCPR/C/102/D/1959/2010 (21 July 2011) at para 9.

security or of serious criminality to be deported, in exceptional circumstances, even if a risk that they would be submitted to torture or cruel, inhuman or degrading treatment exists.<sup>78</sup>

## **REFUGEE PROTECTION: “IRREGULAR ARRIVALS” AND “SAFE COUNTRIES OF ORIGIN” (Art 2)**

Reforms to the *IRPA* enacted in 2012<sup>79</sup> single out refugee claimants and migrants on the basis of how they arrive to Canada. Adopted in the wake of arrivals in British Columbia of two ships carrying Sri Lankan refugee claimants in 2009 and 2010 with the stated aim to target human smuggling operations, the legislation allows groups of migrants, including refugee claimants, to be designated as “irregular arrivals” at the discretion of the Minister of Public Safety and Emergency Preparedness.<sup>80</sup> Those who are deemed to be “irregular arrivals” are

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<sup>78</sup> Under the *IRPA*, *supra* note 71 s. 36, people who are not Canadian citizens may be subject to removal from Canada for reasons of “serious criminality.” Specifically, s. 36(1) states that a permanent resident or a foreign national is inadmissible on grounds of serious criminality if they have been convicted in Canada of a federal crime punishable by at least 10 years in prison, or if they have actually been sentenced in Canada to a federal crime and received a sentence of at least six months. Additionally, a permanent resident or a foreign national may be found inadmissible if they have been convicted of an offence outside Canada that if committed inside Canada would carry a term of imprisonment of 10 years or more.

Without the status of citizen or permanent resident, the threshold for the possible deportation of foreign nationals is lower than that for permanent residents. Thus, in addition to the grounds of serious criminality described above, s. 36(2) of the *IRPA* also stipulates that a foreign national is inadmissible on grounds of criminality for conviction in Canada of any indictable federal offence, or conviction in Canada of any two offences under any Act of Parliament not arising out of a single occurrence. Additionally, foreign nationals convicted outside Canada of equivalent offences are also deemed inadmissible.

In *Suresh v Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 3, the Supreme Court of Canada ruled that while under most circumstances, the *Canadian Charter of Rights and Freedoms* protects individuals in Canada from being deported to a country where they face a risk of torture, such deportations may be allowed if the refugee claimants are a serious security risk to Canadian society.

<sup>79</sup> Bill C-31, *An Act to amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act, the Marine Transportation Security Act and the Department of Citizenship and Immigration Act*, 1st Sess, 41st Parl, 2011, (assented to 28 June 2012) SC 2012, c 17.

<sup>80</sup> *IRPA*, *supra* note 71 s. 20.1. The provision reads: “The Minister may, by order, having regard to the public interest, designate as an irregular arrival in Canada of a group of persons if he or she

(a) is of the opinion that examinations of the persons in the group, particularly for the purpose of establishing identity or determining inadmissibility – and any investigations concerning persons in the group – cannot be conducted in a timely manner; or

(b) has reasonable grounds to suspect that, in relation to the arrival in Canada of the group, there has been, or will be, a contravention of subsection 117(1) [human smuggling] for profit, or for the benefit of, at the direction of or in association with a criminal organization or terrorist group.”

subject to mandatory detention and are not given access to a detention review for two weeks and then, only once every six months.<sup>81</sup> “Irregular arrivals” who are later recognised as refugees are barred from travelling outside Canada and are unable to apply to be reunited with spouses and minor children for a period of five years.

Though the stated aim of the proposed legislation is to target human smuggling operations, it leads to the detention of refugee claimants and victims of trafficking and smuggling. In fact, refugee claimants who have paid substantial sums of money to come to Canada and have endured a very dangerous journey to seek safety, are on occasion labelled human smugglers themselves, declared inadmissible to Canada on grounds of serious criminality, and denied a hearing before the Refugee Division. Two such cases are currently being appealed to the Supreme Court of Canada.<sup>82</sup>

The 2012 reforms to the *IRPA* also allowed for the designation of groups of refugee claimants who are nationals of countries that are considered to be “safe countries of origin.”<sup>83</sup> Individuals coming from such countries are subject to a fast-tracked refugee claim process.<sup>84</sup> As UNHCR recognised as early as 1991, the application of the safe country of origin concept could, *inter alia*, discriminate on the basis of the applicant’s country of origin,<sup>85</sup> be inconsistent with the individual character of refugee status and the subjective nature of fear of persecution, and could even result in *refoulement*.<sup>86</sup>

Importantly, both “irregular arrivals” and refugee claimants from “safe countries of origin” who are denied refugee status are also denied access to an appeal before the Refugee Appeal Division.<sup>87</sup>

The UN Committee on the Elimination of Racial Discrimination and the UN Committee

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The first such designation of the five groups or “irregular arrivals” was announced on 5 December 2012: Public Safety Canada, “Minister of Public Safety makes first designation of irregular arrival under Protecting Canada’s Immigration System Act” Ministry of Public Safety and Emergency Preparedness (5 December 2012) online: < <http://www.publicsafety.gc.ca/cnt/nws/nws-rlss/2012/20121205-eng.aspx>>.

