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

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

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

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INTRODUCTION

In this submission, prepared for the UN Human Rights Committee's (hereinafter, "this Committee") review of the sixth periodic report of Canada at its 114th Session from 7 to 8 July 2015, Amnesty International (AI) expands upon and presents updates on its concerns presented in the organization's July 2014 briefing to this Committee in advance of the preparation of the List of Issues for the review of the periodic report of Canada, at its 112th Session from 7 to 31 October 2014.

AI sets out its concerns within the framework set out by this Committee in the List of Issues prepared for this review. Those concerns include the rights of Indigenous Peoples, women's human rights, national security and counter-terrorism measures, refugee and migrant rights, freedom of expression and peaceful assembly, the rights of transgender individuals, and the right to adequate housing.

CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED

THE COMMITTEE ASKS:

1. Given that the Covenant is not directly applicable in the State party, please provide information on measures taken to ensure that the Covenant provisions are given full effect in its domestic legal order.

IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS (ART. 2)

Canada's approach to implementing its international human rights obligations, including its obligations under the *International Covenant on Civil and Political Rights* (*ICCPR*), continues to be inadequate. This concern has been raised repeatedly by the 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.[1]

[1] 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) at para 6 [Human Rights Committee 2006].

In 2013, 82 countries made recommendations for human rights reform during Canada's second Universal Periodic Review (UPR) at the Human Rights Council,[2] including for improved approaches to implementing human rights treaty obligations.[3] Despite stating that Canada would consider "options for enhancing existing mechanisms and procedures related to implementation of international human rights obligations,"[4] the Canadian government only accepted the recommendations that were already being implemented by federal, provincial or territorial governments of their own initiative, and rejected recommendations outside of its already established agenda.[5] Canada's response to the UPR compounds a growing tendency to disengage from the UN whenever it is the subject of international human rights scrutiny.[6]

In a joint submission to the UN Human Rights Council in relation to the May 2012 UPR, AI along with 46 other civil society organizations expressed concern about the Canadian government`s failure to institute a transparent, effective, and accountable system for ensuring full and proper implementation of Canada's international human rights obligations.[7] The organizations recommended that Canada launch a process of law reform to establish a formal mechanism for transparent, effective, and accountable implementation of Canada's international human rights obligations, including by enacting an *International Human Rights Implementation Act* to be developed through a process of extensive consultation with provincial and territorial governments, Indigenous peoples, and organizations and civil society groups.[8]

Throughout the course of 2012 the government of Canada criticized and derided UN Special

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[2] 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.

[3] United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Canada*, 11th Sess, UN Doc A/HRC/11/17 (3 March 2009), recommendations 12, 13, 14, 15, 62, 63, 64.

[4] United Nations Human Rights Council, *Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 11th Sess, UN Doc A/HRC/11/17/Add.1 (8 June 2008) at para 14.

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

[6] See 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: <http://www.amnesty.ca/sites/default/files/upr16_ngo_coalition_submission_for_the_upr_of_canada_october_2012_eng.pdf> [Empty Words].

[7] *Ibid*.

[8] *Ibid*.

Rapporteurs and Committees that examined or commented on Canada's human rights record.[9] For instance, when the Special Rapporteur on Food, Olivier de Schutter, raised concern about hunger and poor diets in Canada, the government responded with a barrage of personal insults, stating that the Special Rapporteur had wasted money that could be spent on food aid by choosing to have a mission in Canada, and that he should not get involved in "political exercises in developed democracies like Canada."[10] Canada has agreed to additional visits from the following special procedures: the Special Rapporteur on Racism, the Special Rapporteur on Extreme Poverty, and the Working Group on transnational corporations and business enterprises.[11] The Special Rapporteur on the human rights of migrants, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the sale of children, prostitution and child pornography, and the Special Rapporteur on the rights and freedoms of peaceful assembly and of association have all requested visits to Canada. The Special Rapporteur on freedom of peaceful assembly and of association has sent two reminders since its request for a visit on 30 October 2013. It is important that Canada honours its 1999 standing invitation[12] to special procedures and accepts and facilitates these requested visits in good faith and without further delay.

Accepting such visits and engaging fully in human rights review processes are important opportunities for Canada to improve its approach to implementation. Canada must also consider in good faith the recommendations that arise from these interactions, and consult meaningfully with stakeholder groups and human rights and civil society organizations regarding their effective implementation. Only such an approach will provide the necessary transparency and political accountability that has been lacking to date. Despite the previous recommendation of this Committee on this point, Canada has made no significant efforts to ensure genuine consultations, nor any attempt to increase transparency, coordination, or accountability of Canada's approach to implementation. There has, for instance, been no political meeting of federal, provincial, and territorial ministers responsible for human rights since 1998. As such, the only intergovernmental process within Canada for discussing and coordinating human rights implementation remains the Continuing Committee of Officials on Human Rights,[13] which has no decision making authority and does not report publicly on the topics it discusses or even the results of those discussions.[14] There is no public tabling of action plans or reporting on the progress of implementing international human rights recommendations.

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[9] *Ibid*.

[10] *Ibid*.

[11] See United Nations Office of the High Commissioner for Human Rights, "Country and other visits by Special Procedures Mandate Holders since 1998 A-E" online: <http://www.ohchr.org/EN/HRBodies/SP/Pages/countryvisitsa-e.aspx>.

[12] *Ibid*.

[13] Government of Canada, "Continuing Committee of Officials on Human Rights" online: <http://www.pch.gc.ca/eng/1355256857893/1355257172114>.

[14] Empty Words, *supra* note 6.

RECOMMENDATIONS

AI recommends that Canada:

- Convene regular meetings of federal, provincial, and territorial ministers responsible for human rights, and initiate a process of law, policy, and institutional reform that would ensure effective, transparent, and politically accountable implementation of Canada's international human rights obligations. Such reforms should recognize the indivisibility of human rights and ensure the protection of all rights under the *Canadian Charter of Rights and Freedoms* (*Canadian Charter*), which is Canada's primary vehicle for implementing its international human rights obligations;[15] and

- Take steps to facilitate in good faith and without undue delay the visits of Special Rapporteurs who have requested to conduct missions in Canada.

THE COMMITTEE ASKS:

3. Please provide information on the legislative measures taken to ensure that national security and law enforcement agencies have effective accountability structures. Please also inform teh Committee of operational steps taken to comply with the recommendations set forth in the report by the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar.

LACK OF ACCOUNTABILITY STRUCTURES FOR SECURITY AND LAW ENFORCEMENT AGENCIES (ART. 2)

There have been numerous tragic reminders in Canada, including the findings of the 2006 Inquiry into the Actions of Canadian Officials in relation to Maher Arar (Arar Inquiry)[16] and the 2008 Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nurredin[17], of the dangers of conducting national security activities without effective oversight.

Among its many recommendations, the Arar Inquiry Report outlined a new approach to ensuring proper review of agencies involved in national security activities.[18] In the Report, Commissioner Justice O'Connor determined that "with enhanced information sharing, new legal powers and responsibilities, and increased integration in national security policing" it

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[15] *R v Ewanchuk*, [1999] 1 SCR 330 at para 73.

[16] Maher Arar, a Canadian citizen, was travelling home to Canada from visiting relatives in Tunisia in 2001. 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.

[17] Like Maher Arar, these Canadian citizens were rendered to torture in Syria, and in the case of Ahmad Abou-Elmaati, also in Egypt.

[18] *Commission of Inquiry into Actions of Canadian Officials in Relation to Maher Arar, A New Review 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/araref/policy_review_report-e/PolicyReviewDec12-English.pdf>.

was time for an overhaul of the approach taken to reviewing the activities of the Royal Canadian Mounted Police (RCMP) and the numerous other agencies and government departments involved in maintaining national security. His proposed model includes ensuring that all such agencies and departments are subject to review, that review bodies have strong and effective powers, and, to ensure that nothing falls through the cracks, that all review bodies are integrated, given that agencies and departments involved in national security increasingly carry out their work in an interconnected fashion.[19]

The urgency of strengthening national security review and oversight in Canada continues to grow. In the years since Justice O'Connor's 2006 recommendations, national security operations in Canada have become even more integrated. Bodies charged with overseeing national security activities have themselves highlighted the importance of integrating review and oversight. The former Chair of the Security Intelligence Review Committee (SIRC), Chuck Strahl, noted in 2013 that SIRC did not "have the authority under the current system to chase those threads [involving agencies and departments such as Foreign Affairs, the RCMP, Transport Canada, and the Canadian Border Services Agency]. All we can do is investigate [the Canadian Security Intelligence Service]."[20] He noted that there was a need for "rules and perhaps legislation that reflects that 21st century reality."[21]

The unevenness of review and oversight across the various agencies and departments has become an increasing challenge. Some departments, such as the Canadian Border Services Agency (CBSA), are not subject to any regular independent scrutiny. This is alarming given the CBSA's general role in intelligence and law enforcement, and its new role in citizenship revocation procedures made possible through recent amendments to the *Citizenship Act*.[22]

Rather than increasing review, the oversight of the Canadian Security Intelligence Service (CSIS) was diminished with the decision in 2010 to dismantle the position of the Inspector General for CSIS. The Commission for Public Complaints against the RCMP has recently been replaced by the Civilian Review and Complaints Commission for the RCMP. This change, however, did not include any steps to ensure that the new Commission carried out national security review in an integrated manner with other review and oversight bodies.

Not only does Canada lack a system of expert and independent review and oversight of national security agencies consistent with the model proposed by Justice O'Connor, but Parliament is also not given any oversight role with respect to national security. Canada is alone among its closest national security "Five Eyes" allies – the United States, the United Kingdom, Australia, and New Zealand – in failing to afford to its parliamentarians at least

[19] *Ibid*

[20] Jim Bronskill, "Intelligence oversight review still not done 4 years after promise" *CBC News* (25 February 2015) online: < http://www.cbc.ca/m/news/politics/intelligence-oversight-review-still-not-done-4-years-after-promise-1.2972063>.

[21] *Ibid*.

[22] 2nd Sess, 41st Parl, 2013 (assented to 19 June 2014) SC 2014, c 22. The amendments are discussed at p 36 of this brief.

some degree of oversight powers.

In the wake of the separate attacks in October 2014 against a soldier in St-Jean-sur-Richelieu and a soldier and Parliament in Ottawa, Canada has introduced new legislation – Bill C-51[23] – which proposes dramatically increased powers for CSIS, the creation of new criminal offences, and increased information sharing, but with no corresponding increase in oversight or review. In a recent public letter, a group of 22 eminent Canadians, including four former Prime Ministers, who have served in political, judicial, and watchdog roles with responsibility for assessing, responding to and making decisions about national security threats, laws, policies, and operations, all strongly called for significant improvements to Bill C-51 to include oversight and review of Canada's national security agencies and departments.[24] More than 100 Canadian law professors and academics also joined the call for Bill C-51 to be amended to include mechanisms for oversight and review.[25]

RECOMMENDATIONS

AI recommends that Canada establish robust oversight and effective review of agencies and departments engaged in national security activities. In particular, Canada should:

- Develop a model of integrated, expert, and independent review as proposed by Justice Dennis O'Connor in his 2006 Arar Inquiry Report;

- Ensure that all review and oversight bodies and processes have sufficient powers and resources to carry out their work effectively; and

- As part of an overall system of review and oversight, institute a robust system of parliamentary oversight of national security in Canada.

RIGHT TO AN EFFECTIVE REMEDY

THE COMMITTEE ASKS:

3. Please inform the Committee of any measures taken or envisaged to monitor the human rights conduct of Canadian oil, mining, and gas companies operating abroad. Please also inform what the available legal

[23] Bill C-51, *Anti-Terrorism Act, 2015*, 2nd Sess, 41st Parl, 2015 (passed by the House of Commons but was still before the Senate when this brief was being finalized) [Bill C-51].

[24] Jean Chretien, Joe Clark, Paul Martin, and John Turner, "A close eye on scrutiny makes Canadians safer" *The Globe and Mail* (19 February 2015) online: <http://www.theglobeandmail.com/globe-debate/a-close-eye-on-security-makes-canadianssafer/article23069152/>; Jean Chretien, Joe Clark, Paul Martin, and John Turner, "Une question de protection du public et de droits de la personne" *La Presse* (19 February 2015) online: <http://www.lapresse.ca/debats/votre-opinion/201502/18/01-4845380-une-question-deprotection-du-public-et-de-droits-de-la-personne.php>.

[25] "Open letter to Parliament: Amend C-51 or kill it" *National Post* (27 February 2015) online: <http://news.nationalpost.com/full-comment/open-letter-to-parliament-amend-c-51-or-kill-it>.

avenues are in the State party for victims of human rights abuses arising from overseas operations of Canadian extractive firms.

MONITORING THE HUMAN RIGHTS CONDUCT OF CANADIAN OIL, MINING, AND GAS COMPANIES ABROAD (ART. 2)

Canadian mining companies lead the industry worldwide and now operate in every corner of the globe, including countries faced with armed conflict, grave human rights violations, and extreme poverty.[26] In 2007 and 2012, the Committee on the Elimination of Racial Discrimination (CERD) expressed concern over "reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada on the right to land, health, living

[26] Amnesty International has pointed to human rights concerns associated with the operations of several Canadian companies around the word: Amnesty International, "Wiretap transcripts raise troubling questions about Tahoe Resources' militarized security detail" (7 April 2015) online: < http://www.amnesty.ca/news/public-statements/joint-press-release/wiretap-transcripts-raise-troubling-questions-about-tahoe >; Amnesty International, "Myanmar: Canadian mining company colluding in serious abuses and illegality" (9 February 2015) online: < http://www.amnesty.ca/our-work/issues/business-and-human-rights/ivanhoe-mines >; Amnesty International, *Mining in Guatemala: Rights at Risk* (Index: AMR 34/002/2014), September 2014 online: < http://www.amnesty.ca/sites/default/files/mining-in-guatemala-rights-at-risk-eng.pdf>; Amnesty International, *Open For Business? Corporate Crimes and Abuses at Myanmar Copper Mine* (Index: ASA 16/004/2015), February 2015 online: < http://www.amnesty.ca/sites/default/files/myanmar_summary_web_final_v10.pdf>; Amnesty International, *Guatemala: Impunity, insecurity and discrimination, Amnesty International Submission to the UN Universal Periodic Review* (Index: AMR 34/004/2012) 1 April 2012 online: <https://www.amnesty.org/en/documents/amr34/004/2012/en/>; Amnesty International, *Guatemala: Submission to the UN Human Rights Committee for the 104th Session of the Human Rights Committee*, (Index: AMR 34/001/2012) 21 February 2012 online: < https://www.amnesty.org/en/documents/AMR34/001/2012/en/>; Amnesty International, *Undermining Rights: Forced evictions and police brutality around the Porgera Goldmine, Papua New Guinea*, (Index: ASA 34/001/2010), January 2010 online: <http://www.amnestyusa.org/sites/default/files/asa340012010eng.pdf>; Amnesty International, *El Salvador: Two activists killed, others threatened*, (Index: AMR 29/001/2010), 4 January 2010 online: <https://www.amnesty.org/en/documents/amr29/001/2010/en/>; Amnesty International, *Mexico: Protester's family at risk after killing*, (Index: AMR/41/062/2009), 3 December 2009 online: <https://www.amnesty.org/en/documents/amr41/062/2009/en/>; Amnesty International: *Mexico: Activists under threat* (Index: AMR 41/047/2009), 10 September 2009, online: <https://www.amnesty.org/en/documents/amr41/047/2009/en/>; Amnesty International, *Ecuador: Fear for safety* (Index: AMR 28/011/2002), 27 August 2002, online: <https://www.amnesty.org/en/documents/amr28/011/2002/en/>; Amnesty International, *Ecuador: Further information on fear for safety* (AMR 28/006/2004), 2 March 2004 online: <https://www.amnesty.org/en/documents/amr28/006/2004/en/>; 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>.

environment and the way of life of indigenous peoples living in these regions."[27] The CERD urged Canada to implement laws to hold transnational corporations registered in Canada accountable for their human rights abuses abroad.[28]

In 2010 the government of Canada opposed a private member's Bill[29] 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 of Canada.[30] A CSR strategy centred 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.

In November 2014, the federal government introduced a revised CSR strategy, *Doing Business the Canadian Way*,[31] which conditions companies' ability to access assistance through "economic diplomacy" on the companies' compliance with CSR best practices and willingness to participate in the CSR strategy's dispute resolution processes. "Economic diplomacy" includes receiving support from the Trade Commissioner Service, government letters of support, participation in government trade missions, and support from Export Development Canada.[32] While a welcomed small step, the new CSR Strategy still fails to establish an independent Ombudsperson to investigate human rights complaints against corporations operating abroad, leaving enforcement tenuous at best.[33]

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[27] UN Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*, 70th Sess, UN Doc CERD/C/CAN/CO/18 (25 May 2007) at para 17; See also UN Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination*, 18th Sess, UN Doc CERD/C/CAN/CO/19-20 (4 April 2012) at para 14.

[28] *Ibid*.

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

[30] Bill C-584, *Corporate Social Responsibility of Extractive Corporations Outside Canada Act*, 2nd Sess, 41st Parl, 2013.

[31] Government of Canada, *Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad* (November 2014) online: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Enhanced_CS_Strategy_ENG.pdf>.

[32] *Ibid* at 12-13.

[33] See Canadian Network on Corporate Accountability, "Government fails to create an extractive-sector Ombudsman, despite broad public support" (14 November 2014) online: < http://cnca-rcrce.ca/government-fails-to-create-an-extractive-sector-ombudsman-despite-broad-public-support/>. See also Mining Watch Canada, "New Federal CSR Counsellor an 'Industry Man' – Weak Mandate Remains" (3 March 2015) online: < http://www.miningwatch.ca/news/new-federal-csr-counsellor-industry-man-weak-mandate-remains>.

Judges have generally ruled that cases launched by victims of corporate human rights abuses should be heard in the country where the abuses occurred 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.[34] 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 on the merits of the case will be held before the Ontario Superior Court.[35]

In June 2014, a new action was filed by seven Guatemalan 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.[36] According to the statement of claim, Tahoe is accused of having expressly or implicitly authorized the use of excessive force against the injured, or was otherwise negligent in failing to prevent the excessive use of force. Preliminary hearings related to the case are currently underway.[37]

On 20 November 2014, yet another lawsuit was filed by three Eritrean men against Nevsun Resources Limited over the use of slave labour at their Bisha Mine in Eritrea.[38]

As for existing non-judicial grievance mechanisms, such as Canada's National Contact Point to the Organization for Economic Cooperation and Development,[39] they have proven to be failures.[40]

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[34] *Choc v Hudbay Minerals Inc*, 2012 ONSC 1414.

[35] Court File Nos. CV-10-411159, CV-11-423077, CV-11-435841.

[36] *Adolfo Augustín García et al v Tahoe Resources*, Supreme Court of British Columbia Court File No. S-144726 (Vancouver Registry).

[37] See AI, "Wiretap transcripts raise troubling questions about Tahoe Resources' militarized security detail" (7 April 2015) online: < http://www.amnesty.ca/news/public-statements/joint-press-release/wiretap-transcripts-raise-troubling-questions-about-tahoe>.

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

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

[40] For instance, the 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

The reticence 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 with countries that have worrying human rights records, such as Colombia[41] and Honduras,[42] without specific attention to or incorporation of international human rights obligations.

