

CANADA

EXECUTIVE SUMMARY AND RECOMMENDATIONS

**SUBMISSION TO THE UN
COMMITTEE ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS**

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**AMNESTY
INTERNATIONAL**



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AI is a global movement of more than 8 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

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

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

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I. GENERAL OBSERVATIONS

IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Canada's approach to implementing its international human rights obligation suffers from longstanding inadequacy, which has severely limited its ability to implement this Committee's previous recommendations. This shortcoming is compounded by the fact that Canada's federalist government distributes constitutional authority between two levels of government—national and provincial/territorial—which means that the responsibility for acting on any particular human rights obligation or UN recommendation may rest with one or both levels of government. An integrated system that brings these different levels of governments together in a transparent and politically accountable manner is needed to oversee and ensure implementation of the country's international human rights obligations on the basis of meaningful engagement with all its people, including vulnerable groups, Indigenous peoples, and civil society. There has been no meeting of ministers responsible for human rights in the country since 1988.

ACCESS TO JUSTICE

The position advanced by the government on numerous occasions that ESC rights are of a different nature and not susceptible to the same level of judicial enforcement as civil and political rights undermines Canada's commitments under the Covenant and effectively denies access to justice to victims of abuses. As such, efforts by disadvantaged groups to rely on international human rights such as the rights to an adequate livelihood or access to healthcare as a basis for interpreting the Charter and other laws in Canada have faced stiff opposition from government lawyers. Despite the urging from this Committee for federal, provincial, and territorial governments to incorporate Covenant rights into the country's domestic legislation, effective remedies remain out of reach for victims of ESC rights violations. Canada's failure to initiate consultations to consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights illustrates government reticence about the status and standing of ESC rights on the international stage.

II. OBSERVATIONS RELATING TO GENERAL PROVISIONS OF THE COVENANT

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

Canadian mining companies dominate the industry worldwide and now operate in every corner of the globe, not shying away from the frontlines of armed conflict, grave human rights violations, and extreme poverty. Judges have generally ruled that cases launched by victims of corporate human rights abuses should be heard in the country where the mine is located rather than in Canada or have dismissed such lawsuits at the outset on other grounds. Existing non-judicial grievance mechanisms, such as Canada's National Contact Point to the Organization for Economic Cooperation and Development, have proven to be ineffective. The lack of 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.

MAXIMUM AVAILABLE RESOURCES (ART. 2)

New austerity measures introduced by the province of Quebec for implementation in 2015-2016 have reduced access to essential public services and impacted the realization of economic and social rights in the province. Amnesty International is particularly concerned by the Quebec government's intention to continue cutting public spending in the areas of health care, education, and other services, which will disproportionately affect the most disadvantaged and marginalized groups in Quebec society. The government of Quebec has not fulfilled its obligation to consider the impact of its proposed cuts on vulnerable groups. Amnesty International also notes that the detrimental impact of austerity measures is cumulative and that violations of ESC rights occur over time. Those who already experience systemic discrimination also suffer the worst consequences of austerity measures, such as, children, persons with disabilities, and persons with low incomes.

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

Canada has failed to provide effective redress for violations of Indigenous peoples' land and resource rights or ensure that Indigenous peoples are able to control and benefit from the lands and resources essential to their economic well-being and cultural identities. Failure to respect and uphold Indigenous peoples' lands rights can profoundly impair the ability of Indigenous individuals and families to enjoyment of their rights to an adequate standard of living, the highest attainable standard of health, to participate in the cultural life of their community, and to gain their living through the pursuit of traditional occupations such as hunting, trapping and fishing. First Nations, Inuit and Métis peoples are also under increasing pressure from large-scale resource development projects and related infrastructure development on and near their traditional territories. Government claims that these projects will create new jobs fail to account for the potential impact on the traditional occupations of Indigenous peoples which remain important sources of food and livelihood for people who are otherwise marginalized in the Canadian economy.

EDUCATION OF INDIGENOUS CHILDREN (ARTS. 2, 13, 14)

The federal government significantly underfunds schools in First Nations reserves when compared to provincial funding of schools in predominantly non-Indigenous communities. The Canadian Centre for Policy Alternatives estimates that the accumulated funding shortfall between 1996 and 2014 amounted to more than \$3 billion. Inadequate and inequitable funding of First Nations schools has directly contributed to lower educational achievement and deprived First Nations students of the kind of language and cultural skills training needed to help undo the harms inflicted by colonial policies and programmes such as the residential schools system.