<sup>81</sup> *IRPA*, supra note 71, s 57.1.

<sup>82</sup> *Canada (Public Safety and Emergency Preparedness) v JP and Minister of Public Safety and Emergency Preparedness v B306*, 2013 FCA 262, leave to appeal to the Supreme Court of Canada granted 17 April 2014.

<sup>83</sup> *IRPA*, supra note 71 s 109.1

<sup>84</sup> *Ibid* s 111.1(2).

<sup>85</sup> Article 3 of the *Convention relating to the Status of Refugees* (189 UNTS. 150, entered into force April 22, 1954) states: “The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.”

<sup>86</sup> UN High Commissioner for Refugees, *Background Note on the Safe Country Concept and Refugee Status*, 42nd Sess, UN Doc EC/SCP/68 (26 July 1991).

<sup>87</sup> *Ibid* ss 24(4), 110(2).

against Torture both expressed concern about the provisions regulating the designation of irregular arrivals and safe countries of origin when reviewing Canada's human rights record in 2012.<sup>88</sup>

### **INDEFINITE DETENTION AND DETENTION OF CHILDREN (Arts 7, 9, 24)**

There is no maximum period of time that individuals can be held in detention pending their removal from Canada. This has resulted in situations of individuals being held, without charge, for several years at a time.<sup>89</sup> Continued detention is authorized if it is determined that the individual is (1) a danger to the public; (2) unlikely to appear for examination, a hearing, or removal; (3) under investigation for certain grounds of inadmissibility; or (4) in a situation where the individual's identity has not been established.<sup>90</sup>

The Supreme Court of Canada has held that indefinite detention without review is a violation of the right to be free from cruel and unusual treatment and punishment.<sup>91</sup> The UN High Commissioner for Refugees has stated that "indefinite detention is arbitrary and maximum limits should be established in law."<sup>92</sup> There are concerns as to the effectiveness of detention reviews.<sup>93</sup> Continued detention is ordered when a detainee is unable to show a change in circumstances from the previous detention review. Often, removals are stalled by foreign governments refusing to facilitate the removal.<sup>94</sup> Detainees also have the option of voluntary removal from Canada. Detainees who refuse to volunteer to be returned for fear of persecution remain detained. In such cases, the Immigration Division reasons that continued detention is justified as such detainees are frustrating their own removal from Canada.

The indefinite detention of Michael Mvogo, of Cameroon, pending his removal from Canada, led a network of migrant rights organizations and individuals, the End Immigration Detention Network,<sup>95</sup> to file an official complaint with the UN Working Group on Arbitrary Detention in

<sup>88</sup> UN Committee on the Elimination of Racial Discrimination *Concluding Observations*, 2012, *supra* note 10 para 15; UN Committee against Torture *Concluding Observations*, 2012, *supra* note 8 para 13.

<sup>89</sup> See, e.g. Nicholas Keung, "Canada urged to release migrants in endless detention" *The Star* (23 October 2013) online: <  
[http://www.thestar.com/news/immigration/2013/10/23/canada\\_urged\\_to\\_release\\_migrants\\_in\\_endless\\_detention.html](http://www.thestar.com/news/immigration/2013/10/23/canada_urged_to_release_migrants_in_endless_detention.html)> [Keung]. See also Joe Friesen, "Jailed in Canada, unwanted by Iraq, refugee struggles for way out of legal limbo" *The Star* (17 December 2013) online: <  
<http://www.theglobeandmail.com/news/politics/jailed-refugee-unwanted-by-iraq-struggles-for-way-out-of-legal-limbo/article16014397/>> [Friesen].

<sup>90</sup> *IRPA*, *supra* note 71 58(1).

<sup>91</sup> *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 SCR 350.

<sup>92</sup> United Nations High Commissioner for Refugees, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (UNHCR, 2012) online: <<http://www.refworld.org/pdfid/503489533b8.pdf>>.

<sup>93</sup> See, e.g. Friesen, *supra* note 90.

<sup>94</sup> Keung, *supra* note 90.

<sup>95</sup> The Network's website can be found at: <http://endimmigrationdetention.com/>.