The agreement with Colombia requires Canada to produce and table in Parliament annual reports assessing the human rights impact of the deal. A growing number of Canadian natural resource companies are active in Colombia. Despite the National Indigenous Organization of Colombia informing Canada of serious human rights abuses associated with the resource extraction sector in Colombia which threaten the physical and cultural survival of Indigenous communities, the Canadian government has failed to address these concerns in its yearly reports.[43] The 2012 report did not include any human rights assessment. While the government filed reports in 2013, 2014 and 2015, it interpreted the reporting requirement to exclude consideration of possible impacts of Canadian extractive companies operating in Colombia.[44]

Rights" (6 May 2011) online < 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 Mining Watch Canada filed a complaint to the National Contact Point regarding the actions of company Corriente Resources and its Subsidiary EcuaCorriente in the Ecuadorian Amazon, including the militarization of the region and forced displacement of communities. Almost two years 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 Mining Watch Canada, "Canada Refuses to Take Action Against Abuses by mining Project in Ecuador" (15 October 2014) online: < http://www.miningwatch.ca/news/canada-refuses-take-action-against-abuses-mining-project-ecuador>; Mining Watch Canada, "International NGOs Call for Transparency in Murder Investigation of Ecuadorian Indigenous Leader" (19 January 2015) online: < http://www.miningwatch.ca/news/international-ngos-call-transparency-murder-investigation-ecuadorian-indigenous-leader>.

[41] *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?lang=eng>.

[42] *Canada-Honduras Free Trade Agreement*, 3 November 2013, online: < http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/honduras/index.aspx?lang=eng>.

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

[44] *Annual Report Pursuant to the Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia* (15 May 2012) online: < http://www.canadainternational.gc.ca/colombia-colombie/bilateral_relations_bilaterales/rep-hrft-co_2012-dple-rapp.aspx?lang=eng>; *Annual Report Pursuant to the Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia* (For the period August 15,

RECOMMENDATIONS

AI recommends that Canadian authorities:

- 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; and

- Institute a policy of ensuring that all trade deals are subject to independent and comprehensive human rights impact assessments before they are concluded and at regular intervals after coming into force.

STATE IMMUNITY ACT (ART. 2)

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*[45] bars such lawsuits. That law was challenged before the Supreme Court of Canada (SCC) in March 2014 in a case stemming from the 2003 detention, torture, and death in Iranian custody of Zahra Kazemi.[46] The Court upheld the provisions of the *State Immunity Act* and determined that Stephan Hashemi, Zahra Kazemi's son, could not sue the officials who tortured her, nor could he sue the government of Iran. The judgment denies victims of torture and their families the opportunity to obtain justice for the violation of their rights.[47]

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- 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

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2011 to December 31, 2012) online: <http://www.canadainternational.gc.ca/colombia-colombie/bilateral_relations_bilaterales/rep-hrft-co_2013-dple-rapp.aspx?lang=eng>; *Annual Report Pursuant to the Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia* (For the period January 1, 2013 to December 31, 2013) online: < http://www.canadainternational.gc.ca/colombia-colombie/bilateral_relations_bilaterales/AnnualReport_RapportAnnuel-2013.aspx?lang=eng>; *Annual Report Pursuant to the Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia* (For the period January 1, 2014 to December 31, 2014) online: <http://www.canadainternational.gc.ca/colombia-colombie/bilateral_relations_bilaterales/rep-hrft-co_2014-dple-rapp.aspx?lang=eng>.

[45] RSC 1985, c S-18.

[46] *Estate of the Late Zahra (Ziba) Kazemi, et al v Islamic Republic of Iran*, 2014 SCC 62.

[47] Amnesty International, "Supreme Court of Canada bolsters impunity by denying access to justice for torture victims" (10 October 2014) online: < http://www.amnesty.ca/news/news-releases/supreme-court-of-canada-bolsters-impunity-by-denying-access-to-justice-for-tortur

subject to universal jurisdiction.

RIGHT TO LIFE, PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT, AN EFFECTIVE REMEDY, AND PRIVACY

THE COMMITTEE ASKS:

7. With regard to the Committe's previous concluding observations (CCPR/C/CAN/CO/5, para 15) and in light of the State party's report (CCPR/CAN/6, para 15), please provide information on measures taken to amend relevant laws, including subsection 115(2) of the Immiigration and Refugee Protection Act which provides legislative exceptions to the principle of non-refoulement.

DEPORTATION TO TORTURE (ARTS. 6, 7)

On multiple occasions, this 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 where they would face the risk of torture or ill-treatment, which amounts to a grave breach of article 7 of the *ICCPR*.[48] The two Committees have also criticized Canada in individual cases of deportation to a real risk of torture or cruel, inhuman or degrading treatment.[49]

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[48] UN Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, UN Doc CCPR/C/79/Add.105 (7 April 1999) at para 13 [Human Rights Committee 1999]; 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; Human Rights Committee 2006, *supra* note 1 at para 15; UN 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 9 [CAT 2012].

[49] The Committee against Torture made two requests in 2006 that Canada suspend its deportation of Bachan Singh Sogi to India: See UN 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. Canada proceeded with the deportation, justifying it on the basis that Mr. Singh posed a threat to Canada's national security. The Committee against Torture criticized Canada's use of this justification in November 2007 (at paras 10.2, 10.11) and in its 2012 review: CAT 2012, *supra* note 48 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: UN Human Rights Committee,

The *Immigration and Refugee Protection Act* (*IRPA*), however, still allows for individuals who are found to pose a risk to national security or for 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.[50]

RECOMMENDATIONS

AI recommends that Canada:

- Amend the *IRPA* and incorporate the internationally-recognized absolute ban on *refoulement.*

THE COMMITTEE ASKS:

8. Please provide information on the steps taken to modify the 2011 Ministerial Direction to the State party's security and intelligence agencies on information sharing with foreign entities, and comment on reported allegations that these directions permit information sharing, even when doing so may give rise to a substantial risk of mistreatment of an individual.

INTELLIGENCE GATHERING AND INFORMATION SHARING (ARTS. 6, 7, 17, 21)

The UN Special Rapporteur on Torture has called on states to "restrain from […] sharing […] information, even if there is no pattern of systematic torture, if it is known, or should be known, that there is a real risk of acts of torture or other cruel, inhuman or degrading

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Communication No 1959/2010, 102nd Sess, UN Doc CCPR/C/102/D/1959/2010 (21 July 2011) at para 9.

[50] 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 or ill-treatment, such deportations may be allowed if the refugee claimants are a serious security risk to Canadian society.

Under the *Immigration and Refugee Protection Act*, SC 2001, c 27, [*IRPA*], at 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 of 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 of Canada of equivalent offences are also deemed inadmissible.

treatment or punishment."[51]

The Arar Inquiry 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."[52] Despite this recommendation, in 2011 a Ministerial Direction was issued to CSIS, the RCMP, the CBSA, and other government agencies and departments, which allows, in exceptional circumstances, for information to be shared with a foreign country even when there is a substantial risk it would lead to torture.[53] The Ministerial Direction also allows, again 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.[54]

The recently introduced Bill C-51 proposes new legislation, the *Security of Canada Information Sharing Act*. The Act's purpose is to "encourage and facilitate information sharing between Government of Canada institutions in order to protect Canada against activities that undermine the security of Canada."[55] The new information-sharing powers proposed in Bill are associated with any "activity that undermines the security of Canada."[56] This extends to activities that "undermine the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada" and specifically includes situations such as interference with the economic or financial stability of Canada, interference with critical infrastructure, and activity that causes harm to property because of its connection with Canada.[57] While the Bill excludes advocacy, protest, dissent, or artistic expression, the list of "activities that undermine the security of Canada" is the most expansive definition of security threats found in Canadian law, with virtually no safeguards to ensure that inaccurate, inflammatory, or irrelevant information is not shared. The broad scope of this aspect of Bill C-51 is highly problematic and exacerbates the concerns about the potential reach and scope of the Ministerial Direction.[58]

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[51] UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, 25th Sess, UN Doc A/HRC/25/60 (10 April 2014) at para 83(h).

[52] *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>.

[53] 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>.

[54] CAT 2012, *supra* note 48 at para 17.

[55] Bill C-51, *supra* note 23.

[56] *Ibid*.

[57] *Ibid*.

[58] See Office of the Privacy Commissioner of Canada, "Bill C-51, the *Anti-Terrorism Act, 2015*: Submission to the Standing Committee on Public Safety and National Security of the House of

RECOMMENDATIONS
AI Recommends that Canada

- Amend the Ministerial Direction with respect to intelligence gathering and torture to ensure full compliance with international human rights obligations.

THE COMMITTEE ASKS:

9. Please update the Committee on measures taken to compensate Canadian citizens, Abdullah Almalki, Ahmed El-Maati and Muayyed Nureddin, who have experienced torture in prisons abroad with the involvement of Canadian officials in their arrest in Syria and in the case of El-Maati also in Egypt.

EFFECTIVE REMEDIES FOR VICTIMS OF TORTURE AND ILL-TREATMENT (ARTS. 2, 7, 9, AND 24)

ABDULLAH ALMALKI, AHMAD ABOUR-ELMAATI AND MUAYYED NUREDDIN

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 facilitated or tolerated their arrest and imprisonment."[59] In 2008 a judicial inquiry, known as the Iacobucci Inquiry for the former SCC Justice who presided over the proceedings, 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 in Egypt.[60]

Yet the Canadian government has forced the three men into protracted litigation rather than provide them with an official apology and compensation. The UN Committee against Torture raised this as a priority concern in its 2012 Concluding Observations.[61]

OMAR KHADR

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 to serve the remainder of his eight year sentenced handed down by the US Military Commission in a plea deal. Mr. Khadr is

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Commons" (5 March 2015) online: < https://www.priv.gc.ca/parl/2015/parl_sub_150305_e.asp>. The Privacy Commissioner was excluded from testifying at the Committee Hearings.

[59] Human Rights Committee 2006, *supra* note 1 at para 16.

[60] *Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, 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>.

[61] CAT 2012, *supra* note 48 at para 16.

currently appealing his sentence in the United States.[62] In April 2015, the Queen's Bench of the Court of Alberta granted Mr. Khadr bail pending the resolution of his appeal in the United States.[63] In that decision, the judge noted that Mr. Khadr's appeal has a "strong" prospect of success and that the undisputed evidence was that Mr. Khadr has been a model prisoner and poses a low risk to public safety if released.[64] Yet the government announced that they would appeal the decision, stating Canada has "vigorously defended against any attempts to lessen his punishment for [his alleged] crimes.[65]" Mr. Khadr is currently free on bail while the appeals in both Canada and the United States proceed.[66]

The SCC has twice concluded that Canadian officials were complicit in violating Mr. Khadr's rights by interviewing him while knowing 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.[67] These human rights violations have never been remedied. In response to suggestions that Canada provide Mr. Khadr redress, Canada's Minister of Public Safety stated that while opposition parties "refused to rule out special compensation for this convicted terrorist and [...] actively [try] to force Canadian taxpayers to compensate him, [the government believes] the victims of the crime, not the perpetrators, are the ones who deserve compensation."[68]

The government refuses to acknowledge that Mr. Khadr was a child soldier when he was first apprehended by American forces, and appealed a recent decision by the Court of Appeal for Alberta, concluding that Mr. Khadr should be serving a youth sentence, and should not be in a federal prison, to the SCC. At the hearing held 14 May 2015,[69] the SCC ruled from the bench immediately after the hearing, affirming Mr. Khadr's status as a juvenile offender who should serve a youth sentence in a provincial facility.

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[62] Court of Military Commission Review, Case "Omar Admed Khadr (13-005)", documents available online: <http://www.mc.mil/Cases.aspx?caseType=cmcr>.

[63] *Omar Ahmed Khadr v Bowden Institution*, 2015 ABQB 261.

[64] *Ibid*.

[65] "Omar Khadr granted bail, but federal government to appeal" *CBC News* (23 April 2015) online: <http://www.cbc.ca/news/canada/edmonton/omar-khadr-granted-bail-but-federal-government-to-appeal-1.3046775>.

[66] *Dave Pelham, Warden of the Bowden Institution and Her Majesty the Queen v Omar Ahmad Khadr*, Order of Release, Docket No. 150056836XI (7 May 2015).

[67] *Canada (Prime Minister) v Khadr*, 2010 SCC 3; *Canada (Prime Minister) v Khadr*, 2009 FCA 246 at para 50; *Canada (Justice) v Khadr*, 2008 SCC 28.

[68] See "Conservatives React To Omar Khadr News With Trudeau Attacks" *Huffington Post* (24 April 2015) online: < http://www.huffingtonpost.ca/2015/04/24/omar-khadr-conservatives-trudeau_n_7137412.html>.

[69] *Bowden Institution v Khadr*, 2015 SCC 26.

RECOMMENDATIONS

AI recommends that the Canadian government

- Ensure prompt redress for Abdullah Almalki, Ahmad Abou-Elmaati, Muayyed Nureddin, and Omar Khadr for Canada's complicity or direct involvement in their human rights violations, as confirmed by the Iacobucci Inquiry and by the SCC.

CANADIANS DETAINED ABROAD (ARTS. 2, 6, 7, 9)

There is growing concern that the government is inconsistent in advocating for the protection of the rights of Canadian citizens detained abroad, and for access to effective remedies to end their torture, arbitrary arrest, and unlawful imprisonment. This has raised questions and concerns about possible discrimination, with some Canadians receiving greater government support than others. 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.[70] In other cases, Canada's efforts have been more muted. Despite assurances that the government is taking action, Canada's advocacy on behalf of Huseyin Celil or Bashir Makhtal, serving life sentences in China and Ethiopia, respectively, after blatantly unfair trials,[71] is barely visible. Canadian efforts to support the clemency bid of Ronald Smith, on death row in Montana, USA, can be described as reluctant at best.[72]

Canadian permanent resident Khaled al-Qazzaz, who was detained in Egypt without charge or

[70] E.g., The September 2013 freeding of Hamid Ghassemi-Shall from imprisonment and possible execution in Iran: Minister of Foreign Affairs, Trade and Development Canada, "Ministers Baid and Ablonczy call on Iran to Halt Execution and 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: Minister 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>; 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>.

[71] See Omar El Akkad, "As Ottawa fumbled, Canadian languished in China's court system" *The Globe 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 hailed 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/>.

[72] 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>.

trial for one year was released in January 2015. While detained, Mr. al-Qazzaz's health deteriorated significantly as a result of several months in solitary confinement and secret detention, and he is in urgent need of a spinal surgery.[73] Despite being freed, Mr. al-Qazzaz has been prevented from leaving Egypt and returning to Canada.[74] The Canadian government has failed to intervene in his case in any significant way.

Journalist Mohamed Fahmy, a dual Canadian and Egyptian national recognized by AI to be a prisoner of conscience, was sentenced to seven years of imprisonment in Egypt. Although Mr. Fahmy relinquished his Egyptian citizenship in hopes of benefiting from a Presidential decree allowing for the deportation of foreign prisoners, Egyptian authorities still refused to return him to Canada, spurring Mr. Fahmy's family to launch a social media campaign urging Prime Minister Harper to intervene in his case personally.[75] Rather than being released and deported to Canada as was his colleague Peter Greste to Australia, Egyptian authorities decided to proceed with a re-trial of the allegations against Mr. Fahmy, and released him on bail. There have now been eight sessions of the re-trial, most recently on 1 June, most of which have been adjourned and rescheduled. Canada has failed to speak out regarding the continuing injustice of Mr. Fahmy being subjected to a re-trial.

RECOMMENDATIONS

AI recommends that the Canadian government:

- In keeping with obligations with respect to non-discrimination and equal treatment, intervene consistently and strongly on behalf of Canadian citizens and residents who have been detained abroad and whose human rights are violated by foreign authorities.

FAILURE TO RATIFY THE OPTIONAL PROTOCOL TO THE 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 its domestic 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

[73] Amnesty International, "Egypt: Former presidential aide Khaled al-Qazzaz freed" (21 January 2015) online: <http://www.amnesty.ca/our-work/good-news/egypt-former-presidential-aide-khaled-al-qazzaz-freed>.

[74] "Khaled Al-Qazzaz still not being allowed to leave Egypt for Canada" *CBC News* (16 April 2015) online: <http://www.cbc.ca/news/canada/toronto/khaled-al-qazzaz-still-not-being-allowed-to-leave-egypt-for-canada-1.3035289>.

[75] Diana Mehta, "Family of Mohamed Fahmy launches 'HarpeCallEgypt' campaign" *The Star* (9 February 2015) online: < http://www.thestar.com/news/canada/2015/02/09/family-of-mohamed-fahmy-launches-harpercallegypt-campaign.html>.

2013 UPR Canada stated that there was no "current plan" to ratify.[76]

RECOMMENDATIONS

AI Recommends that Canada

- Ratify the *Optional Protocol to the Convention against Torture* without further delay.

VIOLENCE AGAINST WOMEN, INCLUDING DOMESTIC VIOLENCE, AND MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS

THE COMMITTEE ASKS:

12. Please provide detailed information on the measures taken to enact legislation specifically addressing domestic violence and indicate whether domestic violence is considered a criminal offence. Please repoirt on the steps taken to ensure that victims of domestic violence have access to immediate means of redress and protection, and that perpetrators are prosecuted and appropriately punished.

13. Please provide updated informatiom on the progress made to clarify cases of disappearances of Aboriginal women and girls, including those mentioned in the 2013 British Columbia inquiry report. Please provide disaggregated data on the number of investigations, prosecutions, convictions and sanctions imposed in cases of disappearances and murders of Aborigianl women and girls.

VIOLENCE AGAINST WOMEN AND GIRLS (ARTS. 2, 3, 6, 7, 24, 26)

Violence against women and girls in Canada remains a serious human rights issue that is not receiving adequate government attention. There has been little to no progress in reducing violence against women and girls in Canada. Since publishing its ground breaking 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.[77] In a recent

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

[77] See Canadian Women's Foundation, "The Facts About Violence Against Women" online: <http://www.canadianwomen.org/facts-about-violence >; See also 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

report, the Canadian Centre for Policy Alternatives estimated that between 1999 and 2009, rates of self-reported physical and sexual violence against women have risen from 2.1 to 2.4 percent for the adult population, while fewer and fewer of those crimes are being reported to the police.[78] The study found that "on any given day, more than 8,256 women and children will seek protection from a shelter or transition home.[79] In 2013, Statistics Canada reported that 173,600 women aged 15 or over were victims of violent crimes in 2011, but also that less than one third of victims of spousal violence surveyed reported their abuse to the police.[80]

First Nations, Inuit, and Métis women and girls face the highest rates of violence. A 2014 report by the RCMP stated that at least 105 First Nations, Inuit, and Métis women and girls are missing under suspicious circumstances or for undetermined reasons, and 1,017 women and girls identified as Indigenous were murdered between 1980 and 2012.[81] A number of factors, including the lack of clear and consistent policies and standards for recording the Indigenous identities of victims of crime and the exclusion of suspicious deaths not yet determined to be homicides, have caused RCMP data to be incomplete and likely underestimate the scale of violence facing Indigenous women and girls. Nonetheless, the homicide rate shown by the RCMP figures is roughly 4.5 times higher than that of all other women in Canada. In the last ten years of data provided by the RCMP, where there are likely to be fewer gaps or errors in the identification of Indigenous victims of crime, the homicide rate is 7 times higher than for all other women and girls. This vastly disproportionate rate of violence is consistent with the patterns of violence revealed in prior research, including the work of the Native Women's Association of Canada[82] and AI.[83]

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[78] Kate McInturff, *The Gap in the Gender Gap: Violence Against Women in Canada* (Canadian Centre for Policy Alternatives, 2013) online: < https://www.policyalternatives.ca/publications/reports/gap-gender-gap>.

[79] *Ibid* at 11.

[80] Statistics Canada, *Measuring violence against women: Statistical trends* (26 February 2013) at 8, 10 online: <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766-eng.pdf>

[81] Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: A National Operational Overview* (2014) online: <http://www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.pdf>.

[82] Native Women's Association of Canada, "Fact Sheet: Violence Against Aboriginal Women" online: <http://www.nwac.ca/files/download/NWAC_3E_Toolkit_e.pdf>. See also AI, *Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada* (Index: AMR 20/001/2004), 3 October 2005 online: < https://www.amnesty.org/en/documents/amr20/001/2004/en/>.