III. OBSERVATIONS RELATING TO SPECIFIC PROVISIONS OF THE COVENANT

INADEQUATE PROTECTIONS FOR MIGRANT DOMESTIC WORKERS (ART. 7)

Migrant workers are often brought into Canada on terms that leave them open to exploitation and a range of human rights violations whilst facing barriers to accessing justice and securing effective remedies. Once these workers arrive, they are wary of asserting their rights, afraid that doing so could mean losing their employment. Migrant workers employed as live-in caregivers, most of whom are women, are particularly at risk of abuse, and no jurisdiction in Canada has adopted legislation aimed specifically at protecting them from exploitation. Migrants working as caregivers come to Canada under a work permit which only authorizes them to work for the employer listed on the document. Working for anyone else is considered illegal and puts the worker at risk of deportation. As a result, migrant workers are not free to change jobs without risk to their livelihood and may stay in abusive households because they do not feel they have any other choice. Abuse can be physical, sexual, verbal, psychological, social, or financial. Changes to the Live-in Caregiver Program (LCP) introduced in 2014 have not fundamentally addressed the problematic provisions that leave migrant domestic workers susceptible to exploitation and abuse.

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

In April 2014, a government Member of Parliament tabled Bill C-585, *An Act to amend the Federal-Provincial Fiscal Arrangements Act (period of residence)*, which allows provinces to reduce access to social assistance to refugee claimants and other people without permanent status in Canada by imposing a minimum provincial residency requirement before allowing such individuals to apply for benefits. On 23 October 2014, the same provisions of this Bill were incorporated into Bill C-43, a government omnibus budget Bill. The Bill received Royal Assent and became law on 16 December 2014. The new law has been widely condemned by refugee and human rights groups across Canada as it permits provinces to deny some of the most vulnerable people access to any social assistance.

VIOLENCE AGAINST INDIGENOUS WOMEN AND GIRLS (ARTS. 2, 10, 12)

Indigenous women and girls in Canada face a significantly heightened risk of being subject to violence, including murder, as compared to other women and girls in the country. This risk is rooted in the social and economic marginalization that Indigenous women and girls experience in Canadian society. There are still no statistics about the numbers of suspicious deaths of Indigenous women and girls and no ongoing reporting on missing Indigenous women and girls. There are also no national protocols and very little training to ensure police consistently and accurately record the Indigenous identity of victims of crime. UN bodies and experts, as well as Indigenous women's organizations across Canada, have repeatedly stressed the need for a response to violence against Indigenous women and girls that is comprehensive, coordinated and properly resourced in keeping with the scale and severity of the violence. Consultations are presently underway in the lead up to a public inquiry into murdered and missing Indigenous women, expected to launch later in 2016.

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

There has been little or no progress in reducing violence against women and girls in Canada. In a recent report, rates of physical and sexual violence against women were found to have risen by 2.4 percent for the adult population, while fewer of those crimes are being reported to the police. The study found that “on any given day, more than 8,256 women and children will seek protection from a shelter or transition home.” Canada has also frequently undermined the protection of sexual and reproductive rights in other countries in important UN fora dealing with violence against women.

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

The federal government bears the responsibility of funding services on First Nations reserves, and in the Yukon, that in other communities would generally be funded by the provincial and territorial governments. However, the federal government’s funding of child and family services in First Nations reserves and in the Yukon is at least 22 per cent less per child than what provincial governments dedicate for child protection services in other, predominantly non-Indigenous communities. This is despite often greater needs and the higher costs of delivering services in small and remote First Nations communities. The persistent underfunding has limited the child and family services available in many First Nations communities to the point that the removal of children from their families, meant to be strictly a last resort, has far too often become the only option available when families are not able to provide adequate care. A January 2016 Canadian Human Rights Tribunal ruling has called on Canada to address this discriminatory underfunding.