2013 on behalf of Michael Mvogo, a detainee held for over seven years pending his removal from Canada.<sup>96</sup> On 20 July 2014, the Working Group released its opinion, calling for Mr. Mvogo be immediately released, stating that “[t]he inability of a state party to carry out the expulsion of an individual does not justify detention beyond the shortest period of time or where there are alternatives to detention, and under no circumstances indefinite detention.”<sup>97</sup>,

Finally, the *IRPA* allows for the detention of minors as a last resort,<sup>98</sup> but the detention of children is not limited to exceptional circumstances and their best interests are not always considered.<sup>99</sup> Even infants and toddlers have been detained, often with inadequate medical support and no education for older child detainees.<sup>100</sup> Children are detained as individuals presenting potential flight risks when Canada Border Services Agency officials are not satisfied as to their identity, and when accompanying a parent subject to a detention order. Where facilities specifically for the purposes of immigration detention do not exist, correctional facilities are also used.<sup>101</sup>

### **REFUGEE HEALTH (Arts 2, 6, 7, 26)**

In 2012, the government made sweeping cuts to the program that funds health services for refugee claimants and refugees in Canada,<sup>102</sup> and Amnesty International is concerned that these cuts might undermine their right to life and freedom from ill-treatment.

The result of the cuts was that most refugees, unless they came to Canada through government sponsorship, were no longer eligible for medication coverage or vision or dental care. Health coverage was limited to “urgent or essential care” and no longer extended to treatment that would be considered to be preventative in nature. Refugee claimants coming from countries designated as “safe countries of origin” were not even covered for urgent or essential care as a result of the cuts. Rather, they only would receive coverage for conditions that pose a risk to public health or public security. Some provinces agreed to provide access to health care and prescription medication, but in those cases there is a 4-6 week wait to

<sup>96</sup> Keung, *supra* note 90.

<sup>97</sup> Human Rights Council Working Group on Arbitrary Detention, *Opinion adopted by the Working Group on Arbitrary Detention at its sixty-ninth session, 22 April-1 May 2014: No.15/2014 (Canada)*, 66th Sess, UN Doc A/HRC/WGAD/2104/15.

<sup>98</sup> *IRPA*, *supra* note 71 s 60: “a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.”

<sup>99</sup> Canadian Council for Refugees, “Detention and the Best Interests of the Child” (November 2009) online: <<http://ccrweb.ca/documents/detentionchildren.pdf>>.

<sup>100</sup> *Ibid.*

<sup>101</sup> Canada Border Services Agency, “CBSA Detentions and Removals Program – Evaluation Study” (November 2010) online: <<http://cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2010/dr-rd-eng.html>>.

<sup>102</sup> See Meagan Fitzpatrick, “Refugee health benefits scaled back by Tories” *CBC News* (25 April 2012) online: <<http://www.cbc.ca/m/touch/politics/story/1.1164074>>.

access provincial social assistance benefits. These measures put the lives of refugees who require essential medicines and other health services at risk.<sup>103</sup>

Medical professionals and medical associations, including the Canadian Medical Association, the Canadian Nurses Association and the Canadian Dental Association, have all raised serious health-related concerns about the cuts and have urged the government to reinstate funding.<sup>104</sup>

In July 2014, the Federal Court of Canada declared the cuts to be unconstitutional, finding them to be “cruel and unusual.”<sup>105</sup> The Federal Court also found that the withholding of healthcare specifically from refugee claimants coming from safe countries of origin was discriminatory.<sup>106</sup> The government announced that it will appeal the decision.<sup>107</sup>

## SHRINKING SPACE FOR ADVOCACY AND DISSENT (ARTS 19, 21)

Support for strong advocacy and diverse, including dissenting, views in debates about important public policy issues is being dramatically undermined and rapidly dismantled. This attack on freedom of expression in Canada has come through a range of measures, including punitive funding cuts and threats of loss of charitable status targeting organizations with programming that runs counter to government positions on issues such as women’s equality,<sup>108</sup> the rights of Palestinians,<sup>109</sup> and environmental protection and corporate social

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<sup>103</sup> See, for background information on the cuts and their impacts on the lives and well-being of refugees, *Canadian Doctors for Refugee Care v Canada (Attorney General)*, 2014 FC 651 [*Canadian Doctors for Refugee Care*].

<sup>104</sup> Letter to Minister of Citizenship and Immigration Jason Kenney, from Canadian Association of Optometrists Canadian Medical Association, Canadian Nurses Association, Canadian Association of Social Workers, Canadian Dental Association, Canadian Pharmacists Association, College of Family Physicians of Canada, and Royal College of Physicians and Surgeons of Canada (18 May 2012) online: <[https://www.cda-adc.ca/\\_files/cda/news\\_events/media/news\\_releases/2012/kenneymay2012.pdf](https://www.cda-adc.ca/_files/cda/news_events/media/news_releases/2012/kenneymay2012.pdf)>.

<sup>105</sup> *Canadian Doctors for Refugee Care*, *supra* note 104 at paras 636, 669, 688, 691, 1080.

<sup>106</sup> *Ibid* at para 766.

<sup>107</sup> See Laura Payton, “Federal government to appeal ruling reversing ‘cruel’ cuts to refugee health” *CBC News* (4 July 2014) online: <<http://www.cbc.ca/news/politics/federal-government-to-appeal-ruling-reversing-cruel-cuts-to-refugee-health-1.2696311>>.