[83] Amnesty International, "The need for accurate and comprehensive statistics on missing and murdered Indigenous women and girls" (15 April 2015) online: < http://www.amnesty.ca/blog/the-need-for-accurate-and-comprehensive-statistics-on-missing-and-murdered-indigenous-women-and>; Amnesty International, "Missing and murdered Indigenous women and girls: Federal government response to UN expert committee finding of 'grave human rights violations' shockingly inadequate" (9 March 2015) online: <http://www.amnesty.ca/news/news-releases/missing-and-murdered-indigenous-women-and-girls-

It is concerning that prior to the release of the 2014 RCMP report, Canada had not previously attempted to compile national data on the numbers of missing and murdered Indigenous women and girls. Inconsistencies in police practices of recording and reporting on the Indigenous identities of victims of crime remain unaddressed.

UN treaty bodies, including this Committee,[84] the Committee against Torture,[85] the Committee on the Elimination of Discrimination against Women,[86] the CERD,[87] the Committee on the Rights of the Child,[88] and the Committee on Economic, Social and Cultural Rights;[89] as well as Special procedures,[90] including the Special Rapporteur on the Rights of

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federal-government-response-to-un>; Amnesty International, *Stolen Sisters – A human rights response to violence and discrimination against Indigenous women in Canada*, (Index: AMR 20/003/2004), October 20104 online: <http://www.amnesty.ca/sites/default/files/amr200032004enstolensisters.pdf>; Amnesty International, *No More Stolen Sisters: The need for a comprehensive response to discrimination and violence against Indigenous women in Canada* (Index: AMR 20/012/2009), September 2009 online: <http://www.amnesty.ca/sites/default/files/amr200122009enstolensistersupdate.pdf>; Amnesty International, *Canada: summary of Recommendations from Amnesty International Briefing to the UN Committee on the Elimination of Racial Discrimination*, (Index: AMR 20/003/2012), February 2012 online: <https://www.amnesty.org/en/documents/AMR20/003/2012/en/>; Amnesty International, *Canada: Briefing to the UN Committee against Torture* (Index: AMR 20/004/2012), May 2012 online: <https://www.amnesty.org/en/documents/amr20/004/2012/en/>; Amnesty International, *Violence against Indigenous women and girls in Canada: A summary of Amnesty International's concerns* (February 2014) online: <http://www.amnesty.ca/sites/default/files/iwfa_submission_amnesty_international_february_2014_-_final.pdf>.

[84] Human Rights Committee 2006, *supra* note 1.

[85] CAT 2012, *supra* note 48 at para 20.

[86] UN 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).

[87] UN Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, 70th Sess, UN Doc CERD/C/CAN/CO/18 (25 May 2007); UN 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 [CERD 2012].

[88] UN 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.

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

[90] See UN 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]; See also UN Commission on Human Rights, *Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms*

Indigenous Peoples James Anaya;[91] have all expressed concern about violence and discrimination experienced by Indigenous women and girls, and have made recommendations to the Canadian government for reform.

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

> Indigenous women and girls constitute one of the most disadvantaged groups in Canada. Poverty, inadequate housing, economic and social relegation, among other factors, contribute to their increased vulnerability to violence. In addition, prevalent attitudes of discrimination – mainly relating to gender and race – and the longstanding stereotypes to which they have been subjected, exacerbate their vulnerability.[92]

The Commission stressed that "addressing violence against indigenous women is not sufficient unless the underlying factors of racial and gender discrimination that originate and exacerbate the violence are also comprehensively addressed[,]" and called for a "national coordinated response to address the social and economic factors that prevent indigenous women from enjoying their social, economic, cultural, civil and political rights, the violation of which constitutes a root cause of their exposure to higher risks of violence."[93]

In March 2014, a Parliamentary Committee Report vaguely called for "further examination of the causes of the violence, and how it can be best prevented, without giving any indication of how or when such examination would take place, and ignoring concrete proposals presented by Indigenous women's organizations and families of missing and murdered women.[94] Meanwhile, Prime Minister Harper, in the wake of the death of 15-year old Aboriginal girl Tina Fontaine in August 2014, refused to call an inquiry into this epidemic of violence,

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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).

[91] UN 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].

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

[93] *Ibid* at 13.

[94] 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>.

stating that it should be viewed as simply "crime" and not a "sociological phenomenon."[95] In an interview in December, the Prime Minister said a public inquiry into violence against Indigenous women and girls was "not high on our radar."[96]

On 6 March 2015, the Committee on the Elimination of Discrimination against Women issued a report concluding that Canada was responsible for "grave violations" of human rights due to its "protracted failure" to take sufficient action to stop violence against Indigenous women and girls.[97] The report sets out 38 recommendations to address the marginalization and impoverishment putting indigenous women at risk, ensure effective and unbiased police responses, and provide proper support for affected families and communities. The Committee also called for an independent national inquiry and a comprehensive, coordinated national action plan. In an official response released along with the report, the federal government rejected both a national inquiry and a comprehensive national action plan. While claiming to accept the remaining recommendations, either in whole or in part, Canada in fact made no commitments to make any changes to its current programs and policies, even where these programs and policies are specifically critiqued in the report.[98]

Most recently, the call for the federal government to initiate a public inquiry into missing and murdered Indigenous women and girls was echoed as a necessary step in order to redress the legacy of residential schools in Canada and advance the process of reconciliation with Indigenous communities in the June 2015 landmark report of the findings of the Truth and Reconciliation Commission of Canada [99]

Most acts of violence against women are carried out by spouses and intimate partners. This is

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[95] See Alex Boutilier, "Native teen's slaying a 'crime,' not a 'sociological phenomenon,' Stephen Harper says" *The Star* (21 August 2014) online: <http://www.thestar.com/news/canada/2014/08/21/native_teens_slaying_a_crime_not_a_sociological_phenomenon_stephen_harper_says.html>.

[96] See Tanya Kappo, "Stephen Harper's comments on missing, murdered aboriginal women show 'lack of respect'" *CBC News*, (19 December 2014) online: <http://www.cbc.ca/news/aboriginal/stephen-harper-s-comments-on-missing-murdered-aboriginal-women-show-lack-of-respect-1.2879154>.

[97] UN Committee on the Elimination of Discrimination against Women, *Report of the inquiry concerning Canada of the Committee of the Elimination of Discrimination against Women under article 8 of the Optional Protocol of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/OP.8/CAN/1 (6 March 2015) at para 214 [CEDAW 2015].

[98] UN Committee on the Elimination of Discrimination against Women, *Observations of the Government of Canada on the report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/OP.8/CAN/2 (6 March 2015).

[99] Truth and Reconciliation Commission of Canada, *Calls to Action* (Winnipeg, 2015) at para 41 online: < http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf> [Truth and Reconciliation Commission].

true of both Indigenous and non-Indigenous women alike.[100] However, the RCMP figures released to date show that Indigenous women are more likely than non-Indigenous women to be attacked by a stranger or by someone known to them, but who is not an intimate partner. The federal government has routinely characterized issues of violence against Indigenous women and girls as a matter of domestic violence. While domestic and family violence facing Indigenous women and girls is crucial and must be addressed, other forms and patterns of violence must not be ignored.

In a 2015 survey, the Canadian Women's Foundation found that only one third of Canadians fully understand the meaning of sexual consent.[101] A number of high-profile cases of alleged sexual abuse have underscored that there is far to go in addressing violence against women in Canada. In November 2014, a number of allegations of sexual harassment were levelled against former radio host for the publicly funded Canadian Broadcasting Corporation (CBC), Jian Ghomeshi.[102] A subsequent inquiry report into the scandal concluded that the CBC had failed to provide its staff with a workplace "free from disrespectful and abusive behaviour", including sexual harassment.[103] Also in November 2014, political commentator Ian Capstick alleged that he was sexually harassed by two Members of Parliament (MPs),[104] and two other MPs were suspended pending an investigation into separate accusations of sexual harassment made by two female MPs.[105] More than 330 women are suing the RCMP in a class-action lawsuit for "discrimination against, bullying of, and harassment of, female Members, Civilian Members, and Public Service Employees, because they are women."[106]

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[100] See, e.g. Aboriginal Healing Foundation, *Aboriginal Domestic Violence in Canada* (Ottawa: Aboriginal Healing Foundation, 2003) online: <http://www.ahf.ca/downloads/domestic-violence.pdf>.

[101] Canadian Women's Foundation, "Only 1 in 3 Canadians Know What Sexual Consent Means" (5 May 2015) online: < http://canadianwomen.org/press-consent>.

[102] Kevin Donavan, "Jian Ghomeshi did not ask for consent, accusers say" *The Star* (28 November 2014) online: <http://www.thestar.com/news/gta/2014/11/28/jian_ghomeshi_did_not_ask_for_consent_accusers_say.html>;

[103] Janice Rubin and Parisa Nikfarjam, *Report: CBC Workplace Investigation Regarding Jian Ghomeshi* (13 April 2015) online: <https://www.documentcloud.org/documents/1894581-report-april-2015-en-1.html>.

[104] "Former Parliament Hill staffer alleges 2 MPs sexually harassed him" *CBC News* (5 November 2014) online: < http://www.cbc.ca/news/politics/former-parliament-hill-staffer-alleges-2-mps-sexually-harassed-him-1.2825380>.

[105] John Ivison, "Two Liberal MPs suspended from caucus after sexual harassment allegations" (5 November 2014) online: < http://news.nationalpost.com/news/canada/canadian-politics/two-liberal-mps-suspended-from-caucus-after-sexual-harassment-allegations>.

[106] Notice of Civil Claim in *Janet Merlo v Canada* (Supreme Court of British Columbia Court File No. S-122255) online: <http://www.callkleinlawyers.com/wp-content/uploads/2013/12/Notice-Civil-Claim-RCMP.pdf>; See also Andrea Woo, "Sexual-harassment claims against RCMP reach 336" *The Globe and Mail* (18 July 2014) online: <http://www.theglobeandmail.com/news/british-columbia/sexual-harassment-claims-against-rcmp-reach-336/article19669218/>.

Finally, an inquiry report issued in March 2015 by former Supreme Court Justice Marie Deschamps found that sexual assault and harassment is "endemic" in the Canadian Armed Forces.[107] All of these events highlighted the pervasive climate of violence against women that exists in Canada, and has spurred an alliance of over 150 women's and civil society organizations across Canada to urge a leader's debate on women's issues in Canada's upcoming federal election.[108]

Canada has also frequently undermined the protection of sexual and reproductive rights in other countries. 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.[109] 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.[110] 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.[111]

RECOMMENDATIONS

AI Recommends that Canada should:

- Develop a comprehensive national plan to address violence against women in the country;

- Establish an independent public inquiry to examine violence against Indigenous women and girls with a view to developing and implementing a comprehensive national plan of action on violence and discrimination against Indigenous women and girls; and

- Improve Canada's foreign policy to ensure the protection of the full range of sexual and reproductive rights for all women.

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[107] Marie Deschamps, *External Review into Sexual Misconduct and Sexual Harassment into the Canadian Armed Forces* (27 March 2015) online: < https://s3.amazonaws.com/s3.documentcloud.org/documents/2070308/era-final-report-april-20-2015-eng.pdf>.

[108] Up for Debate, online: <http://upfordebate.ca/>.

[109] 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>.

[110] 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?lang=eng>.

[111] See "Canada won't fund abortion in cases of war rape, child marriage" *CBC News* (4 October 2013) online:<http://www.cbc.ca/news/politics/canada-won-t-fund-abortion-in-cases-of-war-rape-child-marriage-1.1912822>.

RIGHT TO LIBERTY AND SECURITY, TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY, RIGHT TO A FAIR TRIAL AND NON-REFOULEMENT, FREEDOM OF MOVEMENT

THE COMMITTEE ASKS:

14. Please provide information on the steps taken to amend Bill C-31 of 2012 that includes mandatory detention of undocumented immigrants who enter Canada irregularly. Please also describe measures taken to ensure that all refugee claimants, including irregular immigrants and those who come from a 'safe country' are treated in a non-discriminatory fashion in relation to their refugee claim, can access the Refugee Appeal Division, and do not risk deportation to places where they may risk being tortured or ill-treated.

REFUGEE PROTECTION: "IRREGULAR ARRIVALS" AND "SAFE COUNTRIES OF ORIGIN" (ARTS. 2, 6, 7, 9, 14, 26)

Amendments made to the *IRPA* in 2012[112] single out refugee claimants and migrants on the basis of their manner of arrival to Canada. Adopted in the wake of arrivals in British Columbia of two ships carrying Sri Lankan refugee claimants in 2009 and 2010, the legislation allows the Minister of Public Safety and Emergency Preparedness to designate groups of migrants, including refugee claimants, as "irregular arrivals."[113] "Irregular arrivals" are subject to

[112] Bill C-31, *Protecting Canada's Immigration System Act*, 1st Sess, 41st Parl, 2011 (assented to 28 June 2012) SC 2012, c 17.

[113] *IRPA, supra* note 50, 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."

The first such designation of "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" (5 December 2012) online: < http://www.publicsafety.gc.ca/cnt/nws/nws-rlss/2012/20121205-eng.aspx>.

mandatory detention and are not given access to a detention review for two weeks and then, only once every six months.[114] "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 legislation is to target human smuggling operations, it leads to the detention of refugee claimants and victims of trafficking and smuggling. In fact, many refugee claimants who have endured a very dangerous journey with hundreds of others to seek safety, are on occasion labelled human smugglers themselves, and declared inadmissible to Canada on grounds of serious criminality for the mere fact of having collectively assisted each other in the journey out of survival and not for any sort of material gain. The human smuggling provisions of the *IRPA* were recently challenged before the SCC.[115] The Court has not yet rendered its judgment.

Refugee claimants found to be inadmissible to Canada[116] – including refugee claimants mislabelled as human smugglers – are automatically and permanently barred from accessing protection under the *Convention Relating to the Status of Refugees* under s. 96 of the *IRPA*. Such asylum-seekers are only entitled to a final Pre-Removal Risk Assessment (PRRA), which is restricted to considerations of whether they would face a danger to their life, or a danger of torture or cruel or unusual treatment or punishment if deported (*IRPA*, ss. 97, 113(d)). Inadmissible refugee claimants will not have the risks of returning to other forms of persecution, such as domestic violence or other persecution committed by non-state actors, as well as state persecution not rising to the level of torture or ill-treatment, assessed during the PRRA. And the Minister of Citizenship and Immigration retains the discretion to cancel a stay of removal and deport the individual from Canada to a country where it is determined that individual faces a danger to life or torture or ill-treatment (*IRPA*, s 114(2)).

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[114] *IRPA*, *supra* note 50, s 57.1.

[115] *Hernandez et al v Canada*, Court File Nos. 35677, 35685, 35688, 35958.

[116] AI is increasingly concerned that a growing number of individuals are being barred from making refugee claims in Canada as a result of being found inadmissible. The inadmissibility decisions in Canadian law appear to go far beyond the grounds for exclusion laid out in the *Convention relating to the Status of Refugees*, 22 April 1954, 189 UNTS 150 (*Refugee Convention*). AI has, over the years, made repeated submissions to Parliament when new inadmissibility provisions, expressly barring individuals from making refugee claims, were introduced in Canadian law. AI has highlighted on several occasions that the inadmissibility provisions of the *IRPA* are drafted in very broad terms which could apply to a wide swathe of individuals. See, e.g. Gloria Nafziger, "No Lives in Limbo" (8 May 2015) online: <http://www.amnesty.ca/blog/no-lives-in-limbo>; Amnesty International, Letter to the Honourable Chris Alexander, Minister of Citizenship and Immigration, (15 September 2014); Amnesty International, "Brief on Bill C-11" (March 2001); See also Canadian Council for Refugees, "Refugees and Security" (February 2003) online: <http://ccrweb.ca/sites/ccrweb.ca/files/security.pdf>; Canadian Council for Refugees, "Submission to the Senate Standing Committee on National Security and Defence for its study on the policies, practices, and collaborative efforts of Canada Border Services Agency in determining admissibility to Canada and removal of inadmissible individuals (1 April 2014) online: <http://ccrweb.ca/sites/ccrweb.ca/files/senate-inadmissibility-study-april-2014.pdf>.

The 2012 changes 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."[117] Individuals coming from such countries are subject to a fast-tracked refugee claim process.[118] As the UN High Commissioner for Refugees (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,[119] be inconsistent with the individual character of refugee status and the subjective nature of fear of persecution, and could even result in *refoulement*.[120]

Mexico is one such country designated as "safe", despite the well-documented human rights crisis in the country, as reflected in numerous Amnesty International reports.[121] Another group that is severely impacted by Canada's designation of "safe counties of origin" are Hungarian Romani refugee claimants. Despite an increase in persecution of the Roma in Hungary, Canadian politicians often single out Hungarian refugees as "bogus" refugee claimants coming to Canada in order to abuse the country's social programs.[122] A study led by one of Canada's leading academics on refugee law concluded: "cracking down on alleged abuse of the refugee determination system was a major policy objective of the government, and Hungarian Roma were repeatedly held up as the prime example of this alleged abuse."[123]

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.[124]

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[117] *IRPA*, *supra* note 50, s 109.1.

[118] *Ibid* s 111.1(2)

[119]Article 3 of the *Refugee Convention, supra* note 116 states: "The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin."

[120] 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).

[121] See, e.g. Amnesty International, *Mexico: Submission to the UN Committee on Enforced Disappearances* (Index: AMR 41/0001/2015), 29 January 2015 online: < https://www.amnesty.org/en/documents/amr41/0001/2015/en/>; Amnesty International, *Mexico: Out of control: Torture and other ill-treatment in Mexico* (Index: AMR/41/020/2014), 4 September 2014 online: < https://www.amnesty.org/en/documents/amr41/020/2014/en/>; Amnesty International, *Mexico: Spiralling human rights violations and impunity: Amnesty International Submission to the UN Universal Periodic Review*, (Index: AMR 41/019/2013), 1 March 2013 online: <https://www.amnesty.org/en/documents/amr41/019/2013/en/>.

[122] See, e.g. *House of Commons Debates*, 1st Sess, 41st Parl, vol 090 (6 March 2012) at 1635.

[123] Julianna Beaudoin, Jennifer Danch, and Sean Rehaag, "NoRefuge: Hungarian Romani Refugee Claimants in Canada" (2015) Osgoode Legal Studies Research Paper Series, online: <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1090&context=olsrps>.

[124] *IRPA, supra* note 50, ss 24(4), 110(2).

The CERD and the Committee against Torture have 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.[125]

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- Amend provisions governing "irregular arrivals" and "safe countries of origin" refugee claimants to comply with the principles of *non-refoulement*, non-discrimination, and prohibition on arbitrary detention set out in international human rights and refugee law or otherwise repeal those provisions; and

- Ensure that the categories of inadmissibility to Canada in the *IRPA* do not go beyond the grounds for exclusion from refugee status set out in the *Refugee Convention*.

IMMIGRATION DETENTION - INDEFINITE DETENTION, DETENTION OF CHILDREN (ARTS. 2, 6, 7, 9, 14, 26)

There is no maximum period of time that individuals found to be inadmissible to Canada or failed refugee claimants who cannot be removed from Canada can be held in detention pending their deportation. Some individuals are being held, without charge, for several years at a time.[126] 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.[127] Although the Immigration Division is empowered to consider alternatives to detention when conducting detention reviews,[128] in practice such considerations are undertaken inconsistently at best.[129] Where facilities specifically for the

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[125] CERD 2012, *supra* note 87 at para 15; CAT 2012, *supra* note 48 at para 13.

[126] 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> [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].

[127] *IRPA*, *supra* note 50, s 58(1).

[128] *Ibid*, s 58; *Immigration and Refugee Protection Regulations*, SOR/2002/227, reg 248.