FOOD SECURITY (ARTS. 2, 11)

In 2012, the UN Special Rapporteur on the right to food, Olivier De Schutter, expressed serious concerns with the extent and depth of hunger and food insecurity in Canada. In response, officials from the previous Canadian government made sharply critical and derisive remarks in the House of Commons and to the media about the value of investigating issues related to the right to food in an affluent country such as Canada, rather than focusing exclusively on developing countries. The previous government’s dismissiveness of the Special Rapporteur’s findings contrast sharply with the lack of progress made to address food insecurity in the country. Despite the country’s wealth and abundance of resources, one in eight Canadian households struggle to put food on the table; nearly 375,000 people in the province of Ontario alone use a food bank in a single month; and a staggering 62% of children living in the North (the Yukon, Northwest Territories, and Nunavut) are food insecure. A report released in October 2015 reveals that the prevalence of food insecurity has “increased significantly” in major cities including Halifax, Montreal, and Calgary.

FAILURE TO ADOPT A NATIONAL HOUSING STRATEGY (ART. 11)

In 2006 this Committee recommended that Canada “address homelessness and inadequate housing as a national emergency.” It emphasized the responsibility of courts to consider Canada’s international human rights obligations when interpreting the *Canadian Charter of Rights*, and urged the government to design and implement a national strategy to reduce homelessness. Successive governments have steadfastly refused to adopt a human rights based housing strategy. In February 2013, the previous government opposed and defeated private member’s legislation which called upon the Minister responsible for the Canada Mortgage and Housing Corporation to “establish a national housing strategy designed to

respect, protect, promote and fulfil the right to adequate housing as guaranteed under international human rights treaties ratified by Canada.” The new government, in its election platform, promised to develop a national housing strategy.

INCLUSIVE EDUCATION FOR CHILDREN WITH DISABILITIES (ARTS. 2, 13, 14)

Canada has no federal legislation protecting children with disabilities’ right to inclusive education because education falls under provincial and territorial jurisdiction. Although every province and territory has some form of policy on inclusive education, they vary widely in how they define inclusion and how they implement inclusive education in practice. This inconsistency in policy and practice across provinces and the failure of many schools to abide by international standards contributes to lower educational and employment outcomes for children with disabilities and, in some cases, can lead to abuse. In British Columbia, a 2013 investigation revealed the widespread use of restraint and seclusion in schools, reporting that children with disabilities were being kept in small spaces—including closets and stairwells—for up to three hours when judged to be disruptive. In addition, student assessment models in schools are generally normative and designed with the majority in mind, which undermines inclusive education efforts.

IV. FURTHER OBSERVATIONS

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

An estimated 20,000 First Nations people living on reserves across Canada have no access to running water or sewage. At any one time more than 100 of those communities with running water are under advisories to boil or not drink the water because of failures in the drinking water system. In 2006, an expert panel appointed by the federal government concluded that drinking water problems in First Nations communities were primarily the result of federal underfunding. The panel urged the federal government to provide the resources necessary “to ensure that the quality of First Nations’ water and wastewater is at least as good as that in similar communities and that systems are properly run and maintained.” Instead of acting on the panel’s concerns, Canada adopted new legislation in 2013 that granted unilateral powers to the federal government to disregard constitutionally protected rights of Indigenous peoples—including self-government rights set out in treaties and other agreements—for the purpose of regulating First Nations water systems.

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

Transgender individuals face a heightened risk of murder, assault and other hate crimes and human rights violations. They also experience widespread discrimination with respect to employment, housing and other essential rights. The impact is devastating. Transgender individuals face some of the highest levels of depression and suicide of any sector in society. Law reform is one of the many measures needed to better protect the rights of transgender individuals. Over the past decade there have been four attempts to strengthen Canadian legal protections for transgender individuals through private members legislation. The most recent effort, Bill C-279, passed in the House of Commons but became stalled in the Senate in the face of opposition from a number of Senators appointed by the previous government. It did not pass before the last session of Parliament ended in June 2015. The Bill would have added gender identity to the prohibited grounds of discrimination under the *Canadian Human*

Rights Act as well as the hate crime provisions in the *Criminal Code*. The government has committed to bring forward new legislation forward.