<sup>108</sup> E.g. dramatic cuts to Status of Women Canada, Canada’s most important body for promoting gender equity: See Voices-Voix, “Status of Women Canada: What happened” (27 September 2012) online: <<http://voices-voix.ca/en/facts/profile/status-women-canada>>.

<sup>109</sup> E.g. in 2013, after allowing a toxic debate about support for Israeli and Palestinian human rights groups to fester between government-appointed Board members and staff at Rights & Democracy, a globally respected organization and voice for national and international rights, the government announced that it would shut down the Agency: See Voices-Voix, “Rights & Democracy: What Happened” online: <<http://voices-voix.ca/en/facts/profile/rights-democracy>>.

responsibility in the extractive sector.<sup>110</sup> In 2006, the federal government ended the Court Challenges program which facilitated important equality challenges under the *Canadian Charter of Rights and Freedoms* from marginalized communities in Canada through the courts.<sup>111</sup>

At the same time, government watchdogs and civil servants who have spoken out about such issues as nuclear safety, RCMP oversight, prisoner transfers in Afghanistan, the rights of veterans, and the national census, have been dismissed or publicly vilified by senior members of government.<sup>112</sup> Environmental activist David Suzuki and others have drawn attention to the fact that there is a particularly alarming pattern of targeting activists, researchers and scientists working on environmental issues in the country.<sup>113</sup> Following this trend, in July 2013 it was discovered that the Prime Minister's Office had instructed government officials to compile "friend and enemy stakeholder" lists as part of the process of briefing new members of Cabinet. In a letter to the Prime Minister, organizations across

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<sup>110</sup> See, e.g. Lee-Anne Goodman, "NGOs rally to prevent foreign-aid cuts in upcoming federal budget" *The Globe and Mail* (4 February 2014) online: < <http://www.theglobeandmail.com/news/politics/ngos-fear-more-foreign-aid-cuts-in-upcoming-federal-budget/article16696559/>>.

<sup>111</sup> Voices-Voix, "Court Challenges Program: What Happened" online: < <http://voices-voix.ca/en/facts/profile/court-challenges-program>>.

<sup>112</sup> Suggestions that to be concerned about the torture of prisoners in Afghanistan is tantamount to supporting the Taliban: see CBC News, "Liberals furious at Harper's Taliban accusation" *CBC News* (21 March 2007) online: < <http://www.cbc.ca/news/canada/liberals-furious-at-harper-s-taliban-accusation-1.633807>>; Suggestions that to question the recent proposed online surveillance legislation was to stand with pedophiles: see John Ibbitson, "Tories on e-snooping: 'Stand with us or with the child pornographers'" *The Globe and Mail* (13 February 2012) online: < <http://www.theglobeandmail.com/news/politics/tories-on-e-snooping-stand-with-us-or-with-the-child-pornographers/article545799/>>; Suggestions that to raise questions about environmental protection and Indigenous rights in relation to the Northern Gateway pipeline is to be under the undue influence of sinister foreign activists: see Laura Payton, "Radicals working against oil sands, Ottawa says: Environment groups 'threaten to hijack' system, natural resources minister says" *CBC News* (9 January 2012) online: < <http://www.cbc.ca/news/politics/radicals-working-against-oilsands-ottawa-says-1.1148310>>; An on-line list maintained by Voices-Voix Coalition details "80 cases of individuals, organizations and public service institutions that have been muzzled, defunded, shut down, or subjected to vilification" see Voices-Voix, "Hit List" online: <<http://voices-voix.ca/en/hit-list?&&keys=&page=3>>.

<sup>113</sup> See Carol Goar, "Hard time to be an environmentalist: A new survey on charities shows decline in public trust for environmental organizations" *The Star* (7 November 2013) online: <[http://www.thestar.com/opinion/commentary/2013/11/07/hard\\_time\\_to\\_be\\_an\\_environmentalist\\_goar.html](http://www.thestar.com/opinion/commentary/2013/11/07/hard_time_to_be_an_environmentalist_goar.html)>; One startling example is the Federal Privacy Commissioner's findings about extensive and intimidating government surveillance of Dr. Cindy Blackstock, a prominent Indigenous rights activist who launched a complaint about discriminatory levels of federal funding for on-reserve child protection services: See Cindy Blackstock, "The government spied on me without a warrant" *The Star* (21 June 2014) online: <[http://www.thestar.com/opinion/commentary/2014/06/21/the\\_government\\_spied\\_on\\_me\\_without\\_a\\_warrant.html](http://www.thestar.com/opinion/commentary/2014/06/21/the_government_spied_on_me_without_a_warrant.html)>.