[129] See, e.g. University of Toronto International Human Rights Program, *"We have no rights": Arbitrary detention and cruel treatment of migrants with mental health issues in Canada* (2015); Stephanie J. Silverman and Petra Molnar, "Unshackled Discretion: Barriers to Procedural Justice in the Canadian Immigration Detention System" (April 2015) online: <https://www.academia.edu/11993530/Unshackled_Discretion_Barriers_to_Procedural_Justice_in_the_Canadian_Immigration_Detention_System>.

purposes of immigration do not exist, correctional facilities are used.[130]

The SCC has held that indefinite detention without review is a violation of the right to be free from cruel and unusual treatment and punishment.[131] The effectiveness of detention reviews is questionable, however. 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.[132] Detainees also have the option to obtain release if they volunteer to be removed from Canada. Detainees who refuse to volunteer to be returned for fear of persecution remain detained and continue to be subject to the review process. In such cases, the Immigration Division reasons that continued detention is justified as such detainees are frustrating their own removal from Canada. The UNHCR has stated that "indefinite detention is arbitrary and maximum limits should be established in law."[133]

A network of migrant rights organizations and individuals, the End Immigration Detention Network, filed an official complaint with the UN Working Group on Arbitrary Detention in 2013 on behalf of Michael Mvogo, a Cameroonian national held for over seven years pending his removal from Canada.[134] On 20 July 2014, the Working Group released its opinion, calling for Mr. Mvogo to 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."[135] In spite of this UN ruling almost 11 months ago, Mr. Mvogo remains detained.

Finally, the *IRPA* allows for the detention of children as a last resort,[136] but the detention of children is not limited to exceptional circumstances and their best interests are not always considered.[137] Even infants and toddlers have been detained, often with inadequate medical

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

[131] *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9.

[132] See, e.g Keung, *supra* note 126.

[133] UN 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>.

[134] *Ibid*.

[135] 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/2014/15.

[136] *IRPA*, *supra* note 50.

[137] Canadian Council for Refugees, "Detention and the Best Interests of the Child" (November 2009) online: <http://ccrweb.ca/files/detentionchildren.pdf>.

support.[138] Children are detained as individuals presenting potential flight risks when CBSA officials are not satisfied as to their identity, and when accompanying a parent subject to a detention order.

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- Refrain from detaining refugee claimants and other migrants solely as a measure of immigration control other than in the most exceptional circumstances and then only for the shortest period of time possible immediately prior to deportation;
- In all circumstances refrain detaining individuals indefinitely;
- Never detain children and trafficking victims; and
- In cases where it is necessary to impose restrictions on movement to prevent absconding or to ensure compliance with a removal order, use least restrictive alternatives to detention available to achieve those objectives, and resort to detention only in the most exceptional of circumstances.

THE COMMITTEE ASKS:

14. [...] Please also indicate if the State party intends to withdraw the 2012 cuts to the programme that funds health services for refugee claimants, and respond to allegations that such cuts may undermine their rights to life and freedom from ill-treatment.

REFUGEE AND MIGRANT HEALTH (ARTS. 2, 6, 7, 26)

In 2012, the government made sweeping cuts to Interim Federal Health Program (IFHP), which funds health services for refugee claimants and refugees in Canada. The cuts resulted in a new, tiered system of health benefits to persons in need of protection in Canada. Which tier a person falls in under the new IFHP depends on a number of factors. Refugee claimants have lost access to often life-saving medications, such as insulin to treat juvenile diabetes. Health coverage is limited to "urgent or essential care" and no longer extends to treatment considered to be preventative in nature. An individual who was seeking permanent residence in Canada, for instance, almost went blind when the government refused to fund his urgent eye surgery, which his doctor finally conducted *pro bono*. Refugee claimants coming from countries designated as "safe countries of origin" are not even covered for urgent or essential care as a result of the cuts. Rather, they only receive coverage for conditions that pose a risk to public health or public security. And individuals deemed inadmissible to Canada but who are awaiting a final PRRA are excluded from any coverage whatsoever, *even if* their health conditions posed a risk to public health or public security.[139]

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[138] *Ibid*.

[139] 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*

Some provinces agreed to provide access to health care and prescription medication, but in those cases there is a 4-6 week wait to access provincial social assistance benefits. These measures put the lives of refugees who require essential medicines and other health services at risk.[140]

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.[141]

In July 2014, the Federal Court of Canada declared the cuts to be unconstitutional, finding them to be "cruel and unusual."[142] The Federal Court also found that the withholding of health care specifically from refugee claimants coming from safe countries of origin was discriminatory.[143] The government is appealing the decision to the Federal Court of Appeal.[144] In November 2014, the government lost on a motion before the Federal Court of Appeal to suspend the lower court's remedy to restore health services to refugees while the appeal was proceeding, temporarily restoring healthcare pending the resolution of the case.[145]

Canada also refuses to provide health care to migrants without legal status. In a 2011 case involving the right to health of irregular migrants in Canada, the Federal Court of Appeal held that "[t]he Charter does not confer a freestanding constitutional right to health care"[146] and that withholding health care in that case was in accordance with principles of fundamental justice.[147] Leave to appeal the case to the SCC was denied; however, the case is currently the

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Doctors].

[140] *Ibid*.

[141] Letter to the Minister of Citizenship and Immigration, Jason Kenney, from the 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: < http://www.cda-adc.ca/_files/about/news_events/media/news_releases/2012/kenneymay2012.pdf>.

[142] *Canadian Doctors, supra* note 139 at paras 636, 669, 688, 691, 1080.

[143] *Ibid* at para 766.

[144] *Canada v Canadian Doctors for Refugee Care et al,* Federal Court of Appeal Court File No. A-407-14.

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

[146] *Toussaint v Canada (Attorney General)*, 2011 FCA 2013 at para 77.

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

subject of a petition before this Committee.[148]

RECOMMENDATIONS

AI recommends that the Canadian authorities should:

- Reinstate the Interim Federal Health Program and ensure that all individuals in Canada, including refugee claimants, refugees, and migrants, have access to necessary health care.

THE COMMITTEE ASKS:

15. With regard to the previous concluding observations (CCPR/C/CAN/CO/5, para 14) on adminstrative detention of immigrants and refugees without judicial review, and to the State party's report (CCPR/C/CAN/6, paras. 20 to 30), please provide updated information on the active cases of individuals subject to a security certificate under the new statutory regime of the Immigration and Refugee Protection Act, and comment on reports indicating that recourse to security certificate may lead to unlawful deportations. Please provide information on specific steps taken to ensure that *Special Advocates* can seek evidence indepdently and can properly represent their clients.

SECURITY CERTIFICATES AND SPECIAL ADVOCATES (ARTS. 2, 6, 7, 9, 14, 26)

Non-citizens can be arrested, detained, and ordered deported from Canada pursuant to security certificates issued under the *IRPA*. In 2008, the SCC 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.[149] The federal government responded by amending the *IRPA* to introduce a new system of special advocates whose role is to represent individuals named in security certificates.[150]

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 individuals subject to security certificates.[151] The Committee also expressed concern that the security certificate process leads to indeterminate and often prolonged detention without charge.[152]

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[148] See *Nell Toussaint v Canada*, Communication Submitted for Consideration Under the First Optional Protocol to the International Covenant on Civil and Political Rights, online: <http://www.socialrightscura.ca/documents/legal/tousaint%20IFBH/Toussaint%20v%20Canada%20HRC%20No%202348-2014.pdf>.

[149] *Charkaoui v Canada (Citizenship and Immigration)*, 2008 SCC 38.

[150] *IRPA*, *supra* note 50, s 85.

[151] CAT 2012, *supra* note 48 at para 12.

[152] *Ibid* at para 12(c).

In May 2014, the SCC upheld the constitutionality of the special advocate regime.[153] 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.

In its recent proposed Anti-terrorism legislation, Bill C-51, Canada has sought to restrict special advocates' access to evidence in national security-related proceedings. This is highly problematic, as the role a special advocate plays is the very basis of the SCC's judgment that the security certificate scheme complies with the *Canadian Charter*. The finding of *Canadian Charter* compliance was premised on the requirement that the special advocate receives full access to all evidence brought forward by the government.[154]

Bill C-51's amendments to the *IRPA* will enable judges to deny special advocates access to information on the request of the Minister if satisfied that the information is not directly relevant to the allegations that have been made against the individual concerned. In particular, information that "does not enable the permanent resident or foreign national to be reasonably informed of the case made by the Minister"[155] does not have to be disclosed to the special advocate. Any information that is withheld from the special advocate will not be relied upon by the judge in his or her decision and will be returned to the Minister.[156]

The possibility that information provided to a judge would not be shared with the special advocate and would be returned to the Minister without being relied upon by the judge in making the decision carries a risk that it may inadvertently influence the judge in making his or her decision, without having been made available to the special advocate acting on behalf of the individual concerned.

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- Amend the security certificate procedure to address the concerns raised by the Committee against Torture and to conform to Canada's international human rights obligations with respect to ensuring the right to a fair and public hearing before an independent and impartial tribunal; and

- Withdraw the provisions of Bill C-51 which will further restrict the ability of special advocates to access all information presented to the judge by the government against the individual named in the security certificate.

THE *SECURE AIR TRAVEL ACT* (ARTS. 2, 12, 14, 26)

Bill C-51 includes a new statute, the *Secure Air Travel Act*, which would establish in law the

[153] *Canada (Citizenship and Immigration) v Harkat*, 2014 SCC 37.

[154] *Ibid*.

[155] Bill C-51, *supra* note 23, clause 57, proposing new section 83(1)(c.1) of the *IRPA*.

[156] *Ibid,* clause 57, proposing new section 83(1)(j) of the *IRPA*.

system for overseeing the administration of Canada's so-called "no-fly" list. The Act empowers the Minister of Public Safety and Emergency Preparedness to establish a list of persons who the Minister has reasonable grounds to suspect will engage in an act that would threaten transportation security or who will travel by air for the purpose of committing a number of specified terrorism offences. The Act applies to all persons, both inside and outside of Canada,[157] and all air carriers with Canadian aviation documents.[158] The Minister is empowered to direct air carriers to "take a specific, reasonable and necessary action to prevent a listed person from engaging in" any of the acts described above, including denying transportation to the person or subjecting a listed person to additional screening procedures.[159] The list is to be reviewed and amended as necessary every 90 days.[160]

Under the *Secure Air Travel Act*, listed individuals have two avenues of recourse. Within 60 days of being denied boarding, they may apply to the Minister, in writing, requesting that their name be removed from the list. They are to be afforded a reasonable opportunity to make representations. There is no requirement, however, that they be provided access to information that forms the basis of the decision to place them on the list.[161]

If the decision to list the individual is not reversed by the Minister, the individual may appeal to the Federal Court of Canada. AI is concerned that this appeal is inadequate in two important respects. First, the judge may only determine whether the decision to list the individual was "reasonable", a low threshold.[162] Second, the judge may withhold information from the individual during the appeal if it would be injurious to national security or endanger the safety of any person; in which case the individual will instead only be provided with a summary of the information. The judge can base his or her decision on any information, even when a summary of it has not been provided to the individual.[163]

This Committee has underscored that an individual must be able to have access to information about him or her held in official files and to have that information rectified if it is erroneous:

> [E]very individual should [...] be able to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control his or her files. If such files contain incorrect personal date or have been collected or processed contrary to the provisions of the law, every individual should have the right to have his or her records

[157] *Ibid*, clause 11, proposed s 4 of the *Secure Air Travel Act*.

[158] *Ibid*, clause 11, proposed s 6 of the *Secure Air Travel Act*.

[159] *Ibid*, clause 11, proposed s 9 of the *Secure Air Travel Act*.

[160] *Ibid*, clause 11, proposed s 8 of the *Secure Air Travel Act*.

[161] *Ibid,* clause 11, proposed s 15 of the *Secure Air Travel Act*.

[162] *Ibid,* clause 11, proposed s 16(3) of the *Secure Air Travel Act*.

[163] *Ibid*, clause 11, proposed s 16(6) of the *Secure Air Travel Act*.

rectified.[164]

The human rights implications of being listed can be serious. Canadian citizens and other individuals residing in Canada may be unable to undertake travel that is vital to their employment, curtailing job prospects. They may also be barred from visiting and reuniting with family members living outside the country who are unable to travel to Canada. The impact has inevitably been discriminatory in effect, as individuals from certain communities, including Arab, South-Asian and Muslim Canadians, have been disproportionately impacted. A 2007 submission to Transport Canada on behalf of 25 Canadian civil society organizations highlighted concerns that the administration of Canada's no-fly list had negative repercussions on the right to liberty, freedom of movement, privacy, and equality. The report also underscores that there have been many instances of individuals being erroneously or mistakenly included on the Canadian and other no-fly lists.[165] A comprehensive report by the International Civil Liberties Monitoring Group in 2010 provides further detailed accounts and documents the difficulties individuals have faced in seeking to have their names removed from such lists.[166]

Given the numerous human rights at stake, it is vital that there be a fair appeal process for individuals who seek to have their names removed from the list. With substantial restrictions on access to information and a low standard of review which does not examine the merits, Bill C-51 does not offer that fair appeal process.

RECOMMENDATIONS

AI recommends that Canadian Authorities should:

- Amend Bill C-51 to ensure that any appeal procedures in the proposed *Secure Air Travel Act* provide the listed individual with meaningful access to the full information and accusations against them sufficient to mount an effective challenge to the listing.

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*.

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[164] UN Human Rights Committee, *General Comment No. 34: Article 19, Freedom of Opinion and Expression*, UN Doc CCPR/C/GC/34 (12 September 2011) at para 18; UN Human Rights Committee, *General Comment No. 16: Article 17 (Right to Privacy)*, 32nd Sess (8 April 1988) at para 10.

[165] Faisal Kutty, "Canada's Passenger Protect Program: Too Guilty to Fly, Too Innocent to Charge?" (2007) Social Science Research Network online: < http://papers.ssrn.com/sol3/papers.cfm?abstract_id=962797>.

[166] International Civil Liberties Monitoring Group, *Report of the Information Clearinghouse on Border Controls and Infringements to Travellers' Rights* (February 2010) online: <http://www.travelwatchlist.ca/updir/travelwatchlist/ICLMG_Watchlists_Report.pdf>.

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,[167] the case is heard in private and in the absence of the applicant organization or their counsel,[168] and the applicant organization is only entitled to receive a summary of the evidence viewed by the judge.[169] 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. IRFAN is currently appealing its listing to the Federal Court of Canada.[170]

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- Ensure that organizations listed as terrorist entities under Canada's *Criminal Code* obtain access to a meaningful judicial process to review the reasons for the listing, including by having access to sufficient information in order to respond to allegations made against them, in conformity with international due process standards.

REVOCATION OF CITIZENSHIP (ARTS 2, 14, 26)

The *Strengthening Canadian Citizenship Act*[171] became law on 19 June 2014. The Act 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.

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 two tiers of 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.[172] 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

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[167] *Criminal Code of Canada*, RSC 1985, c C-46, s 83.05(6.1) [*Criminal Code*].

[168] *Ibid*, s 83.05(6)(a).

[169] *Ibid*, s 83.05(6)(b).

[170] See Brian Daily, "Hamas-linked charity can't use taxpayer funds for legal defence: Federal Court" *Canoe News* (22 April 2015) online: <http://cnews.canoe.com/CNEWS/Canada/2015/04/21/22356556.html>.

[171] SC 2014 c 22.

[172] AI, *Bill C-24: AI'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>.

recognized by the UN Human Rights Council.[173]

The constitutionality of the citizenship revocation provisions was challenged before the Federal Court of Canada on 23 October 2014.[174] The Court has not yet issued its judgment.

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- Repeal the recent amendments to the *Citizenship Act* allowing for the revocation of citizenship; and

- Ensure that any decisions concerning the acquisition, deprivation, or revocation of nationality are conducted in accordance with the stringent due process standards set out in international human rights law.

THE COMMITTEE ASKS:

16. Please provide information on measures taken to: (a) adopt effective measures to reduce the current overcrowding and properly meet the basic needs of all persons deprived of their liberty; (b) inclurease the capacity of treatment centres for prisoners with intermediate and acute mental health issues; (c) limit the use of solitary confinement as a measure of last resort, and (d) abolish the use of solitary confinement for persons with serious mental illness.

SOLITARY CONFINEMENT (ARTS. 2, 6, 7, 9, 10, 14, 26)

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."[175] 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.[176] According to Correctional Services Canada, the average length of stay in segregation between 2006 and 2011 was 40 days, and 13 percent of segregated inmates stayed longer than four months.[177]

In 2012, the Committee against Torture expressed concern that Canada uses "solitary confinement, in the forms of disciplinary and administrative segregation, for often extensively

[173] UN Human Rights Council, *The right to a nationality: women and children*, 20th Sess, UN Doc A/HRC/20/L.8 (28 June 2012).

[174] Voices-Voix, "Canadian Citizenship (Bill C-24)" online" < http://voices-voix.ca/en/facts/profile/canadian-citizenship-bill-c-24>.

[175] 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].

[176] Kirk Makin, "Canadian Prisons 'Out of Step' on Solitary Confinement," *The Globe and Mail* (21 March 2013) online: < http://www.theglobeandmail.com/news/politics/canadian-prisons-out-of-step-on-solitary-confinement/article10103358/>.

[177] OCI Report, *supra* note 175.

prolonged periods, even for persons with mental illness."[178] The Committee recommended that Canada "limit its 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."[179]

In 2011, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment affirmed that confinement in isolation produces severe – and sometimes irreversible – physical and psychological effects, and can amount to torture.[180] The tragic effects of "administrative segregation" 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 Inquiry into Ms. Smith's death determined that it was a homicide.[181] 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.[182] In December 2014, Canada dismissed the recommendations made in the Ashley Smith Inquiry, and refused to place limits on its practice of solitary confinement in federal prisons.[183]

In a report issued on 28 May 2015, the Office of the Correctional Investigator released updated statistics on Canada's use of administrative segregation, finding that its use disproportionately affects Indigenous, black, and female inmates,[184] and leading the Correctional Investigator Howard Sapers to declare that Canada's use of solitary confinement is "out of control."[185]

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[178] CAT 2012, *supra* note 48 at para 19.

[179] *Ibid*.

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

[181] *Re Smith* (2013) online: <https://www.canlii.org/en/on/onocco/doc/2013/2013canlii92762/2013canlii92762.html?searchUrlHash=AAAAAQAMYXNobGV5IHNtaXRoAAAAAAE&resultIndex=1>.

[182] "He needed help. He got none" *The Globe and Mail* (14 July 2014).

[183] See Josh Wingrove, "Canadian government rejects solitary confinement limits" *The Globe and Mail* (11 December 2014) online: < http://www.theglobeandmail.com/news/politics/government-rejects-changes-to-limits-on-solitary-confinement/article22049695/>.

[184] Office of the Correctional Investigator, *Administrative Segregation in Federal Corrections: 10 Year Trends* (28 May2015) online: < http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20150528-eng.aspx>.

[185] Patrick White, "Use of solitary confinement for black inmates in federal prisons increasing" *The Globe and Mail* (28 May 2015) online: <http://www.theglobeandmail.com/news/national/use-of-solitary-confinement-in-federal-prisons-has-increased-over-last-10-years/article24661862/>.

In January 2015, the British Columbia Civil Liberties Association and the John Howard Society of Canada filed a lawsuit against the federal government for its use of "administrative segregation" in prisons.[186] In its response to the legal challenge, Canada denied that it uses solitary confinement in its prisons, arguing that "administrative segregation" is "different from and not analogous to the concept of solitary confinement referred to in many foreign jurisdictions and should not be confused with it."[187] The case is still underway.

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- Limit administrative segregation, which is tantamount to solitary confinement, as a measure of last resort only, for as short a time as possible, subject to independent review, and only pursuant to authorization by a competent authority;

- Prohibit prolonged administrative segregation– that is, for more than 15 consecutive days; and

- Prohibit imposing administrative segregation on persons with mental or physical disabilities when their conditions would be exacerbated by such measures.