REFUGEE AND MIGRANT HEALTH (ARTS. 2, 12)

In 2012, the previous government made sweeping cuts to the program that funds health services for refugee claimants and refugees. The cuts resulted in a new, tiered system of health benefits to persons in need of protection in Canada. Refugee claimants lost access to often life-saving medications, such as, for instance, insulin to treat juvenile diabetes. Health coverage was limited to “urgent or essential care” and no longer extended to treatment that would be considered to be preventative in nature. In December 2015, the new government stated that it would reverse the cuts to the program. Canada still, however, refuses to provide health care to undocumented migrants. The UN Human Rights Committee, in its August 2015 review of Canada, called on Canada to ensure that all refugee claimants and irregular migrants have access to essential health care services irrespective of their status.

SOLITARY CONFINEMENT (ART. 12)

Solitary confinement is widespread in Canada as a “standard tool of population management to maintain the safety and security of the institution.” On any given day, about 850 of the 14,700 offenders in federal institutions are in segregation units. The proportion in provincial institutions may be even higher. According to Correctional Services Canada data, the average length of stay in segregation between 2006 and 2011 was 40 days, and 13 per cent of segregated inmates stayed more than four months. In August 2015, the UN Human Rights Committee called on Canada to, “limit effectively the use of administrative or disciplinary segregation as a measure of last resort for as short a time as possible and avoid such confinement for inmates with serious mental illness.”

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

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

NEGLECT OF SHOAL LAKE 40 COMMUNITY (ARTS. 2, 6, 11, 12, 13)

One hundred years ago the Shoal Lake 40 community was relocated as part of the development of the city of Winnipeg’s water supply system. As of the result of project, the community was flooded and cut off from the mainland. The clean waters of Shoal Lake were diverted to supply the residents of Winnipeg, while Shoal Lake 40 was deprived of access to safe, clean, drinking water. Its residents have lived under a boiled water advisory for almost two decades. The community is isolated from many of the necessities of life, from jobs, to groceries, to medical care on the mainland.

V. RECOMMENDATIONS

Amnesty International's recommendations to the government of Canada are as follows:

IMPLEMENTATION OF HUMAN RIGHTS OBLIGATIONS

- Convene periodic meetings of federal, provincial, and territorial ministers responsible for human rights, and initiate a process of law, policy, and institutional review and reform that ensures effective, transparent, and politically accountable implementation of Canada's international human rights obligations.
- Recognize the indivisibility of human rights and comply with its international economic, social, and cultural rights obligations when interpreting and applying the *Charter of Rights and Freedoms*.
- Cease arguing in court that economic, social and cultural rights are not amenable to judicial enforcement and commit to reviewing human rights and other legislation so as to ensure that Covenant rights are subject to meaningful and accessible remedies in all jurisdictions.
- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

INDIGENOUS PEOPLES

- Ensure that the positions taken by government in negotiations or litigation over Indigenous land disputes are consistent with the obligation to respect, protect and fulfil the rights of Indigenous peoples under Canadian and international law.
- Recognize the right of free, prior and informed consent (FPIC) of Indigenous peoples, fully incorporate FPIC in all laws, policies, and practices related to extractive industries at home and abroad.
- Reject or rescind approval of projects with potential significant harm to the rights of Indigenous peoples where such consent has not been granted.
- Take immediate measures to eliminate inequities in funding for education for First Nations children and youth on reserves and ensure that the level of funding takes account of First Nations children's culture and specific circumstances.
- Collaborate with First Nations to foster on reserve educational systems consistent with preserving the best interests of the child, protecting and restoring Indigenous languages and cultures, honouring treaty rights, and respecting the inherent rights of self-government and self-determination.
- Work with First Nations to eliminate the gap in funding for First Nations child and family services, provide a level of funding that takes the specific needs and circumstances of First Nations communities into account, and ensure equitable access to culturally-appropriate

programmes and support services within families and communities.

- Ensure that Treaty and Aboriginal rights to harvest wild foods are recognized and protected and that the food security of Indigenous peoples is prioritized in development decisions.
- Collaborate with First Nations to ensure that all First Nations communities have access to clean drinking water and adequate sanitation, including through provision of adequate, sustained funding for such services.
- Amend the *Safe Drinking Water for First Nations Act* to ensure respect for First Nations self-government rights in regulating First Nations water systems. Ensure timely follow-up to its commitment to support the construction of an all-weather road providing access to the Shoal Lake #40 First Nation, work collaboratively with the First Nation to take all necessary measures to ensure safe year-round travel to and from the community, and provide access to clean, safe drinking water at Shoal Lake 40.
- Ensure adequate treatment of and compensation to the victims of mercury poisoning at Grassy Narrows and neighbouring First Nations, undertake measures to effectively reduce the risk of continued exposure to mercury poisoning, and work with Grassy Narrows to carry out a comprehensive health study to identify their needs.
- Refrain from licensing logging on the traditional territory of Grassy Narrows without the free, prior and informed consent of the First Nation.
- Suspend construction of the Site C dam and commit to ensuring that the project will not proceed so long as affected Indigenous peoples have withheld their free, prior and informed consent.