Canada expressed concern that individuals or organizations that disagree with government policy would be labelled as “enemies.”<sup>114</sup>

With respect to the right of peaceful assembly, mass arrests and other associated infringements of various human rights protections at the time of the 2010 G20 protests in Toronto and the 2012 Quebec student protests remain unaddressed. There has been no public inquiry into the G20 Summit police response despite 31 police officers facing disciplinary charges and, in September 2013, the first criminal conviction of an officer, on charges of assault with a weapon.<sup>115</sup> The crackdown in Montreal and the emergency law passed by the Quebec government attracted the attention and expressions of concern from the High Commissioner for Human Rights, Navi Pillay.<sup>116</sup> The government of Quebec established a commission to look into events surrounding the student protests. There were concerns, however, that the commission lacked sufficient powers to compel evidence, cross-examine witnesses and carry out necessary investigations.<sup>117</sup> Since the release of their report in March 2014,<sup>118</sup> the government has not indicated that it will implement the report’s recommendations,<sup>119</sup> which included ending the use of pepper spray and stun grenades on protestors.

Given the potential for conflict around resource development on Indigenous lands, as

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<sup>114</sup> CBC News, “PMO asked staff to supply ‘enemy’ lists to new ministers” CBC News (16 July 2013) online: <<http://www.cbc.ca/news/politics/pmo-asked-staff-to-supply-enemy-lists-to-new-ministers-1.1361102>>.

<sup>115</sup> See Alyshah Hasham and Jacques Gallant, “G20 assault trial: Officer found guilty of using excessive force on Adam Nobody” The Star (12 September 2013) online: <[http://www.thestar.com/news/gta/2013/09/12/g20\\_assault\\_trial\\_officer\\_found\\_guilty\\_of\\_using\\_excessive\\_force\\_on\\_adam\\_nobody.html](http://www.thestar.com/news/gta/2013/09/12/g20_assault_trial_officer_found_guilty_of_using_excessive_force_on_adam_nobody.html)>.

<sup>116</sup> Office of the High Commissioner for Human Rights, “Canada: ‘UN experts concerned over recent events in Quebec,’” (30 May 2012) online: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12201&LangID=E>>; Office of the High Commissioner for Human Rights, “Opening Statement by Navi Pillay, High Commissioner for Human Rights to the Human Rights Council 20th Special Session,” (18 June 2012) online: <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12245&LandID=e>>.

<sup>117</sup> See CBC News, “Student protest commission assailed from all sides” (9 May 2013) online: <<http://www.cbc.ca/news/canada/montreal/student-protest-commission-assailed-from-all-sides-1.1400094>>.

<sup>118</sup> Serge Ménard, *Rapport: Commission spéciale d’examen des événements du printemps 2012* (Government of Quebec, 2014) online: <[http://www.securitepublique.gouv.qc.ca/fileadmin/Documents/police/publications/rapport\\_CSEEP2012/rapport\\_CSEEP2012.pdf](http://www.securitepublique.gouv.qc.ca/fileadmin/Documents/police/publications/rapport_CSEEP2012/rapport_CSEEP2012.pdf)>.

<sup>119</sup> See Karen Sieman, “Liberals likely to shelve Maple Spring report” *The Montreal Gazette* (15 May 2014) online: <<http://www.montrealgazette.com/business/Liberals+likely+shelve+Maple+Spring+report/9844082/story.html>>.

highlighted by recent anti-fracking protests at the Elsipogtog First Nation in New Brunswick,<sup>120</sup> concerns remain that police services in Canada have either not adopted or fully implemented appropriate policies and procedures to prevent unnecessary and excessive use of force in response to peaceful protests and demonstrations by Indigenous communities.

## **LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX INDIVIDUAL (LGBTI) RIGHTS (ARTS 2.1, 26)**

While promoting the protection of LGBTI individuals around the world, Canada has failed to provide adequate protection for its own transgendered community. Bill C-279,<sup>121</sup> which would provide critical human rights protections to transgendered individuals by adding gender identity to federal anti-discrimination and anti-hate legislation, has languished in Parliament. However, on 5 June 2014 the Bill passed its second reading before the Senate, and is a step closer to becoming law.<sup>122</sup>

## **FAILURE TO ADOPT A HOUSING STRATEGY (ART 6)**

This Committee has called upon the Canadian government to address homelessness to comply with the right to life,<sup>123</sup> recognizing that homelessness can lead to serious health consequences and even death.

The Committee on Economic, Social and Cultural Rights has raised on several occasions serious concerns about Canada's inaction in the face of the pressing problem of homelessness. It emphasized the responsibility of courts to fully consider Canada's international human rights obligations when interpreting the Canadian Charter of Rights and Freedoms, and has urged the government to design and implement a national strategy to reduce homelessness.<sup>124</sup>

The government has steadfastly refused to adopt a human rights based housing strategy. In February 2013, the government opposed and defeated private member's legislation which called upon the Minister responsible for the Canada Mortgage and Housing Corporation to

<sup>120</sup> See Schwartz, *supra* note 24.