RECOGNIZANCE WITH CONDITIONS: DETENTION WITHOUT CHARGE (ART. 9, 14)

One of the controversial amendments to Canadian national security law in 2001 was the institution of recognizance with conditions measures under which law enforcement officers may detain, but not charge, individuals suspected of planning to commit terrorist acts. Given the obvious concerns associated with a provision allowing detention without charge, the provision was subject to a sunset clause and expired after three years. It was later reintroduced without a sunset clause, as section 83.3 of the *Criminal Code of Canada* (*Criminal Code*).

Given the exceptional nature of this power, it is currently subject to high evidentiary requirements, namely that a peace officer "believes on reasonable grounds that a terrorist activity will be carried out [and] suspects on reasonable grounds that the imposition of a recognizance with conditions [...] is necessary to prevent the carrying out of the terrorist activity."[188] Detention under recognizance currently cannot extend for more than three days.

Bill C-51 introduces two significant and worrying changes. The threshold for obtaining a recognizance with conditions is lowered significantly from believing that a terrorist activity *will* be carried out, to *may* be carried out; and that the recognizance is *necessary* to prevent it to *is likely* to prevent it. The maximum possible length of time that an individual may be held

[186] Statement of claim available on the website of the British Columbia Civil Liberties Association: <https://bccla.org/wp-content/uploads/2015/01/2015-01-19-Notice-of-Civil-Claim1.pdf>.

[187] Canada's response to statement of claim in *BCCLA and John Howard Society v Canada*.

[188] *Criminal Code, supra* note167, s 83.3 [emphasis added].

under a recognizance will increase from three days to seven.[189]

AI is particularly concerned about the significant change in lowering the threshold of suspicion from "will" to "may"; and the assessment of necessity from "necessary" to "likely". This Committee has stated that detention without charge in a security-related context such as the recognizance with conditions scheme must be limited to situations in which a person presents a "present, direct and imperative threat":

> To the extent that States parties impose security detention (sometimes known as administrative detention or internment) not in contemplation of prosecution on a criminal charge, the Committee considers that such detention presents severe risks of arbitrary deprivation of liberty. Such detention would normally amount to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would be available. If, under the most exceptional circumstances, a present, direct and imperative threat is invoked to justify the detention of persons considered to present such a threat, the burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of detention.

With respect to the recognizance with conditions scheme, AI reiterates its comments to this Committee in 2014:

> Anyone deprived of their liberty should promptly be charged with a cognizable offence and tried within a reasonable period, unless action is being taken to extradite them within a reasonable period. The procedures, rules of evidence and burden and standard of proof in the criminal justice system minimize the risk of innocent individuals being deprived of their liberty for prolonged periods. It is unacceptable for governments to circumvent these safeguards, and it is a serious violation of human rights for states to detain people whom they do not intend to prosecute (or extradite). The requirement that the government use the institutions and procedures of ordinary criminal justice, including the presumption of innocence, whenever it seeks to deprive a person of liberty based on allegations of essentially criminal conduct is a fundamental bulwark of the right to liberty and security of person, and an underlying principle of international human rights law.[190]

RECOMMENDATIONS

AI recommends that Canada:

- Withdraw the provisions of Bill C-51 which grant authorities expanded powers to detain a person on the basis of a recognizance with conditions which significantly lower the threshold of suspicion and increase the maximum time for holding and individual in police custody

[189] Bill C-51, *supra* note 23, clause 17, amendments and additions to s 83.3 of the *Criminal Code*.

[190] Amnesty International, *UN Human Rights Committee: Observations on the revised draft General Comment 35 on Article 9 of the International Covenant on Civil and Political Rights* (Index: IOR 41/013/2014), May 2014 at 10-11.

without charge.

IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE (ARTS. 2, 6, 7, 9, 10, 14, 26)

In March 2015, the federal government introduced Bill C-53, the *Life Means Life Act*.[191] According to Prime Minister Harper, the bill will "ensure that for the most heinous offenders and the most horrific crimes, a life sentence in Canada will henceforth mean exactly that – a sentence for life."[192] Bill C-53 would allow the imposition of life sentences without the possibility of parole to offenders convicted of certain first-degree murders, high treason, terrorist offences, taking arms against Canada, or helping an enemy at war with Canada.[193]

As stated by the UN Crime Prevention and Criminal Justice Branch, "once a prisoner can be regarded as no longer being a danger to society, prolonged detention beyond the period that is deemed necessary for reasons of justice, including due consideration of the seriousness of the crime and the victims concerned, may be questionable and should be subject to special scrutiny."[194] Similarly, the Council of Europe in 1976 pronounced that "a crime prevention policy which accepts keeping a prisoner for life even if he is no longer a danger to society would be compatible neither with modern principles on the treatment of prisoners during the execution of their sentence nor with the idea of the reintegration of offenders into society."[195]

Bill C-53 would ensure that certain offenders will remain incarcerated for life, barring any sort of consideration into their rehabilitative progress and their potential to reintegrate successfully into society as law-abiding and self-sufficient individuals. Imposing life sentences without any entitlement to periodic reviews of those sentences cannot be reconciled with the essential aim of social rehabilitation of imprisonment and the requirement to treat all prisoners with humanity and respect for their dignity set out in Article 10 of the *ICCPR*.

The *Rome Statute of the International Criminal Court*, which deals with war crimes, crimes against humanity, and genocide, does not provide for sentences of life without the possibility of parole. While it does provide for life imprisonment, such terms are to be reviewed by the

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[191] 2nd Sess, 41st Parl, 2015 (first reading 3 March 2015) [Bill C-53]

[192] See Paola Loriggio, "Harper's 'life without parole' initiative a political move, say critics' *The Canadian Press* (2015) online: <http://www.thecanadianpress.com/english/online/OnlineFullStory.aspx?filename=DOR-MNN-CP.4715ca860d0d4a969def34957b9b25f1.CPKEY2008111303&newsitemid=32145208&languageid=1>.

[193] Bill C-53, *supra* note 191.

[194] UN Office at Vienna, Crime Prevention and Criminal Justice Branch, *Life Imprisonment*, UN Doc ST/CSDHA/24 (1994) at 4 online: < http://www.penalreform.org/wp-content/uploads/2013/06/UNODC-1994-Lifers.pdf>.

[195] As cited in *Ibid* at 4.

Court after 25 years to determine whether they are to be reduced.[196]

In 2013, the European Court of Human Rights ruled that there must be both a possibility of review of life sentences and a prospect of release. The periodic reviews must consider the appropriateness of commutation, remission, termination, or conditional release in light of the individual's progress towards rehabilitation. The continued imprisonment of an individual without possibility of parole when it can no longer be justified on penal grounds is inconsistent with Article 3 of the *European Convention on Human Rights*, which protects against torture and other ill-treatment.[197]

Similarly, the imposition of life sentences without the possibility of parole under Bill C-53 is inconsistent with the prohibition against torture and other ill-treatment and the principle that incarceration should involve social rehabilitation as a primary goal.

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- Repeal Bill C-53 and ensure that any life sentence handed down by Canadian courts is accompanied with periodic reviews of that sentence with the prospect of release. Ensure that rehabilitation and reintegration remain the principal aims of the Canadian penitentiary system, such that inmates who have been socially rehabilitated and who no longer pose a danger to the public are paroled and reintegrated into society.

CSIS THREAT REDUCTION POWERS: THREATENING A WIDE RANGE OF HUMAN RIGHTS

CANADIAN SECURITY INTELLIGENCE SERVICE – NEW POWERS OF THREAT REDUCTION (ARTS. 2, 6, 7, 9, 10, 14, 17, 18, 19, 21, 22)

Bill C-51 expands CSIS powers well beyond the Service's current mandate of collecting, analysing, and reporting to the government information and intelligence concerning activities that may pose threats to the security of Canada.[198] Bill C-51 proposes an expanded mandate that would also allow CSIS, when there are "reasonable grounds to believe that a particular activity constitutes a threat to the security of Canada" to "take measures, within or outside

[196] UN General Assembly, *Rome Statute of the International Criminal Court*, 17 July 1998, arts 77(1)(B) and 110(3).

[197] *Vinter and Others v United Kingdom*, (2013) 66069/09, 130/10, 3896/10.

[198] *Canadian Security Intelligence Service Act*, RSC 1985, c C-23, s 12 [*CSIS Act*].

Canada, to reduce the threat."[199]

What constitutes a "threat to security" authorizing the exercise of these new powers extends far beyond acts that would constitute terrorist activity under the *Criminal Code* to include vague and/or overly-broad categories of offences that could infringe the legitimate exercise of human rights. Measures that CSIS can take to reduce threats include actions that would violate human rights, including the prohibition on torture and ill-treatment. Those violations could be authorized by Federal Court judges, and could explicitly include acts in other countries that violate or disregard local laws.

THREAT TO THE SECURITY OF CANADA

The new threat reduction powers are linked to the existing definition of "threats to the security of Canada" found in the *Canadian Security Intelligence Service Act* (*CSIS Act*).[200] Notably, this existing definition does not expressly refer to acts of "terrorism." Moreover, the threats listed are broad and, in some instances, involve vague and undefined concepts: espionage, sabotage, foreign-influenced activities "detrimental" to Canada's interest, "serious violence" linked to political, religious or ideological objectives, and the "destruction" of Canada's system of constitutionally established government. Whether or not this definition of "threats to the security of Canada" is appropriate for the purposes of intelligence-gathering and reporting, it requires very careful consideration when it is linked to new disruption powers that would have direct consequences for an individual's rights to privacy, liberty, and security of the person.

CSIS has interpreted "threats to the security of Canada" very expansively when undertaking intelligence-gathering. Sabotage, for instance, includes "activities conducted for the purpose of endangering the safety, security or defence of vital public property, such as installations, structures, equipment or systems.[201] In relation to covert unlawful acts, CSIS has stated that such acts include "subversive activities seeking to interfere with or ultimately destroy the electoral, legislative, executive, administrative or judicial processes or institutions of

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[199] Bill C-51, *Anti-Terrorism Act*, 2nd Sess, 41st Parl, clause 42, proposing new s 12.1 to the *CSIS Act*.

[200] *Supra,* note 198, s 2 reads: "In this Act […] 'threats to the security of Canada' means (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage, (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person, (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and (d) activities directed toward undermining by covert unlawful acts or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada, but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).

[201] Canadian Security Intelligence Service, "Backgrounder #1: CSIS Mandate" (2005) As cited in Craig Forcese and Kent Roach, "Bill C-51 Backgrounder #2: The Canadian Security Intelligence Service's Proposed Power to 'Reduce' Security Threats through Conduct that May Violate the Law and Charter" (12 February 2015) at 9 online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2564272>.

Canada."[202]

The *CSIS Act* contains a proviso excluding lawful advocacy, protest or dissent that is not linked to any of the described "threats to the security of Canada." This qualification offers only minimal safeguards, however. There are many acts of advocacy, protest or dissent which are not criminal but at the same time are not lawful in the sense that organizers have not met the procedural or other requirements stipulated in laws or by-laws. That is a common feature, for instance, in protests mounted by Indigenous communities, environmental groups, or the labour movement. They may not have obtained an official permit; or they may even be protesting despite a court order to desist demonstrations. That does not mean they are criminal, and it does not mean they are undeserving of human rights protection.

The requirement that protest be "lawful" is a departure from existing Canadian criminal law. Threat reduction powers are closer in nature to criminal sanctions than simply intelligence-gathering. The *Criminal Code* defines "terrorist" activity to include acts that cause "serious interference with or serious disruption of an essential service, facility or system, whether public or private"[203] but excludes advocacy, protest, dissent or stoppage of work that is not intended to result in death or serious bodily harm, endanger a person's life or cause a serious risk to public health or safety.[204] Under the *Criminal Code*, there is no requirement that the advocacy, protest, dissent or work stoppage be *lawful* in order to exempt it from the definition of "terrorist activity."[205]

MEASURES TO REDUCE A THREAT TO THE SECURITY OF CANADA

The proposed new threat reduction powers are not prescribed or defined. As such, they appear to be limitless in scope and nature. If the exercise of these powers in a particular case would involve violations of the *Canadian Charter* or other Canadian laws, a warrant must be obtained from a Federal Court judge.[206] Some actions are prohibited. CSIS officials and/or agents are not permitted to cause death or bodily harm, wilfully attempt to obstruct, prevent, or defeat the course of justice, or violate the sexual integrity of an individual.[207]

The fact that it was considered necessary to explicitly prohibit acts that are already clearly and unequivocally unlawful under Canadian and international law is telling of the potential scope and nature of the potential disruptive powers that may be utilized. AI is deeply

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[202] *Ibid* at 11.

[203] *Criminal Code, supra,* note 167, s 83.01.

[204] *Ibid*.

[205] *Ibid*.

[206] Bill C-51, *supra* note 23, clause 42, proposed new s 12.1(3) of the *CSIS Act*: "The Service shall not take measures to reduce a threat to the security of Canada if those measures will contravene a right or freedom guaranteed by the *Canadian Charter of Rights and Freedoms* or will be contrary to other Canadian law, unless the Services us authorized to take them by a warrant issued under section 21.1."

[207] *Criminal Code, supra* note 167, s 2. Bodily harm is "any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature."

troubled that the prohibitions are limited to these three instances, and do not clearly prohibit violations of other rights that are safeguarded by international human rights standards binding on Canada. For example, Bill C-51 leaves open the possibility of psychological torture and ill-treatment, or violations such as enforced disappearances.

It is extremely worrying that this Bill designates the judiciary, which is entrusted with the vital responsibility of upholding the Canadian Constitution, including the *Canadian Charter*, as the state authority that would *authorize* constitutional breaches, including violations of the *Canadian Charter*. Even with the requirement that the "reasonableness and proportionality"[208] of the proposed measures be taken into account by the Federal Court judge, tasking judges with approving acts that violate the *Canadian Charter* is a perversion of the rule of law and separation of powers.[209]

RECOMMENDATIONS

AI recommends that Canada:

- Withdraw in their entirety the provisions of Bill C-51 granting CSIS unprecedented new powers to act to reduce security threats, considering that:
  - These new powers are based on an existing and overly-broad definition of "threats to the security of Canada" and the danger that a wide range of protest activity that is not criminal would be susceptible to interference and disruption through these new powers;
  - Bill C-51 does not sufficiently circumscribe the particular measures that officers would be allowed to take to reduce threats, and leaves open the possibility of the violation of the rights to liberty, privacy, expression, association, peaceful assembly, and freedom from torture and ill-treatment;
  - Bill C-51 authorizes Federal Court judges to issue warrants approving CSIS activity that violates the *Charter* and international law; and
  - These powers are entrusted to security and intelligence officials who do not have the specific training, command structures, accountability, or public transparency required of law enforcement agencies.

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[208] Bill C-51, *supra* note 23, clause 44, proposed new s 21.1(2)(c) of the *CSIS Act*.

[209] Article 4 of the *ICCPR* provides that the test for limiting rights is one of necessity, not reasonableness. This does not apply to the rights under the *Covenant* which are non-derogable.

FREEDOM OF EXPRESSION AND THE RIGHT TO PEACEFUL ASSEMBLY

THE COMMITTEE ASKS:

10. Further to the Committee's previous concluding observations (CCPR/C/CAN/CO/5, para. 20), please provide information on the measures taken to ensure that all allegations of ill-treatment and excessive use of force by the police are impartially investiagted by an indepdnent body, including those related to the police use of force during the student protests in Quebec in 2012.

18. Please provide information on [...] the alleged unlawful restrictions on the right of peaceful assembly, inter alia, over the course of the 2010 G20 protests in Toronto, 2012 Quebec student protests, and demonstrations by Aboriginal communities.

EXCESSIVE USE OF FORCE BY THE POLICE DURING PROTESTS (ARTS. 2, 7, 9, 19, 21)

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. The crackdown in Montreal and the emergency law passed by the Quebec government in 2012 attracted attention and concern from the previous High Commissioner for Human Rights, Navi Pillay.[210] At both protests, police used excessive force, conducted mass arrests and kettling, used stun grenades, pepper spray, rubber bullets, and physically assaulted protestors. The police have also used excessive force, including firearms, against those participating in Indigenous land rights demonstrations. Rather than complying the State's obligation to facilitate the exercise of the right to peaceful assembly, the mass arrests and police use of excessive force against largely peaceful protesters violated their right to peaceful assembly.

There has been no public inquiry into the police response to the 2010 G20 Summit demonstrations, despite 31 police officers facing disciplinary hearings and, in September 2013, the first criminal conviction of an officer, on charges of assault with a weapon.[211]

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[210] 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&LandID=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>.

[211] 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://thestar.com/news/gta/2013/09/12/g20_assault_trial_officer_found_guilty_of_using_excessive_force_on_adam_nobody.html>.

The government of Quebec established a commission headed by former Public Safety Minister Serge Ménard to look into events surrounding the student protests in 2012 (Ménard Commission). There were concerns, however, that the commission lacked sufficient powers to compel evidence, cross-examine witnesses and carry out necessary investigations.[212] Since the release of the report in March 2014,[213] the government has failed to take any steps to implement the report's recommendations,[214] which included presuming that assemblies are peaceful and should not be disrupted on the basis of isolated incidents of illegality,[215] ending the use of pepper spray and stun grenades on protesters, as well as ending mass arrests, and conducting police training on the right to peaceful demonstration.

The failure to implement the Commission's recommendations became evident in March of 2015, when once again students, along with civil society groups from the health and education sectors, took to the streets in Quebec to protest the province's austerity measures resulting in cuts to public services. The police continued to use excessive force which resulted in injured protesters. This use of force appears to have predominantly targeted student demonstrations. AI has urged the government of Quebec to implement the Commission's recommendations.[216]

The police have also used excessive force in the context of land rights protests by Indigenous peoples over the past two decades. For a more detailed account of the events described below see Amnesty International, *Canada: "I was never so afraid in my entire life": excessive and dangerous police response during Mohawk land rights demonstrations on the Culbertson Tract*.[217]

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[212] See "Student protest commission assailed from all sides" *CBC News* (9 May 2013) online: <http://www.cbc.ca/news/canada/montreal/student-protest-commission-assailed-from-all-sides-1.1400094>.

[213] Serge Ménard, *Rapport: Commission spéciale d'examen des événements du printemps 2012* (Government of Quebec, 2014) online: <http://www.securitepublique.gouv.qz.ca/fileadmin/Documents/police/publications/rapport_CSEEP2012/rapport_CSEO2012.pdf>.

[214] 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>

[215] The presumption that participants in assemblies have peaceful intentions has been recognized by the Special Rapporteur on the right to freedom of peaceful assembly and of association, Maina Kiai: See UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 20th Sess, UN Doc A/HRC/20/27 (21 May 2012) at para 25.

[216] Amnesty International letter to Mme Lise Thériault, Quebec Minister of Public Security (4 May 2015).

[217] (31 May 2011) online: <http://www.amnesty.ca/sites/default/files/2011-05-31canada-mohawk-land-rights.pdf> [*I was never so afraid*]

In 1995, the Ontario Provincial Police (OPP) deployed a force of approximately 200 officers, including snipers, to respond to the occupation of Ipperwash Provincial Park by a small group of First Nations protesters. The protest was meant to focus attention on the longstanding failure of the federal and provincial governments to restore Indigenous lands taken in the 1890s and 1930s. On the night of 6 September 1995, the situation escalated when police suddenly moved against the protesters. One man was badly beaten by police and another man, Dudley George, was fatally shot by a police sniper.[218]

In 2003, the government of Ontario established a provincial inquiry into the events that occurred at Ipperwash. During the Inquiry, the OPP pointed to a policy framework that it had adopted after the killing of Dudley George. The Framework for Police Preparedness for Aboriginal Critical Incidents states that the OPP will "make every effort prior to understand the issues and to protect the rights of all involved parties" and will "promote and develop strategies that minimize the use of force to the fullest extent possible."[219] The 2007 Inquiry report endorsed the Framework, but it went even further. Noting that police and politicians are often under intense pressure from the public to end Indigenous protests quickly if, for example, there are associated road closures and blockades, the Inquiry called for the province to adopt a similar "peacekeeping" model as official policy across all relevant departments. The Inquiry report also called upon Ontario to carry out an independent assessment to determine how effectively the Framework has been adopted into OPP procedures and organizational culture.[220]

Despite a pledge that the Ontario government will fully implement the recommendations from the Ipperwash Inquiry, the government has yet to adopt the recommended province-wide policy on Indigenous protests. Nor has there been an independent assessment of how well the OPP is living up to its own policy framework.