GENDER EQUALITY

- Develop a comprehensive national plan of action to address violence against women and girls in the country.
- Ensure that the independent public inquiry into missing and murdered Indigenous women and girls examines issues of due diligence, systemic discrimination, and access to justice in all jurisdictions in Canada, leads to the adoption of a comprehensive plan of action to address the social and economic factors placing Indigenous women and girls at risk, and ensure appropriate and unbiased responses from police and the justice system.
- Take immediate measures to implement outstanding recommendations from UN human rights bodies and others to address urgent and longstanding right violations related to violence and discrimination against Indigenous women and girls, including increased funding for women's shelters and other supports in Indigenous communities.
- Increase and enhance data collection on incidents of violence against women and girls in Canada.
- Ensure that all provinces investigate the gendered implications of funding policies in the

development of annual budgets and the extent to which austerity policies disproportionately impact women, and make revisions where the effect is to perpetuate systematic discrimination against women.

- Amend its foreign policy stance so that Canada upholds international standards on sexual and reproductive rights and funds safe abortion services for survivors of sexual violence as part of its overseas development assistance.
- Pass legislation that would add gender identity and gender expression to the prohibited grounds of discrimination under the *Canadian Human Rights Act* and the hate crimes provisions of the Criminal Code.

MIGRANTS AND REFUGEES

- Follow up on the commitment to restore the Interim Federal Health Program for refugee claimants and refugees in Canada.
- Ensure equal access to essential health care for all individuals in Canada, including irregular migrants, regardless of immigration status.
- Allow migrant domestic workers to move freely between employers by offering open work permits, thereby improving working and living conditions and rendering them less susceptible to abuse.
- Provide a guaranteed pathway to permanent residency for migrant domestic workers, including reasonable extensions to temporary visas.
- Ensure that migrant domestic workers who experience human rights violations have effective access to justice, including legal aid.

PERSONS WITH DISABILITIES

- Ensure that the education policy across all provinces prohibits the use of restraint, seclusion, and aversive interventions.
- Prioritize inclusive assessments that recognize the diverse needs of the entire student body, including students with disabilities.
- Provide teachers with sufficient resources and expertise to ensure that children with disabilities and their families receive adequate support both inside and outside the classroom.

BUSINESS AND HUMAN RIGHTS

- Pass laws that ensure access to domestic 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.

- Institute legal and policy reforms to require companies domiciled or headquartered in Canada to carry out adequate human rights due diligence throughout their global operations.
- Institute a policy of ensuring that all trade deals are subject to independent and comprehensive human rights impact assessments before they are concluded and at regular intervals after coming into force.

PRISONERS

- End Canada's practice of solitary confinement, limiting its use as only a measure of last resort, for as short a time as possible, prohibiting its use against children and individuals with mental health issues, and ensuring the possibility of judicial review.

ADEQUATE LIVELIHOOD

- Follow-up to its commitment to develop a national housing strategy designed to respect, protect, promote and fulfil the right to adequate housing including prioritising the crisis of homelessness.
- Develop a comprehensive, human rights-based national food strategy, in consultation with civil society, for combatting food insecurity which ensures that discriminated groups are prioritised and protected against barriers that impede access to food.
- Repeal Bill C-43 and ensure that all individuals seeking Canada's protection receive adequate social security.
- Promote a practice whereby all governments in Canada—federal, provincial and territorial—assess budgetary cuts so as to ensure compliance with the Covenant.
- Ensure that the government of Quebec adequately considers the extent to which its austerity policies disproportionately impact disadvantaged and marginalized groups and revises its 2015-16 budget accordingly to ensure such groups are prioritised and safeguarded against any retrogressive measures, and that there is no systematic discrimination in the areas of access to education, health, and other public services across the province.