<sup>121</sup> Bill C-279, *An Act to Amend the Canadian Human Rights Act and the Criminal Code (Gender Identity)*, 2nd Sess, 41st Parl, 2013.

<sup>122</sup> See Alex Neve and Amanda Ryan, "Human-rights victory draws close for transgender Canadians" *The Ottawa Citizen* (17 June 2014) online: < <http://ottawacitizen.com/news/national/alex-neve-and-amanda-ryan-human-rights-victory-for-transgender-canadians>>.

<sup>123</sup> UN Human Rights Committee *Concluding Observations*, 1999, *supra* note 17 at para 12.

<sup>124</sup> UN CESCR *Concluding Observations*, *supra* note 17; United Nations Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing*, 6th Sess, UN Doc E/1992/23 (1 January 1992); United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, 42nd Sess, UN Doc E/C.12/GC/20 (2 July 2009).

“establish a national housing strategy designed to respect, protect, promote and fulfil the right to adequate housing as guaranteed under international human rights treaties ratified by Canada.”<sup>125</sup>

A recent court case launched in Ontario<sup>126</sup> seeks a ruling that the federal and Ontario governments be required to develop and implement housing strategies. The federal and provincial governments argued that the case should not proceed to a full hearing as the rights asserted are not proper matters for judicial consideration. An Ontario Superior Court judge agreed with the governments, concluding “the courts are not the proper place to determine the wisdom of policy choices involved in balancing concerns for the supply of appropriate housing against the myriad of other concerns associated with the broad policy review this Application.”<sup>127</sup> The case was appealed to the Ontario Court of Appeal and submissions were heard in May 2014. The Court has not yet released its decision.

### **CORPORATE ACCOUNTABILITY, TRADE AND HUMAN RIGHTS (ART 2.3)**

Canadian mining companies dominate the industry worldwide and now operate in every corner of the globe, not shying away from the frontlines of armed conflict, grave human rights violations, and extreme poverty.<sup>128</sup> In 2010 the government opposed private member's

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<sup>125</sup> Bill C-304, *An Act to Ensure Secure, Adequate, Accessible and Affordable Housing for Canadians*, 3rd Sess, 40th Parl, 2010.

<sup>126</sup> *Tanudjaja v Attorney General (Canada) (Application)*, 2013 ONSC 5410.

<sup>127</sup> *Ibid* at para 143.

<sup>128</sup> Amnesty International has pointed to human rights concerns associated with the operations of several Canadian companies around the world: see, e.g. Amnesty International, *Guatemala: Impunity, insecurity and discrimination. Amnesty International Submission to the UN Universal Periodic Review* (November 2012) online: < <http://www.amnesty.org/en/library/asset/AMR34/004/2012/en/989d1e67-cd75-40e2-97cf-229fe23cd150/amr340042012en.pdf>>; Amnesty International, *Guatemala: Submission to the UN Human Rights Committee for the 104<sup>th</sup> Session of the Human Rights Committee* (March 2012) online: < <http://www.amnesty.org/en/library/asset/AMR34/001/2012/en/f787f76b-edfe-478a-bbfb-c612ce3b507e/amr340012012en.pdf>>; Amnesty International, *Undermining Rights: Forced evictions and police brutality around the Porgera Goldmine, Papua New Guinea* (January 2010) online: < <http://www.amnestyusa.org/sites/default/files/asa340012010eng.pdf>>; Amnesty International, “Salvadoran environmental activists killed and radio station staff threatened” (5 January 2010) online: < <http://www.amnesty.org/en/news-and-updates/salvadoran-environmental-activists-killed-radio-station-staff-threatened-20100105>>; Amnesty International, “Mexico: Protester's family at risk after killing” (3 December 2009) online: < <http://www.amnesty.org/en/library/asset/AMR41/062/2009/en/6624dc3e-f9d5-4ed6-9044-8ad6a756b1a9/amr410622009en.pdf>>; Amnesty International, “Mexico: Activists under threat” (10 September 2009) online: < <http://www.amnesty.org/en/library/asset/AMR41/047/2009/en/9964b9d6-d2bb-4fce-b6f7-fc61139c4390/amr410472009en.pdf>>; Amnesty International, “Ecuador: Fear for safety” (25 July 2007) online: < <http://www.amnesty.org/en/library/asset/AMR28/002/2007/en/5b94fe02-d378-11dd-a329-2f46302a8cc6/amr280022007en.pdf>>; Amnesty International, “Ecuador: Further information on fear

legislation<sup>129</sup> establishing human rights standards for Canadian extractive companies. A new, similar Bill was introduced by a private member in 2013, calling for the creation of an ombudsman for the corporate social responsibility (CSR) of Canadian extractive corporations working outside Canada.<sup>130</sup> A corporate social responsibility strategy centered on voluntary participation of companies was instituted in 2009, but the work of the CSR Counsellor at the centre of that strategy has been hampered by the refusal of companies to cooperate in the complaints process.