New confrontations in 2007 and 2008 between the OPP and community members of the Tyendinaga Mohawk Territory indicate that the lessons from Ipperwash have not been fully and consistently incorporated into OPP responses and police are not being held sufficiently accountable for upholding their own framework for policing Indigenous protests or broader police standards.

Between 28-29 June 2007 and again between 21-28 April 2008, hundreds of OPP officers were deployed to surround and contain Mohawk protesters at Tyendinaga near Belleville, Ontario. These forces included members of the Tactics and Rescue Unit (TRU), commonly known as the sniper squad, which is typically deployed in response to violent situations that represent a significant threat to police and public safety. An extensive study of these

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[218] *Ibid*.

[219] Ontario Provincial Police, *A Framework for Police Preparedness for Aboriginal Critical Incidents* online: <https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/projects/pdf/OPP_Appendix_E_Framework_for_Police_Preparedness.pdf>.

[220] The Honourable Sidney B. Linden, Commissioner, *Report of the Ipperwash Inquiry* (2007) online: <http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/report/index.html>.

incidents by AI found no evidence of such a threat.[221] During the April 2008 incident, the situation escalated to the point that police, panicked by a false report that a rifle had been sighted, drew handguns and levelled high-powered assault rifles at unarmed activists and bystanders. The scale and nature of the OPP response to these protests contrasts sharply with the mostly minor criminal charges that were brought against protesters. Although police laid 100 charges against 19 individuals involved in the protests, the only sentence of imprisonment handed down by a court was a single day in jail.[222] Prison surveillance tapes recently obtained by AI through a lengthy access to information process indicate that individuals in detention were held for hours in plastic restraints, without reason and contrary to recommended policing standards.[223]

To the best of AI's knowledge, no action has been taken by government officials or by the OPP to investigate the human rights concerns arising from the Tyendinaga protests. Despite repeated requests, the OPP has refused to meet with AI representatives. The Committee against Torture has taken up the Tyendinaga protests as an issue it will consider in its review of the seventh periodic report of Canada, requesting to know whether Ontario has undertaken an Inquiry into the OPP's conduct during the protests.[224]

RECOMMENDATIONS

AI Recommends that Canadian authorities should:

- Call an independent public inquiry into the conduct of police forces during the G20 protests in Toronto;

- Implement the Ménard Commission's recommendations with respect to police response to public demonstrations, including recognizing the presumption of peaceful assembly, ending the use of excessive force and mass arrests, and conducting police training to ensure that all future conduct adheres to human rights standards set out in international law;

- Implement the recommendations of the Ipperwash Inquiry and conduct an independent assessment of how the OPP has adopted the Framework for Police Preparedness for Aboriginal Critical Incidents into its procedures and organizational culture; and

- Call an independent public review of the police response to the 2007 and 2008 Mohawk protests at Tyendinaga.

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[221] *I was never so afraid*, *supra*, note217.

[222] *Ibid* at 5.

[223] Office of the Independent Police Review Director, *policing the right to protest: G20 Systemic Review Report* (May 2012) online: <http://www.oiprd.on.ca/EN/PDFs/G20-Systemic-Review-2012_E.pdf> at 241: "The use of flex cuffs should be discontinued or, alternatively, be used only in immediate situations of mass arrest in the field during dynamic situations. They should be applied only for short duration and be replaced by ASP restraints or by regular metal handcuffs."

[224] UN Committee against Torture, *List of issues prior to submission of the seventh periodic report of Canada due 2016*, UN Doc CAT/C/CAN/PQR/7 (15 May 2014) at para 21.

THE COMMITTEE ASKS:

18. Please provide information on measures taken at the federal level to reduce restrictions on the right to freedom of peaceful assembly and of association at the provincial and territorial level. Please also comment on: (a) reports indicating that freedom of expression is being restricted by punitive measures against civil society organizations and human rights defenders that promote women's equality, the rights of Palestinians, and environmental protection and corporate social responsibility.

RESTRICTING FREEDOM OF EXPRESSION FOR CIVIL SOCIETY ORGANIZATIONS AND HUMAN RIGHTS DEFENDERS (ARTS. 2, 18, 19, 22)

Support for strong advocacy and diverse, including dissenting, views in debates about important public policy issues in Canada is being dramatically undermined and rapidly dismantled. This attack on freedom of expression, which has been comprehensively documented by Voices-Voix, a national coalition made up of over 200 organizations across Canada, including AI[225] – has come through a range of measures, including punitive funding cuts and threats of loss of charitable status targeting individuals and organizations with positions and programming that runs counter to government policies on issues such as women's equality,[226] the rights of Palestinians,[227] and environmental protection and corporate social responsibility in the extractive sector.[228] In 2006, the federal government ended the Court Challenges program which enabled marginalized communities in Canada to bring important equality challenges under the *Canadian Charter of Rights and Freedoms* before the courts.[229]

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 elimination of the long-form national census which was vital for accurate policy-making, have been dismissed or publicly vilified by senior members of government.[230]

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[225] www.voices-vOix.ca

[226] 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>.

[227] 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>.

[228] 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/>.

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

[230] Suggestions that to be concerned about the torture of prisoners in Afghanistan is tantamount to supporting the Taliban: See "Liberals furious at Harper's Taliban accusation" *CBC News* (21 March

In addition, 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 and Indigenous land rights issues in the country.[231] Indeed, an RCMP document obtained by Greenpeace in February 2015, entitled "Assessment of Criminal Threats to the Canadian Petroleum Industry" devotes much of its analysis to the capacity of Indigenous and environmental groups to influence media coverage and attract public support and donations, suggesting a degree of confusion between threats to public safety and threats to the agenda of a particular government or industry sector. The document identifies the "anti-petroleum" movement as a security threat, finding that "[t]here is a growing, highly organized and well-financed, anti-Canadian petroleum movement, that consists of peaceful activists, militants and violent extremists, who are opposed to society's reliance on fossil fuels." [232]

RCMP and CSIS surveillance of activists opposed to the proposed Northern Gateway Pipeline, and the sharing of this information with both the project proponent and regulatory body overseeing the environmental assessment of the project, is the subject of current complaints by the British Columbia Civil Liberties Association before the RCMP and CSIS complaints mechanisms.[233] Further, documents released in 2011 reveal that the RCMP had focused particular attention on First Nations where Indigenous concerns over "development activities on traditional territories" had "escalated to civil disobedience and unrest in the form of protest actions" and might threaten "critical infrastructure" in the form of highways or

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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 pipelines is to be under the undue influence of sinister foreign activists: See Laura Payton, "Radicals working against oil sands, Ottawa says" *CBC News* (9 January 2012) online: < http://www.cbc.ca/news/politics/radicals-working-against-oilsands-ottawa-says-1.1148310>; An online list maintained by the Voices-Voix Coalition details "more than 100 cases of individuals, organizations and public services institutions that have been muzzled, defunded, shut down, or subjected to vilifications" see Voices-Voix, "Hit List" online: < http://voices-voix.ca/en/hit-list>.

[231] 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>.

[232] Royal Canadian Mounted Police, "Critical Infrastructure Intelligence Assessment: Criminal Threats to the Canadian Petroleum Industry" (24 January 2014) online: <http://www.desmog.ca/sites/beta.desmogblog.com/files/RCMP%20-%20Criminal%20Threats%20to%20Canadian%20Petroleum%20Industry.pdf>.

[233] "Alleged CSIS, RCMP spying on Northern Gateway pipeline protesters prompts complaint" *CBC News* (6 February 2014) online: < http://www.cbc.ca/news/canada/british-columbia/alleged-csis-rcmp-spying-on-northern-gateway-pipeline-protesters-prompts-complaint-1.2526218>.

pipelines.[234] "Communities of concern" identified by the RCMP include the Lubicon Cree, a First Nation in Alberta that was one of the first Indigenous nations in the world to bring a successful complaint of human rights violations through this Committee's complaints mechanism.[235]

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 Canada expressed concern that individuals or organizations that disagree with government policy would be labelled as "enemies."[236]

Thousands of Canadians have come out to publicly protest Bill C-51's intrusion on fundamental human rights and freedoms.[237] However, the Bill was rushed through the House of Commons; the Standing Committee on Public Safety and National Security excluded important independent experts and civil society groups, including the Privacy Commissioner, from testifying before it regarding their concerns, and for those organizations who did testify as to the serious human rights issues posed by the Bill, many were met with insults and inflammatory accusations. For instance, during the hearings, the National Council of Canadian Muslims was accused of supporting terrorism.[238] The British Columbia Civil Liberties Association was questioned as to whether it was "fundamentally opposed to taking terrorists off the streets."[239] Similar suggestions were made towards Greenpeace.[240] The reaction during these hearings to civil society and human rights organizations concerned about human rights reinforced the government's pattern of vilifying individuals and groups who oppose its policies.

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[234] See Tim Groves and Martin Lukacs, "Mounties spied on native protest groups" *The Star* (4 December 2011) online: < http://www.thestar.com/news/canada/2011/12/04/mounties_spied_on_native_protest_groups.html>.

[235] UN Human Rights Committee, *Lubicon Lake Band v Canada, Communication No. 167/1984*, UN Doc A/45/40/Supp 40 (26 March 1990).

[236] "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>.

[237] Morgan Lowrie, "Bill C-51 Protests Held Across Canada" *Huffington Post* (14 March 2015) online: <http://news.nationalpost.com/full-comment/open-letter-to-parliament-amend-c-51-or-kill-it>.

[238] Stuart Trew, "When the facts on C-51 are against you, insult the witness" *Rabble.ca* (13 March 2015) online: <http://rabble.ca/blogs/bloggers/behind-numbers/2015/03/when-facts-on-c-51-are-against-you-insult-witnesses#.VQLxBJQSqpQ.facebook>.

[239] James Fitz-Morris, "Bill C-51 committee hears monologues, but few questions" *CBC News* (13 March 2015) online: <http://www.cbc.ca/news/politics/bill-c-51-committee-hears-monologues-but-few-questions-1.2992615>.

[240] David Pugliese, "Tories go after Greenpeace, BC Civil Liberties Assoc. and Muslim group for raising concerns about new security bill" *Ottawa Citizen* (16 March 2015) online: <http://ottawacitizen.com/news/national/defence-watch/tories-go-after-greenpeace-bc-civil-liberties-assoc-and-muslim-group-for-raising-concerns-about-new-security-bill>.

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- Cease actions and statements that vilify civil society, environmental, and human rights organizations and their members and that effectively penalise them for exercising the right to freedom of expression;

- Develop a plan of action for the implementation of the 1998 UN *Declaration on Human Rights Defenders*;[241] and

- Ensure that all voices have a meaningful opportunity to be heard and considered in good faith when proposed legislation such as Bill C-51 is debated in Parliament and at the Senate.

CRIMINALIZING EXPRESSION (ARTS. 2, 6, 9, 14, 18, 19, 20, 22)

Bill C-51 aims to create a new criminal offence of advocating or promoting the commission of terrorism offences in general. The proposed new crime does not focus on the commission of an offence constituting "terrorist activity", which is explicitly defined in the *Criminal Code*,[242] but refers more broadly to "terrorism offences." There are numerous terrorism-related offences in Canadian law, ranging from direct involvement in a terrorist act to various forms of financing terrorism, as well as incitement, conspiracy, and complicity. The scope and content of this range of offences is complex and not readily comprehensible to most ordinary individuals who may become subject to them. The uncertainty is compounded by the inclusion of the qualifying term "in general" which presumably means that this is not limited to advocating or promoting the commission of a particular offence, such as a specific intended act constituting "terrorist activity", but expands the offence to some undefined, broader, and unspecified range of expression. In a recent report, the Organization for Security and Co-operation in Europe noted that these provisions might even encompass the media when reporting on terrorist threats and activities.[243]

This Committee, in its most recent General Comment regarding Article 19 of the *ICCPR*, notes that "[s]uch offences as 'encouragement of terrorism' and 'extremist' activity' as well as offences of 'praising', 'glorifying', or 'justifying' terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression."[244] The fact that the new offence created by Bill C-51 uses concepts of "advocating" and "promoting" indicates that it is intended to include conduct broader than the already-existing crimes of inciting or threatening terrorism. There has been no assessment or explanation as to why those existing offences are inadequate or ineffective and why further and broader criminalization of expression is considered to be justified, necessary, and

[241] UN General Assembly, *Declaration on Human Rights Defenders*, UN Doc A/RES/53144.

[242] *Criminal Code, supra* note 167, s 83.01.

[243] Organization for Security and Co-operation in Europe, *Legal Analysis of the Proposed Bill C-51, the Canadian* Anti-Terrorism Act, 2015*: Potential Impact on Freedom of Expression*.

[244] UN Human Rights Committee, *General Comment No. 34: Article 19, Freedoms of Opinion and Expression*, UN Doc CCPR/C/GC/34 (12 September 2011) at para 46.

consistent with international requirements.

The new offence does not contain any of the defences that are found in other areas where expression is criminalized, such as the private conversation, public interest or educational defences that are provided for offences dealing with child pornography or hate propaganda. It is also concerning that Bill C-51 lowers the threshold for the criminalization of reckless expression. Rather than criminalizing expression that is reckless as to whether an offence *will* or *is likely* to be committed as a result of the statement, Bill C-51 criminalizes expression that is reckless as to whether it *may* result in the commission of a terrorist offence. There is no requirement that the person has an underlying motive or purpose that the statement will lead to the commission of a terrorism offence. The ways in which this offence might serve to chill legitimate academic debate, policy discussions, public discourse with respect to terrorism, national security, and foreign relations are obvious and were raised by many civil society organizations at the Public Safety and National Security Parliamentary Committee examining the Bill.[245]

Moreover, experts and academics have pointed out that Bill C-51 might actually impede existing counter-radicalization efforts being carried out by authorities like the RCMP. These efforts rely on frank engagement of authorities with communities, parents, and youth holding extreme views, including views which could fall under the new criminal offence created by Bill C-51. The possibility of being charged with a criminal offence for expressing these views openly in an "extreme dialogue' in order to work through the misconceptions, anger, hatred and other emotions that lead to radicalization" will inevitably put a chill on such forms of expression, and negatively impact on these important counter-radicalization initiatives.[246]

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[245] See, e.g., AI, *Insecurity and Human Rights: Concerns and Recommendations with Respect to Bill C-51, the* Anti-Terrorism Act, 2015, (9 March 2015) online: <http://www.amnesty.ca/sites/default/files/amnesty_international_brief_regarding_bill_c-51.pdf>; British Columbia Civil Liberties Association, *Submission to the Standing Committee on Public Safety and National Security* (March 2015) online: < https://bccla.org/wp-content/uploads/2015/03/BCCLA-Submissions-on-C-51-For-website.pdf>; Canadian Association of University Teachers, *What does C-51Mean for Academic Freedom & Campus Free Speech?* (March 2015) online: < http://www.caut.ca/docs/default-source/reports/bill-c-51-caut-analysis-(2015-03).pdf?sfvrsn=8>; The Canadian Bar Association, *Bill C-51, Anti-Terrorism Act, 2015* (March 2015) online: < http://iclmg.ca/wp-content/uploads/sites/37/2015/03/15-15-eng.pdf>; Canadian Civil Liberties Association, *Submission to the Standing Committee on Public Safety and National Security regarding Bill C-51* (March 2015) online: < http://ccla.org/wordpress/wp-content/uploads/2015/03/2015-03-17-C51-Submissions-Final-w-names.pdf>; Canadian Muslim Lawyers Association, *Submission on Bill C-51, the Anti-Terrorism Act, 2015* (March 2015) online: < http://iclmg.ca/wp-content/uploads/sites/37/2015/03/CMLA-Bill-C-51-Submission-HOC-SECU-22-03-15.pdf>; Kent Roach and Craig Forcese "Bill C-51: Our Statement to the Standing Committee on National Security and Public Safety" (12 March 2015) online: <https://cdnantiterrorismlawaudit.wordpress.com/2015/03/12/bill-c-51-our-statement-to-the-standing-committee-on-national-security-public-safety/>; National Council of Canadian Muslims, *Submission on Bill C-51, the Anti-Terrorism Act, 2015* (March 2015) online: < http://iclmg.ca/wp-content/uploads/sites/37/2015/03/NCCM_Written_Submission_Bill_C-51_Final.pdf>.

[246] "Open letter to Parliament: Amend C-51 or kill it" *The National Post* (27 February 2015) online:

RECOMMENDATIONS
AI recommends that Canadian authorities should:

- Refrain from unduly resorting to criminal law against expression; and

- Withdraw the provisions in Bill C-51 creating the new criminal offence of advocating or promoting the commission of terrorism offences *in general*, which have the potential to both violate and cast a chill on freedom of expression, and have not been demonstrated to be necessary over and above existing offences of directly inciting, threatening, counselling, or conspiring to commit terrorist activities.

NON-DISCRIMINATION AND RIGHTS OF PERSONS, INCLUDING CHILDREN, BELONGING TO ETHNIC, RELIGIOUS OR LINGUISTIC MINORITIES

THE COMMITTEE ASKS:

19. Please explain what measures are put in place to tackle the continuous precarious situation of Aboriginla peoples living in teh State party, and inform whether the State party intends toa dopt a comprehensive federal strategy that covers all issues related to Aboriginal peoples. In replying, please also comment on: [...] (b) deepening disparities between Aboriginal and non-Aboriginal communities in relation to poverty prevalence and access to basic needs, including housing education and health-care services.

FIRST NATIONS CHILD WELFARE SERVICES (ARTS. 2, 24, 26, 27)

Under the Constitutional division of powers, the federal government bears the responsibility of funding services on First Nations reserves that in other communities would generally be funded by the provincial and territorial governments. However, the federal government's funding of child and family services in First Nations communities is at least 22 percent less per child than what provincial governments dedicate for child protection services in other, predominantly non-Indigenous communities.[247] This is despite often greater needs[248] and the

<http://news.nationalpost.com/full-comment/open-letter-to-parliament-amend-c-51-or-kill-it> [signed by more than 100 Canadian professors of law and related disciplines].

[247] Dr. Rose-Alma J. McDonald and Dr. Peter Ladd et al, *First Nations Child and Family Services Joint National Policy Review: Final Report* (June 2000) online: <http://www.fncaringsociety.com/sites/default/files/docs/FNCFCS_JointPolicyReview_Final_2000.pdf>.

[248] 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:

higher costs of delivering services in small and remote First Nations communities. This underfunding has created a crisis situation for First Nations children and their families. The persistent underfunding has limited the child and family services available in many First Nations communities to the point that the removal of children and their families, meant to be strictly a last resort, has all too often become the only option available when families are not able to provide adequate care.[249] In 2006, the Committee on Economic, Social and Cultural Rights expressed concern that Aboriginal families "are overrepresented in families whose children are relinquished to foster care."[250] Today, the continued failure to adequately assist these families through culturally appropriate counselling and other family services has led to more First Nations children being taken away from their families today than at the height of the residential school era in the 1940s and 50s.[251]

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*.[252] 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).[253] The case was heard by the Tribunal on its merits in October 2014. The Tribunal has not yet rendered its decision.

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- Ensure that child and family services available to First Nations children living on reserves are comparable to those of other children living off reserve and sufficient to meet their needs.

See Fren 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.