Judges have generally ruled that cases launched by victims of corporate human rights abuses should be heard in the country where the mine is located rather than in Canada. However, the Ontario Superior Court recently ruled that a case against HudBay Minerals related to its operations in Guatemala may proceed in Canadian courts. The Hudbay case involves allegations by Maya-Q'eqchi villagers from eastern Guatemala that security personnel employed by Hudbay Minerals' local subsidiary shot and killed school teacher Adolfo Ich Chamán, shot and paralyzed youth German Chub Choc, and gang-raped 11 Maya-Q'eqchi women. Hudbay Minerals did not appeal the decision, and a hearing will be conducted before the Ontario Superior Court.<sup>131</sup> Given that the Hudbay decision came from a lower court, its precedential value remains to be seen. In June 2014, a new action was filed by seven men in British Columbia against Canadian company Tahoe Resources for injuries suffered when Tahoe's security personnel allegedly opened fire on them at close range during a peaceful protest against the mine.<sup>132</sup>

As for existing non-judicial grievance mechanisms, such as Canada's National Contact Point to the Organization for Economic Cooperation and Development,<sup>133</sup> they have proven to be

for safety" (24 August 2007) online: < <http://www.amnesty.org/en/library/asset/AMR28/003/2007/en/5a1f0ad2-d36e-11dd-a329-2f46302a8cc6/amr280032007en.pdf>>; Amnesty International, "Quebec court decision in Kilwa Massacre DRC case denies right to remedy for victims of corporate human rights abuses" (1 February 2012) online: < <http://www.amnesty.ca/news/news-item/quebec-court-decision-in-kilwa-massacre-drc-case-denies-right-to-remedy-for-victims-o>>.

<sup>129</sup> Bill C-300, *An Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries*, 3rd Sess, 40th Parl, 2010.

<sup>130</sup> Bill C-584, *Corporate Social Responsibility of Extractive Corporations Outside Canada Act*, 2nd Sess, 41st Parl, 2013.

<sup>131</sup> See Bertrand Marotte, "Guatemalan mine claims against HudBay can be tried in Canada, judge says" *The Globe and Mail* (23 July 2013) online: < <http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/guatemalan-mine-claims-against-hudbay-can-be-tried-in-canada-judge-says/article13360800/>>.

<sup>132</sup> See Canadian Centre for International Justice, "Guatemalans file lawsuit against Canadian mining company for 2013 shooting" (18 June 2014) online: < [http://www.ccij.ca/media/news-releases/index.php?DOC\\_INST=4](http://www.ccij.ca/media/news-releases/index.php?DOC_INST=4)>.

<sup>133</sup> Foreign Affairs, Trade and Development Canada, "Canada's National Contact Point (NCP) for the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (MNEs)" (21 March 2014) online: < <http://www.international.gc.ca/trade-agreements->

disappointing failures.<sup>134</sup>

The failure to adopt human rights standards for Canadian companies is exacerbated by a failure to anchor Canada's trade policies in a strong human rights framework. Canada continues to pursue bilateral and multilateral free trade agreements without specific attention to or incorporation of international human rights obligations. This is a particularly troubling omission given that recent trade agreements have been negotiated with countries that have worrying human rights records, such as Columbia<sup>135</sup> and Honduras.<sup>136</sup> The agreement with

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[accords-commerciaux/ncp-pcn/index.aspx?lang=eng&menu\\_id=1&menu=R](http://accords-commerciaux/ncp-pcn/index.aspx?lang=eng&menu_id=1&menu=R)>.

<sup>134</sup> For instance, Canadian NGO Mining Watch Canada reports that a complaint submitted to the National Contact Point regarding human rights harms by communities affected by Canadian company Goldcorp in Guatemala was closed without ruling on the allegations of human rights violations. See Mining Watch Canada, "Canadian government Abdicates Responsibility to Ensure Respect for Human Rights" (6 May 2011) online, Mining Watch Canada: < <http://www.miningwatch.ca/news/canadian-government-abdicates-responsibility-ensure-respect-human-rights>>. Similarly, on 25 July 2013, the International Federation for Human Rights, The Comision Ecumenica de Derechos Humanos, and MiningWatch Canada filed a complaint to the National Contact Point regarding the actions of company Corriente Resources and its Subsidiary EcuCorriente in the Ecuadorian Amazon, including the militarization of the region and forced displacement of communities. A year later, the complainants have not yet received even a preliminary assessment of the case, despite the National Contact Point procedures indicating that this step should be undertaken within three months: See MiningWatch Canada, "Human Rights Organizations Urge Canada to Take Action Against Corporate Abuses in Ecuador" (27 June 2014) online: < <http://www.miningwatch.ca/news/human-rights-organizations-urge-canada-take-action-against-corporate-abuses-ecuador>>.

<sup>135</sup> *Canada-Colombia Free Trade Agreement*, 21 November 2008, online: <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/can-colombia-toc-tdm-can-colombie.aspx>>.