[249] For a detailed overview of First Nations child welfare services, see Assembly of First Nations, *Kiskisik Asawisak: Remember the Children: Understanding the Overrepresentation of First Nations Children in the Child Welfare System* (2011) online: < http://cwrp.ca/sites/default/files/publications/en/FNCIS-2008_March2012_RevisedFinal.pdf>.

[250] CESCR 2006, *supra* note 89 at para 24.

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

[252] RSC 1985, c H-6.

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

FIRST NATIONS EDUCATION (ARTS. 2, 24, 26, 27)

As with child and family services, the federal government significantly underfunds schools on First Nations reserves when compared to provincial funding of schools in predominantly non-Indigenous communities.[254] The Canadian Centre for Policy Alternatives estimates that the accumulated funding shortfall between 1996 and 2014 amounted to more than $3 billion.[255]

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 school system.[256]

Last year, the federal government announced plans to significantly increase funding for First Nations schools and school programmes beginning in 2016.[257] However, the funding commitment was conditional on First Nations support for proposed legislation known as the *First Nations Control of First Nations Education Act*.[258]

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

The proposed act has been widely rejected by First Nations as failing to respect their inherent rights, including the right to self-government, and as imposing a single national model of school administration and accountability in place of the more regional approach considered

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[254] First Nations Child and Family Caring Society, *Jordan & Shannen: First Nations children demand that the Canadian Government stop racially discriminating against them* (Submission to the UN Committee on the Rights of the Child, 29 January 2011) online: <http://www.fncaringsociety.com/sites/default/files/15.UNCRC_report_Canada_2011_final.pdf>.

[255] Canadian Centre for Policy Alternatives, *Striking a Better Balance: Alternative Federal Budget, 2014* (2014) online: <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/02/AFB2014_MainDocument.pdf>.

[256] Scott Haldane, George E Lafond and Caroline Krause, *Nurturing the Learning Spirit of First Nations Students* (2012) online: < http://www.afn.ca/uploads/files/education2/national-panel.pdf>.

[257] Treasury Board of Canada, "Canada's Economic Action Plan – First Nations Education Act" online: < http://www.actionplan.gc.ca/en/initiative/first-nations-education-act> [Haldane et al].

[258] Bill C-33, *An Act to establish a framework to enable First Nations Control of First Nations Education Act*, 2nd Sess, 41st Parl (2013).

necessary to respect the diversity of First Nations cultures, histories and needs.[259] In 2012, a federally-appointed panel on First Nations education called on the government to work with First Nations to develop legislation that would provide sustained, equitable funding; ensure accountability of all partners – including the federal and provincial governments as well as First Nations – and which would have a clear mandate to uphold First Nations children's rights to education, language, and culture.[260] The proposed legislation makes limited references to these rights.

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- Take urgent measures to close the gap in funding for education of First Nations children living on reserves in order to ensure that the right to education is fulfilled without discrimination and that adequate remedy is provided for the harms done by past policies and programmes such as the Indian Residential School system.

THE COMMITTEE ASKS:

20. Please provide updated information on the policies and practices initiated to avoid the extinguishment of inherent Aboriginal rights and titles [...] Please also comment on reports of limited consultations with Aboriginal peoples when their land rights may be affected by government action.

INDIGENOUS LAND RIGHTS (ARTS. 1, 2, 26, 27)

UN treaty bodies, experts, and other international and regional human rights mechanisms have on several occasions commented that disputes over Indigenous peoples' ownership of and rights to control and benefit from their traditional lands remain persistently unresolved, and called on the Canadian government to take concrete and urgent steps to restore and respect Indigenous peoples' rights to their lands, territories, and resources.[261] As noted by this 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."[262] In 2006, the Committee on Economic, Social and Cultural Rights called on Canada to "re-examine its policies and practices towards the inherent rights and titles of Aboriginal peoples, to ensure that policies and practices do

[259] E.g., First Nations Education Steering Committee, "Letter to Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development" (9 April 2014) online: <http://www.fnesc.ca/wordpress/wp-content/uploads/2012/12/April-9_2014-Letter-to-Minister-Valcourt-Re-Canadas-Proposal-for-National-First-Nations-Education-Legislation.pdf>.

[260] Haldane et al, *supra* note257.

[261] Human Rights Committee 1999, *supra* note 48; Stavenhagen, *supra* note 90; Anaya Report, *supra* note 91; UN Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN Doc E/C.12/1/Add/31 (10 December 1998) [CESCR 1998].

[262] Human Rights Committee 1999, *supra* note 48 at para 8.

not result in extinguishment of those rights and titles."[263] In a 2009 complaint brought by the Hul'qumi'num Treaty Group before the Inter-American Commission on Human Rights regarding their decades of failed efforts to obtain redress for the historic, unilateral appropriation of much of their territory, the Commission found that the available mechanisms to provide redress for land rights violations in Canada are too slow and too onerous to meet international standards of justice.[264]

The federal government has predicted 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.[265] Federal government claims that these projects will "translate to hundreds of thousands of jobs in every sector of the Canadian economy and in every region in the country"[266] fail to account for the potential impact on the traditional occupations of Indigenous peoples which remain importance sources of food and livelihood for people who are otherwise marginalized in the Canadian economy.

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.[267] 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.[268] As a consequence, Indigenous peoples are repeatedly forced to enter into

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[263] CESCR 2006, *supra* note 89 at para 37.

[264] *Hul'qumi'num Treaty Group* (2009) Inter-Am Comm HR, Petition 592-07, Admissibility Report No 105-09 online: < https://www.cidh.oas.org/annualrep/2009eng/Canada592.07eng.htm>; See also AI, "Right to Consultation and Consent of Indigenous Peoples in the Americas" (Written statement to the 21st session of the UN Human Rights Council, 10-28 September 2012) (Index: AMR/01/007/2012) 27 August 2012 online: <https://www.amnesty.org/download/Documents/20000/amr010072012en.pdf>.

[265] 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> [Responsible Resource Development Creates Jobs].

[266] *Ibid*.

[267] Amnesty International, *"Pushed to the Edge": The Land Rights of Indigenous Peoples in Canada* (Index: AMR 20/02/2009) September 2009 online: < http://www.amnesty.ca/sites/default/files/amr200022009en-canada-pushed-to-edge.pdf>; Amnesty International, *Americas: Governments must stop imposing development projects on Indigenous peoples' territories* (Index: AMR 01/005/2012) 8 August 2012 online: <http://www.amnesty.ca/sites/default/files/2012-08-08amr010052012engovtstopdevtprojects.pdf>.

[268] E.g. Bill C-38 and Bill C-45, omnibus bills adopted by the federal Parliament in 2012, included a new *Canadian Environmental Assessment Act* and amended dozens of additional federal laws. Changes included greater government discretion over which projects would be subject to independent environmental assessment and elimination of federal assessments altogether for many types of projects. In 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

long an expensive court cases to defend their rights to live on, benefit from, and determine the use of their traditional territories.

Despite SCC rulings affirming that there are circumstances in which decisions should only be made with the consent of the affected Indigenous peoples,[269] the federal government has persisted in denouncing the standard of free, prior, and informed consent set out in the *UN Declaration on the Rights of Indigenous Peoples* and in international human rights more broadly, and characterized this standard as irreconcilable with Canadian law.[270]

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.[271] If the project goes ahead, it will lead to pipeline construction across roughly 1,000 rivers and streams in the traditional territories of Indigenous peoples in Alberta and British Columbia. The decision to certify the Northern Gateway project is currently subject to a number of applications for judicial review before the Federal Court of Appeal.[272]

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

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environmental assessment of new and modified natural gas processing plants and ski and all-season resorts. These amendments were enacted without any consultation with affected Indigenous peoples. As a result of subsequent protests from First Nations, the day after the amendments were passed, British Columbia Environment Minister Mary Polak acknowledged that First Nations had not been consulted, apologized, and announced that the amendments would be rescinded: see "B.C. rescinds environmental assessment exemption" *CBC News* (16 April 2014) online: < http://www.cbc.ca/news/canada/british-columbia/b-c-rescinds-environmental-assessment-exemption-1.2613053>.

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

[270] "Canada's Statement on the World Conference on Indigenous Peoples Outcome Document" online: <http://www.afn.ca/index.php/en/news-media/latest-news/canadas-statement-on-the-world-conference-on-indigenous-peoples-outcom>.

[271] See "Decision Statement Issued under Section 54 of the *Canadian Environmental Assessment Act, 2012* and Paragraph 104(4)(b) of the *Jobs, Growth and Long-term Prosperity Act*" online: < http://gatewaypanel.review-examen.gc.ca/clf-nsi/dcmnt/dcsnsttmnt-eng.html>; See also 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>.

[272] Court File Nos. A-56-14, A- 59-14, A-63-14, A-64-14, A-67-14, A-437-14, A-439-14, A-440-14, A-442-14, A-443-14, A-445-14, A-446-14, A-447-14, A-448-14, A-514-14, A-517-14, A-520-14, A-522-14.

which they rely to maintain their traditional culture and livelihoods.[273]

In October 2014, the federal government approved the Site C Dam project which will flood more than 80 kilometres of the Peace River Valley in Northern British Columbia. An environmental impact assessment found that the flooding would "severely undermine" First Nations, Métis, and non-Aboriginal use of the area for hunting, trapping, and gathering plant medicines, would make fishing unsafe for at least a generation, and would submerge burial grounds and other crucial cultural and historical sites.[274] First Nations are also challenging this project before the courts.[275]

These actions by Canadian officials are at odds with the legal standards articulated by Canada's highest court. For example, on 26 June 2014, the SCC released a landmark unanimous decision recognizing the right of the Tsilqhot'in people to own, control, and enjoy the benefits of approximately 2,000km^2 of land at the heart of their traditional territory in central British Columbia.[276] This decision marked the first time that a court in Canada has upheld the continued right of an Indigenous nation to own and control traditional lands claimed by the state as public lands. The decision also builds on previous decisions to clarify the obligation of government to obtain the consent of Indigenous peoples in decisions over their own lands. The judgement also sets out a clear and rigorous test to determine whether it is permissible for governments to override Indigenous peoples' own decisions. It is unclear how, if at all, governments in Canada intend to incorporate the standards set out in this decision in their laws and policies.

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- Ensure that the positions taken by government in negotiation 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; and

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

THE COMMITTEE ASKS:

[273] Federal Court of Appeal Court File No. A-354-14.

[274] See Government of British Columbia, "Site C to provide more than 100 years of affordable, reliable clean power" (16 December 2014) online: < http://www.newsroom.gov.bc.ca/2014/12/site-c-to-provide-more-than-100-years-of-affordable-reliable-clean-power.html >; See also "Site C dam approved by B.C. government" *CBC News* (16 December 2014) online: <http://www.cbc.ca/news/canada/british-columbia/site-c-dam-approved-by-b-c-government-1.2874433>.

[275] Federal Court of Canada Court File No. T-2292-14; Supreme Court of British Columbia Court File No. 144690.

[276] *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44.

21. Please update the Committee on measures taken to reform the Indian Act with a view to: (a) removing any remaining discriminatory provisions, and (b) affording greater influence in decision-making to Aboriginal peoples, while indicating whether, and if so, how the concerned communities were consulted in reforming the Indian Act.

2010 *INDIAN ACT* AMENDMENTS: MORE FAILED REMEDIAL LEGISLATION (ARTS. 2, 26, 27)

In response to successive court decisions in the case of *McIvor v Canada*[277] finding that the 1985 *Indian Act* is inconsistent with the sex equality guarantees of the *Charter*, in 2010 Parliament passed Bill C-3, *An Act to promote gender equity in Indian registration.*[278] However, like previous amendments, Bill C-3, which came into force in January 2011, has not fully addressed the legacy of sex discrimination in the *Indian Act*.

The *Indian Act* is the legislative regime that has been imposed on First Nations people to regulate their individual and collective relationship to the Canadian government. Under the *Indian Act*, the federal government maintains a registry of "Status Indians." Some rights and benefits are based directly on this registered status. This includes certain health benefits and financial support for post-secondary education. For those First Nations that base membership on registration, status is also essential in order to have access to many additional rights and government benefits, including band election voting rights, the right to reside on reserve lands, harvesting rights such as rights to hunt and fish on the traditional lands of the First Nation, and access to on reserve housing, education, social services, and healthcare.[279] Although the concept of status was imposed on First Nations, it has also taken on a symbolic and personal importance for many First Nations women and men and for how they are perceived and treated in Indigenous and non-Indigenous society.[280]

Prior to 1985, the *Indian Act* directly and explicitly discriminated against First Nations women by taking status away from women who married non-status men while, in contrast, leaving the status of men who "married out" unchanged and granting status to the women they married. The Native Women's Association of Canada has said of these discriminatory provisions that, "[f]or 100 years, First Nations women who married non-Indians were banished from their communities, barred from their families and stripped of their legal rights as Indians."[281] Until 1985, the *Indian Act* also made the transmission of Status to descendants dependent on the male line, so that regardless of the status of the mother, a child would only have status if the father had status.

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[277] 2007 BCSC 827; 2009 BCCA 153.

[278] 3rd Sess, 40th Parl, 2010.

[279] Taiaiake Alfred, *First Nation Perspectives on Political Identity* (Assembly of First Nations, 2009) online: <http://64.26.129.156/misc/FN-political-identity.pdf>.

[280] Pamela D. Pameter."Presentation to the Standing Committee on Aboriginal Affairs and Northern Development Re; Bill C-3 – Gender Equity in Indian Registration Act" (20 April 2010) online: < ftp://www.indigenousnationhood.com/docs/aaon-submit/Dr-PP.pdf>..

[281] Native Women's Association of Canada, *Aboriginal Women, Self-Government and the Canadian Charter of Rights and Freedoms* (1991) at 14 online: <http://www.nwac.ca/files/reports/AboriginalWomenSelfGovCndnChtrofRightsandFreedoms.pdf>.

In 1985, in response to the 1981 decision of this Committee in *Lovelace v Canada*,[282] the Act was amended with the intention of restoring status to women who had been disenfranchised under the discriminatory provisions of the past and eliminating discrimination going forward. These amendments, however, failed to fully remedy the legacy of discrimination and, in fact, perpetuated further discrimination against the women who had lost status and their descendants, by assigning the reinstated women and their descendants to inferior classes of status.

In 1985, the federal government enacted amendments to the *Indian Act* through Bill C-31 in attempts to remedy its discriminatory effects. However, new provisions introduced into the Act created different categories of status that grant equal access to benefits and services, but unequal ability to pass status on to their descendants. Under the new rules, children with only one status parent have a different form of status than children with two status parents. The nature of this difference, known as the second generation cut off rule, is that while a person with only one status parent can have status themselves, they can pass on status to their own children only if their co-parent also has status.

This new, more restricted form of status was applied "going forward" to all children born since 1985 who have only one parent with status, regardless of whether that parent is their mother or their father. Critically, however, under the amended act, the new differentiation of status was also applied retroactively to children of women who regained status under Bill C-31. As a consequence, the grandchildren of women who had been disenfranchised could only have status if both parents had status regardless of when they or their parents were born.

As a result of the 1985 amendments, more than 114,000 women and their descendants regained status.[283] However, because of the retroactive application of the second generation cut off rule, it was rare for grandchildren of disenfranchised women to be able to regain status.

Under the 2011 amendments, all grandchildren of women who had lost status by marrying out are now eligible for status, provided they or one of their siblings was born since 1951.[284] The amendment allows for an estimated 45,000 people[285] to regain status.

However, these individuals have access only to a limited form of status that makes their ability to pass on status to their own children dependent on the status of the other parent. This is a restriction that does not apply to status Indians of parallel generations who, because

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[282] *Communication No. R.6/24*, UN Doc Supp No. 40 (A/36/40) (29 December 1977).

[283] Megan Furi and Jill Wherrett, "Indian Status and Band Membership Issues" *Library of Parliament* (February 2003) online: <http://www.parl.gc.ca/Content/LOP/ResearchPublications/bp410-e.htm#achangestx>.

[284] Mary C. Hurley and Tonina Simeone, *Bill C-3: Gender Equity in Indian Registration Act* (Legislative Summary, 15 November 2010) online: <http://www.parl.gc.ca/Content/LOP/LegislativeSummaries/40/3/c3-e.pdf>.

[285] Aboriginal Affairs and Northern Development Canada, "Frequently Asked Questions: Gender Equity in Indian Registration Act" online: <http://www.aadnc-aandc.gc.ca/eng/1100100032481/1308588720984>.

they trace their descent from the male line, are not affected by the disenfranchisements of the past.[286]

In addition, the latest amendments still exclude the following groups on the grounds of sex:

- Grandchildren born prior to 4 September 1951, who are descendants of status women who married non-status men, (in contrast, comparable grandchildren of status men are eligible for status);

- Grandchildren born prior to 17 April 1985, to status women who parented in common-law unions with non-status men; and

- Female children born prior to 17 April 1985 who are referred to in the legislation as "illegitimate" (in contrast, male "illegitimate" children are eligible for status).

As a result of Bill C-3's deficiencies, there is a petition pending before this Committee[287] (McIvor Petition) which relies on Articles 26, 2(1), 3, 27, and 2(3)(a) of the *ICCPR*. This Committee has on file documents from the Native Women's Association of Canada and the British Columbia Union of Indian Chiefs in support of the McIvor Petition.

Also, as a matter of administrative policy in order for the children of status women to be recognized as having full status, to establish Indian paternity, the identity of the father must be declared and the signatures of both parents must be presented, otherwise it will automatically be assumed that the father is non-Indian. That procedural sex discrimination was not addressed by Bill C-3.

A recent decision of the Inter-American Commission on Human Rights[288] finds that in addressing only particularly subsets of indigenous women who face discrimination, the *Indian Act* as amended in 2011 fails to fully address remaining concerns about gender equality. The Inter-American Commission also found that indigenous women face multiple challenges with respect to securing status for themselves and their children, and in some cases the presence of a second, intermediate status classification can rise to the level of cultural and spiritual violence against indigenous women, since it creates a perception that certain subsets of indigenous women are less purely indigenous than those with "full" status. This can have severe negative social and psychological effects on the women in question, even aside from the consequences for a woman's descendants.

Most recently, on 6 March 2015, the Committee on the Elimination of Discrimination against

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[286] For detailed analysis of the 2010 amendments, see: National Aboriginal Law Section, Canadian Bar Association, *Bill C-3: Gender Equity in Indian Registration Act* (Ottawa: Canadian Bar Association, 2010) online: <http://www.nwac.ca/sites/default/files/imce/WEBSITES/201105-06/Bill%20C-3-eng1.pdf>.

[287] *McIvor v Canada, Communication No. 2020-2010*.

[288] *Missing and Murdered Indigenous Women in British Columbia*, Canada OEA/Ser.L/II.Doc.30/14 (21 December 2014).

Women conducted a similar analysis[289] and recommended that Canada amend the *Indian Act* to eliminate discrimination against women with respect to the transmission of Indian status and in particular to ensure that recognition of status is never contingent on the sex of one's ancestor and remove administrative impediments to ensure effective registration, regardless of whether or not the father is identified or has recognized the child.

RECOMMENDATIONS

AI recommends that Canada should:

- Take timely measures to ensure that s 6(1)(a) of the status registration regime introduced by the 1985 *Indian Act* and re-enacted by the *Gender Equity in Indian Registration Act* (Bill C-3) is interpreted or amended so as to entitle to registration those persons who were previously not entitled to be registered under s 6(1)(a) solely as a result of the preferential treatment accorded to Indian men over Indian women born prior to 17 April 1985, and to patrilineal descendants over matrilineal descendants, born prior to 17 April 1983; and

- Work with First Nation's women's organizations to eliminate any other sex discrimination in access to recognition of status under the *Indian Act*.

THE COMMITTEE ASKS:

21. Please also respond to reports suggesting that Aboriginal peoples lack effective participation in the design of legislation that affects them, including the Canadian Environmental Assessment Act, the National Energy Board Act, the Fisheries Act, the Navigable Waters Protection Act, and the Jobs and Growth Act.

LACK OF CONSULTATION IN LEGISLATIVE DESIGN AFFECTING CANADA'S ABORIGINAL PEOPLES (ARTS. 2, 26, 27)

In 2012, the federal government introduced two omnibus budget bills – Bills C-38 [290]and C-45[291] – which enacted legislative changes to a number of statutes, including the *Canadian Environmental Assessment Act*, the *National Energy Board Act*, the *Fisheries Act*, the *Navigable Waters Protection Act,* and the *Jobs and Growth Act*. Changes included greater government discretion over which projects would be subject to independent environmental assessment and the elimination of federal assessment altogether for many types of projects.

Despite the fact these changes affected legislation relied on by Canada as part of how it upholds the constitutionally protected rights of Indigenous peoples, there was no consultation with Indigenous peoples' organizations prior to introducing the legislation. This arbitrary action was one of the key factors sparking the "Idle No More" movement and the high-profile

[289] CEDAW 2015, *supra* note 97.

[290] *Jobs, Growth and Long-Term Prosperity Act*, 1st Sess, 41st Parl, 2012.

[291] *Jobs and Growth Act, 2012,* 1st Sess, 41st Parl, 2012.

hunger strike of Chief Theresa Spence of Attawapiskat.[292]

In December 2014, in response to a legal challenge brought by the Mikisew Cree First Nation, the Federal Court of Canada found that the government had breached its constitutional obligations to Indigenous peoples by failing to consult with the First Nation prior to adopting these omnibus bills affecting significant changes to laws affecting their rights. The Court declined, however, to order any remedial measures to address this breach.[293]

In May 2015, the governing majority voted down a private members bill that would have required a review of existing legislation and new bills to ensure their consistency with the *UN Declaration on the Rights of Indigenous Peoples* (*UN Declaration*).[294] In June 2015, the Truth and Reconciliation Commission of Canada called upon the "federal, provincial, territorial, and municipal governments to fully adopt and implement the *UN Declaration*" as an important component of providing redress for the legacy of residential schools and advancing reconciliation with Indigenous communities.[295]

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- In cooperation with Indigenous peoples, and in keeping with the recommendation from the Truth and Reconciliation Commission, 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.

DISCRIMINATION ON THE BASIS OF GENDER IDENTITY (ARTS. 2, 26)

In Canada and worldwide, transgender individuals face a heightened risk of murder, assault, and other crimes and human rights violations. [296] They also experience widespread

[292] Amnesty International, "Open Letter Urging a Meeting with Chief Theresa Spence" (28 December 2012) online: <http://www.amnesty.ca/news/open-letters/open-letter-urging-a-meeting-with-chief-theresa-spence>.

[293] *Courtoreille v Canada (Aboriginal Affairs and Northern Development)*, 2014 FC 1244.

[294] Bill C-641, *United Nations Declaration on the Rights of Indigenous Peoples Act*, 2nd Sess, 41st Parl, 2014.

[295] Truth and Reconciliation Commission, *supra* note 99 at paras 43-45.

[296] UN Human Rights Council, *Resolution adopted by the Human Rights Council: 17/19 Human rights, sexual orientation and gender identity*, 70th Sess, UN Doc A/HRC/RES/17/19 (14 July 2011); UN Human Rights Council, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, 19th Sess, UN Doc A/HRC/19/41 (17 November 2011) at para 1; See also Jaime Grant, Lisa A Lottet, Justin Tanis, Jack Harrison, Jody L Herman, and Mara Keisling, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011) at 3-6; and Catherine Taylor and Tracey Peter, *Every Class in Every School: Final Report on the First National Climate Survey on Homophobia, Biphobia, and Transphobia in Canadian Schools* (Toronto:

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.[297] 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, *An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity)*, has passed at the House of Commons but has been stalled in the Senate, where it faces opposition from a number of government-appointed Senators.[298] The Bill would add gender identity to the prohibited grounds of discrimination under the *Canadian Human Rights Act* as well as the hate crime provisions in the *Criminal Code*. Bill C-279 has been endorsed by the police, who indicate it would significantly improve their ability to investigate and punish crimes committed against transgender individuals.[299]

Despite the clear need for the protection Bill C-279 would provide for some of the most vulnerable members of Canadian society, the majority of a Senate Committee voted for an amendment that would *allow* discrimination on the basis of gender identity by exempting from the law's application any facilities that are restricted to one sex only, such as correctional facilities, crisis counselling facilities, shelters, washrooms, shower facilities, and changing rooms.[300] As stated by Senator Mitchell, who voted against the amendment,

> this amendment is very discriminatory and [...] makes the pith and substance of the bill very problematic [...] It suggests that a transgender person is a threat to public safety, which is not so. On one hand we are saying that we are upholding gender identity, but on the other hand we are saying that transgender persons cannot use certain facilities because we perceive them as aggressors when we say that others are in a vulnerable situation. There is therefore a presumption that these people are engaging in offending behaviour, and that is just another of the many difficulties they

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Egale Human Rights Trust, 2011) at 15-17 online: <http://egale.ca/wp-content/uploads/2011/05/EgaleFinalReport-web.pdf>.

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

[298] 1st Sess, 41st Parl, 2013 (Second Reading in the Senate).

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

[300] Standing Senate Committee on Legal and Constitutional Affairs, 2nd Sess, 41st Parl, Volume 149, Issue 130 (31 March 2015) online: < http://www.parl.gc.ca/Content/Sen/Chamber/412/Debates/130db_2015-03-31-e.htm?Language=E#34>.

must face.[301]

Continued debate on Bill C-279 has been adjourned. If the amendments are accepted by the Senate, the Bill will be returned to the House of Commons for a new vote. However, if the Bill is not passed before Canada's fast-approaching federal election, it will likely die.[302]

RECOMMENDATIONS

AI recommends that Canadian authorities should:

- Reject the discriminatory amendments to Bill C-279 and enact it in its original form without delay.

FAILURE TO ADOPT A HOUSING STRATEGY (ART. 2, 6, 26)

This Committee has called upon the Canadian government to address homelessness to comply with the right to life,[303] 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*, and has urged the government to design and implement a national strategy to reduce homelessness.[304]

The government has steadfastly refused to adopt a human rights based housing strategy. In February 2013, the government opposed and defeated private member's legislation which called upon the Minister responsible for the Canada Mortgage and Housing Corporation to "establish a national housing strategy designed to respect, protect, promote and fulfil the right to adequate housing as guaranteed under international human rights treaties ratified by Canada."[305]

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[301] *Ibid*.

[302] See Robin Levinson King, "Trans rights bill amendment would bar trans people from public washrooms" *The Star* (25 February 2015) online: < http://www.thestar.com/news/canada/2015/02/25/trans-rights-bill-amendment-would-bar-trans-people-from-public-washrooms.html?fb_ref=Default>.

[303] Human Rights Committee 1999, *supra* note 48 at para 12.

[304] CESCR 1998, *supra* note 261; UN 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); UN 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).

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

A recent court case launched in Ontario[306] sought 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, and dismissed the case without hearing any arguments on its merits for failing to disclose a reasonable cause of action, 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 envisages."[307] The Court of Appeal for Ontario upheld the Superior Court's decision that the matters were not justiciable, effectively denying the appellants, a number of homeless individuals, from a full hearing. Leave to appeal before the SCC is currently being sought.[308]

RECOMMENDATIONS

AI recommends that Canadian authorities should:

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

- Recognize the indivisibility of human rights and comply with its international human rights obligations by ensuring access to justice for Canada's homeless in recognizing the justiciability of their claims.

RECOMMENDATIONS

AI recommends that Canada:

IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS (ART. 2)

- Convene regular meetings of federal, provincial, and territorial ministers responsible for human rights, and initiate a process of law, policy, and institutional reform that would ensure effective, transparent, and politically accountable implementation of Canada's international human rights obligations. Such reforms should recognize the indivisibility of human rights and ensure the protection of all rights under the *Canadian Charter*, which is Canada's primary vehicle for implementing its international human rights obligations; and

- Take steps to facilitate in good faith and without undue delay the visits of Special Rapporteurs who have requested to conduct missions in Canada.

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[306] *Tanudjaja v Canada (Attorney General)* 2014 ONCA 852.

[307] *Tanudjaja v Attorney General (Canada)*, 2013 ONSC 5410.

[308] Court File No. 36283

LACK OF ACCOUNTABILITY STRUCTURES FOR SECURITY AND LAW ENFORCEMENT AGENCIES (ART. 2)

Establish robust oversight and effective review of agencies and departments engaged in national security activities. In particular, Canada should:

- Develop a model of integrated, expert, and independent review as proposed by Justice Dennis O'Connor in his 2006 Arar Inquiry Report;

- Ensure that all review and oversight bodies and processes have sufficient powers and resources to carry out their work effectively; and

- As part of an overall system of review and oversight, institute a robust system of parliamentary oversight of national security in Canada.

MONITORING THE HUMAN RIGHTS CONDUCT OF CANADIAN OIL, MINING, AND GAS COMPANIES ABROAD (ART. 2)

- 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; and

- Institute a policy of ensuring that all trade deals are subject to independent and comprehensive human rights impact assessments before they are concluded and at regular intervals after coming into force.

STATE IMMUNITY ACT (ART. 2)

- 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.

DEPORTATION TO TORTURE (ARTS. 6, 7)

- Amend the *IRPA* and incorporate the internationally-recognized absolute ban on *refoulement.*

INTELLIGENCE GATHERING AND INFORMATION SHARING (ARTS. 6, 7, 17, 21)

- Amend the Ministerial Direction with respect to intelligence gathering and torture to ensure full compliance with international human rights obligations.

EFFECTIVE REMEDIES FOR VICTIMS OF TORTURE AND ILL-TREATMENT (ARTS. 2, 7, 9, AND 24)

- Ensure prompt redress for Abdullah Almalki, Ahmad Abou-Elmaati, Muayyed Nureddin, and Omar Khadr for Canada's complicity or direct involvement in their human rights violations, as confirmed by the Iacobucci Inquiry and by the Supreme Court of Canada.

CANADIANS DETAINED ABROAD (ARTS. 2, 6, 7, 9)

- In keeping with obligations with respect to non-discrimination and equal treatment, intervene consistently and strongly on behalf of Canadian citizens and residents who have been detained abroad and whose human rights are violated by foreign authorities.

FAILURE TO RATIFY THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE (ART. 7)

- Ratify the *Optional Protocol to the Convention against Torture* without further delay.

VIOLENCE AGAINST WOMEN AND GIRLS (ARTS. 2, 3, 6, 7, 24, 26)

- Develop a comprehensive national plan to address violence against women in the country;

- Establish an independent public inquiry to examine violence against Indigenous women and girls with a view to developing and implementing a comprehensive national plan of action on violence and discrimination against Indigenous women and girls; and

- Improve Canada's foreign policy to ensure the protection of the full range of sexual and reproductive rights for all women.

REFUGEE PROTECTION: "IRREGULAR ARRIVALS" AND "SAFE COUNTRIES OF ORIGIN" (ARTS. 2, 6, 7, 9, 14, 26)

- Amend provisions governing "irregular arrivals" and "safe countries of origin" refugee claimants to comply with the principles of *non-refoulement,* non-discrimination, and prohibition of arbitrary detention set out in international human rights and refugee law or otherwise repeal those provisions; and

- Ensure that the categories of inadmissibility to Canada in the *IRPA* do not go beyond the grounds for exclusion from refugee status set out in the *Refugee Convention*.

IMMIGRATION DETENTION - INDEFINITE DETENTION, DETENTION OF CHILDREN (ARTS. 2, 6, 7, 9, 14, 26)

- Refrain from detaining refugee claimants and other migrants solely as a measure of immigration control other than in the most exceptional circumstances and then only for the shortest period of time possible immediately prior to detention;

- In all circumstances refrain from detaining individuals indefinitely;

- Never detain children and trafficking victims; and

- In cases where it is necessary to impose restrictions on movement to prevent absconding or to ensure compliance with a removal order, use the least restrictive alternatives to detention available to achieve those objectives, and resort to detention only in the most exceptional of circumstances.

REFUGEE AND MIGRANT HEALTH (ARTS. 2, 6, 7, 26)

- Reinstate the Interim Federal Health Program and ensure that all individuals in Canada, including refugee claimants, refugees, and migrants, have access to necessary health care.

SECURITY CERTIFICATES AND SPECIAL ADVOCATES (ARTS. 2, 6, 7, 9, 14, 26)

- Amend the security certificate procedure to address the concerns raised by the Committee against Torture and conform to Canada's international human rights obligations with respect to ensuring the right to a fair and public hearing before an independent and impartial tribunal; and

- Withdraw the provisions of Bill C-51 which will further restrict the ability of special advocates to access all information presented to the judge by the government against the individual named in the security certificate.

THE *SECURE AIR TRAVEL ACT* (ARTS. 2, 12, 14, 26)

- Amend Bill C-51 to ensure that any appeal procedures in the proposed *Secure Air Travel Act* provide the listed individual with meaningful access to the full information and accusations against them sufficient to mount an effective challenge to the listing.

LISTING OF TERRORIST ORGANIZATIONS (ARTS. 2, 14, 22)

- Ensure that organizations listed as terrorist entities under Canada's *Criminal Code* obtain access to a meaningful judicial process to review the reasons for the listing, including by having access to sufficient information in order to respond to allegations made against them, in conformity with international standards of trial fairness.

REVOCATION OF CITIZENSHIP (ARTS 2, 14, 26)

- Repeal the recent amendments to the *Citizenship Act* allowing for the revocation of citizenship; and

- Ensure that any decisions concerning the acquisition, deprivation, or revocation of nationality are conducted in accordance with the stringent due process standards set out in international human rights law.

SOLITARY CONFINEMENT (ARTS. 2, 6, 7, 9, 10, 14, 26)

- Limit administrative segregation, which is tantamount to solitary confinement, as a measure of last resort only, for as short a time as possible, subject to independent review, and only pursuant to authorization by a competent authority;

- Prohibit prolonged administrative segregation – that is, for more than 15 consecutive days; and

- Prohibit imposing administrative segregation on persons with mental or physical disabilities when their conditions would be exacerbated by such measures.

RECOGNIZANCE WITH CONDITIONS: DETENTION WITHOUT CHARGE (ART. 9, 14)

- Withdraw the provisions of Bill C-51 which grant authorities expanded powers to detain a

person on the basis of a recognizance with conditions which significantly lower the threshold of suspicion and increase the maximum time for holding and individual in police custody without charge.

IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE (ARTS. 2, 6, 7, 9, 10, 14, 26)

- Repeal Bill C-53 and ensure that any life sentence handed down by Canadian courts is accompanied with periodic reviews of that sentence with the prospect of release. Ensure that rehabilitation and reintegration remain the principal aims of the Canadian penitentiary system, such that inmates who have been socially rehabilitated and who no longer pose a danger to the public are paroled and reintegrated into society.

CANADIAN SECURITY INTELLIGENCE SERVICE – NEW POWERS OF THREAT REDUCTION (ARTS. 2, 6, 7, 9, 10, 14, 17, 18, 19, 21, 22)

- Withdraw in their entirely the provisions of Bill C-51 granting CSIS unprecedented new powers to act to reduce security threats, considering that:

  - These new powers are based on an existing and overly-broad definition of "threats to the security of Canada" and the danger that a wide range of protest activity that is not criminal would be susceptible to interference and disruption through these new powers;

  - Bill C-51 does not sufficiently circumscribe the particular measures that officers would be allowed to take to reduce threats, and leaves open the possibility of the violation of the rights to liberty, privacy, expression, association, peaceful assembly, and freedom from torture and ill-treatment;

  - Bill C-51 authorizes Federal Court judges to issue warrants approving CSIS activity that violates the *Charter* and international law; and

  - These powers are entrusted to security and intelligence officials who do not have the specific training, command structures, accountability, or public transparency required of law enforcement agencies.

EXCESSIVE USE OF FORCE BY THE POLICE DURING PROTESTS (ARTS. 2, 7, 9, 19, 21)

- Call an independent public inquiry into the conduct of police forces during the G20 protests in Toronto;

- Implement the Ménard Commission's recommendations with respect to police response to public demonstrations, including recognizing the presumption of peaceful assembly, ending the use of excessive force and mass arrests, and conducting police training to ensure that all future conduct adheres to human rights standards set out in international law;

- Implement the recommendations of the Ipperwash Inquiry and conduct an independent assessment of how the OPP has adopted the Framework for Police Preparedness for Aboriginal Critical Incidents into its procedures and organizational culture; and

- Call an independent public review of the police response to the 2007 and 2008 Mohawk protests at Tyendinaga.

RESTRICTING FREEDOM OF EXPRESSION FOR CIVIL SOCIETY ORGANIZATIONS AND HUMAN RIGHTS DEFENDERS (ARTS. 2, 18, 19, 22)

- Cease actions and statements that vilify civil society, environmental, and human rights organizations and that effectively penalise them for exercising the right to freedom of expression;

- Develop a plan of action for the implementation of the 1998 UN *Declaration on Human Rights Defenders*;[309] and

- Ensure that all voices have a meaningful opportunity to be heard and considered in good faith when proposed legislation such as Bill C-51 is debated in Parliament and at the Senate.

CRIMINALIZING EXPRESSION (ARTS. 2, 6, 9, 14, 18, 19, 20, 22)

- Refrain from unduly resorting to criminal law against expression;

- Withdraw the provisions in Bill C-51 creating the new criminal offence of advocating or promoting the commission of terrorism offences *in general*, which have the potential to both violate and cast a chill on freedom of expression, and have not been demonstrated to be necessary over and above existing offences of directly inciting, threatening, counselling, or conspiring to commit terrorist activities.

FIRST NATIONS CHILD WELFARE SERVICES (ARTS. 2, 24, 26, 27)

- Ensure that child and family services available to First Nations children living on reserves are comparable to those of other children living off reserve and sufficient to meet their needs.

FIRST NATIONS EDUCATION (ARTS. 2, 24, 26, 27)

- Take urgent measures to close the gap in funding for education of First Nations children living on reserves in order to ensure that the right to education is fulfilled without discrimination and that adequate remedy is provided for the harms done by past policies and programmes such as the Indian Residential School system.

INDIGENOUS LAND RIGHTS (ARTS. 1, 2, 26, 27)

- Ensure that the positions taken by government in negotiation 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; and

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

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[309] UN General Assembly, *Declaration on Human Rights Defenders*, UN Doc A/RES/53144.

2010 *INDIAN ACT* AMENDMENTS: MORE FAILED REMEDIAL LEGISLATION (ARTS. 2, 26, 27)

- Take timely measures to ensure that s 6(1)(a) of the status registration regime introduced by the 1985 *Indian Act* and re-enacted by the *Gender Equity in Indian Registration Act* (Bill C-3) is interpreted or amended so as to entitle to registration those persons who were previously not entitled to be registered under s 6(1)(a) solely as a result of the preferential treatment accorded to Indian men over Indian women born prior to 17 April 1985, and to patrilineal descendants over matrilineal descendants, born prior to 17 April 1983; and

- Work with First Nation's women's organizations to eliminate any other sex discrimination in access to recognition of status under the *Indian Act*.

LACK OF CONSULTATION IN LEGISLATIVE DESIGN AFFECTING CANADA'S ABORIGINAL PEOPLES (ARTS. 2, 26, 27)

- 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.

DISCRIMINATION ON THE BASIS OF GENDER IDENTITY (ARTS. 2, 26)

- Reject the discriminatory amendments to Bill C-279 and enact it in its original form without delay.

FAILURE TO ADOPT A HOUSING STRATEGY (ART. 2, 6, 26)

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

- Recognize the indivisibility of human rights and comply with its international human rights obligations by ensuring access to justice for Canada's homeless in recognizing the justiciability of their claims.

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