<sup>136</sup> *Canada-Honduras Free Trade Agreement*, 3 November 2013, not yet in force, online: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/honduras/toc-tdm.aspx?lang=eng>>.

Colombia includes a requirement for yearly reports assessing the human rights impact of the deal. The 2012 report did not include any human rights assessment. While the government filed reports in 2013 and 2014, it interpreted the reporting requirement in a way that excludes any consideration of possible impacts of Canadian extractive companies operating in Colombia.

## RECOMMENDATIONS

### **Amnesty International recommends that the Canadian authorities should:**

#### HUMAN RIGHTS IMPLEMENTATION

- Convene a meeting of federal, provincial, and territorial ministers responsible for human rights, and to initiate a process of law, policy, and institutional reform that would ensure effective, transparent, and politically accountable implementation of Canada's international human rights obligations.

#### INDIGENOUS PEOPLES

- In cooperation with Indigenous Peoples, develop a strategy for the full implementation of the UN Declaration on the Rights of Indigenous Peoples, and undertake any necessary reforms to bring Canadian laws and policies into line with its provisions;<sup>137</sup>
- Establish a public inquiry to examine violence against Indigenous women and girls with a view to developing and implementing a comprehensive national plan of action on violence and discrimination against Indigenous women and girls;
- Recognize the right of free, prior and informed consent (FPIC) of Indigenous Peoples and fully incorporate FPIC in all laws, policies, and practices related to extractive industries at home and abroad;
- Ensure that the rights of Indigenous peoples living on reserve are respected and upheld on an equal basis to those of Indigenous and non-Indigenous people living off reserve, particularly the rights related to child protection.

#### VIOLENCE AGAINST WOMEN

- Develop a comprehensive national plan of action to address violence against women in the country.

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<sup>137</sup> Canada formally endorsed the UN Declaration on the Rights of Indigenous Peoples in November 2010. However, the federal government continues to publicly assert that the Declaration has no legal effect.

## TORTURE

- Ratify the Optional Protocol to the Convention against Torture without further delay;
- Limit solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review, and abolish it completely for individuals suffering from mental illness.

## NATIONAL SECURITY AND COUNTER TERRORISM MEASURES

- Appoint a sitting or retired judge and provide him or her with a mandate to examine the range of outstanding human rights and other legal concerns in Omar Khadr's case and make recommendations to the government as to how those concerns should be resolved.
- Amend the Ministerial Direction with respect to intelligence gathering and torture to ensure full compliance with international human rights obligations.
- Adopt a model for thorough, effective and integrated review of national security activities, in line with the recommendation of the Commission of Inquiry into the Actions of Canadian Officials in relation to Maher Arar.
- Ensure that Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin receive prompt, fair and adequate redress for their human rights violations, as confirmed by the judicial inquiry that examined their cases.
- Amend the *State Immunity Act* to permit civil lawsuits in Canadian courts against foreign governments brought by individuals seeking redress for human rights violations that are subject to universal jurisdiction.
- Reform the process for listing terrorist entities to ensure due process.
- Withdraw recent amendments to the *Citizenship Act* allowing revocation of citizenship for individuals who possess at least one nationality in addition to the Canadian one and have been convicted of specified criminal offences.
- Reform the immigration security certificate procedure to conform to international human rights standards with respect to fair trial.

## REFUGEE AND MIGRANT RIGHTS

- Amend the Immigration and Refugee Protection Act and incorporate the internationally-recognized absolute ban on *refoulement* to torture.
- Reform provisions governing "irregular arrivals" and "safe countries of origin" refugee claimants to comply with international human rights norms and international refugee law.
- Detain refugee claimants and other migrants as a measure of last resort and for the shortest period of time, seek alternatives to detention, and under no circumstances detain indefinitely.

#### SHRINKING SPACE FOR ADVOCACY AND DISSENT

- Develop a plan of action for implementation of the 1998 UN *Declaration on Human Rights Defenders*.<sup>138</sup>

#### LGBTI RIGHTS

- Ensure swift passage into law of Bill C-279, *An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity)*.

#### FAILURE TO ADOPT A HOUSING STRATEGY

- Adopt a national housing strategy that is consistent with international human rights principles.

#### CORPORATE ACCOUNTABILITY, TRADE AND HUMAN RIGHTS

- Ensure legislated access to Canadian courts for victims of human rights abuses arising from the overseas operations of Canadian extractive firms.
- Ensure the creation of an extractive-sector Ombudsperson, with the power to independently investigate complaints into human rights abuses and make recommendations.

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<sup>138</sup> Office of the Commissioner for Human Rights, Fact Sheet No. 29, *Human Rights Defenders: Protecting the Right to Defend Human Rights*, (Geneva: Office of the United Nations Commissioner for Human Rights, 2004) online: <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf> > at 30.

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