



# CANADA

## AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 30<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, MAY 2018

### FOLLOW-UP TO THE PREVIOUS REVIEWS

Official information regarding implementation of Canada's previous UPR commitments is not publicly available, nor has it been reported to Parliament or legislatures. Several recommendations rejected by the previous government have been taken up by the government of Prime Minister Justin Trudeau following the October 2015 federal election.<sup>1</sup>

Amnesty International has highlighted the Canadian system's inadequacy in ensuring implementation of international human rights obligations, including UPR recommendations.<sup>2</sup> Numerous UN treaty bodies have called on Canada for a publicly accessible, broadly consultative, politically accountable and well-coordinated approach involving various levels of government. Canada's domestic and international obligations concerning Indigenous Peoples necessitate strengthened collaboration with First Nations, Inuit and Métis on commitments affecting their rights. Amnesty International continues to endorse widely-supported submissions for Canada's 2009 and 2013 reviews, calling for legislation to address this longstanding shortcoming regarding international human rights implementation.<sup>3</sup>

### THE NATIONAL HUMAN RIGHTS FRAMEWORK

#### International human rights instruments

In May 2016, the Canadian government indicated it would reverse the previous government's decision not to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Consultations are proceeding with provincial and territorial governments, but there is no time-line for ratification.

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<sup>1</sup> This includes recommendations to establish a national inquiry into violence against Indigenous women and girls, develop an action plan for the UN Declaration on the Rights of Indigenous Peoples, institute a human rights-based housing policy, ratify the Optional Protocols to the UN Convention against Torture and the UN Convention on the Rights of Persons with Disabilities, and support clemency pleas made by Canadian citizens sentenced to death in other countries. These recommendations had not been accepted at the time of the 2013 UPR but have since been taken up by Prime Minister Trudeau's government. Implementation is ongoing and, in some instances, continuing associated concerns are highlighted in this submission.

<sup>2</sup> See for instance: *Canada: Amnesty International Submission to the UN Universal Periodic Review: Fourth session of the UPR Working Group of the Human Rights Council*, February 2009 (AMR 20/004/2008); *Canada: Human rights abuses prevalent among vulnerable groups*, Amnesty International Submission to the UN Universal Periodic Review, April-May 2013, October 2012, (AMR 20/008/2012).

<sup>3</sup> *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 9, 2012; *Promise and Reality: Canada's International Human Rights Implementation Gap*, Joint NGO Submission to the United Nations Human Rights Council in relation to the February 2009 Universal Periodic Review of Canada, September 8, 2008.

Canada has confirmed an intention to accede to the UN Arms Trade Treaty,<sup>4</sup> and is consulting regarding ratification of the Optional Protocol to the Convention on the Rights of Persons with Disabilities. The government has not indicated that any other instruments are being considered for ratification at this time.<sup>5</sup>

Amnesty International has urged Canada to collaborate with Indigenous Peoples' organizations to develop a legislative framework for implementation of the UN Declaration on the Rights of Indigenous Peoples,<sup>6</sup> including coordinated legislative reform and adoption of a national action plan for implementation. The government has recently unequivocally endorsed the Declaration,<sup>7</sup> and established a Ministerial Working Group to bring Canada's laws into compliance with national and international obligations toward Indigenous Peoples.<sup>8</sup> While these are welcome advances, as of October 2017 concerns remain that this approach is piece-meal rather than systemic and comprehensive and that there has been inadequate engagement with rights-holders, contrary to the provisions of the Declaration.

### **Extra-territorial human rights protection, corporate accountability and trade policy**

Canadian extractive companies operate globally and are sometimes implicated in human rights abuses linked to their activities.<sup>9</sup> UN human rights bodies have urged Canada to regulate the human rights impact of Canadian extractive companies operating abroad and provide accountability when rights are breached.<sup>10</sup>

The government's promise to implement a civil society proposal, supported by numerous UN human rights bodies, to establish an Extractive Sector Ombudsperson has been repeatedly delayed.<sup>11</sup>

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<sup>4</sup> Legislation to enable accession has been tabled in Parliament. (Canada, Bill C-47, *An Act to amend the Export and Import Permits Act on the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and other amendments)*, 1<sup>st</sup> Sess., 42<sup>nd</sup> Parl., 2017, (first reading in the House of Commons 13 April 2017).) There are concerns that Canadian arms controls will still not apply to transfers to the United States, including onward transfers to third countries.

<sup>5</sup> This includes the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure; the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; the Convention on the Protection of All Persons from Enforced Disappearances; or the American Convention on Human Rights.

<sup>6</sup> Most recently in the context of the UN Committee on the Elimination of Racial Discrimination review of Canada in August 2017. Amnesty International, *Canada Must Act on UN Recommendations*, 29 August 2017: <https://www.amnesty.ca/news/canada-must-act-un-recommendations>.

<sup>7</sup> The Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs, "Speech delivered at the United Nations Permanent Forum on Indigenous Issues," 10 May 2016: <https://www.canada.ca/en/indigenous-northern-affairs/news/2016/05/speech-delivered-at-the-united-nations-permanent-forum-on-indigenous-issues-new-york-may-10-.html>.

<sup>8</sup> The Right Hon. Justin Trudeau, Prime Minister of Canada, "Announcement of Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples," 22 February 2017: <http://pm.gc.ca/eng/news/2017/02/22/prime-minister-announces-working-group-ministers-review-laws-and-policies-related>.

<sup>9</sup> See, for example: Amnesty International Canada, "Rights at Risk in Guatemala: One year on, concerns about mining and human rights remain," 30 September 2015: <https://www.amnesty.ca/blog/rights-at-risk-in-guatemala-one-year-on-concerns-about-mining-and-human-rights-remain>; Shin Imai, Leah Gardner, and Sarah Weinberger, "The 'Canada Brand': Violence and Canadian Mining Companies in Latin America," (2016) 17 Osgoode Legal Studies Research Paper: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2886584](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2886584).

<sup>10</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-first to twenty-third periodic reports of Canada*, Advance Unedited Version, UN Doc. CERD/C/CAN/CO/21-23, 31 August 2017, para 21; UN Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, 18 November 2016, UN Doc. CEAW/C/CAN/CO/8-9, paras 18-19; UN Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, 13 August 2015, UN Doc. CCPR/C/CAN/CO/6, para 6; UN Working Group on Business and Human Rights, *Statement at the end of visit to Canada*, 1 June 2017: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21680&LangID=E>.

<sup>11</sup> The Hill Times, Liberals 'seriously' considering mining ombudsperson, says federal corporate social responsibility adviser, November 9, 2016, <https://www.hilltimes.com/2016/11/09/feds-seriously-considering-mining-ombudsman-says-canadas-corporate-social-responsibility-envoy/86691>. UN human rights bodies that have supported the call for an Ombudsperson include those noted in note 10, *supra*.

Concern is growing over risks to human rights defenders raising concerns connected to Canadian companies operating abroad.<sup>12</sup> Canada has released guidelines for Canadian diplomats to support human rights defenders,<sup>13</sup> but civil society groups continue to call for their full implementation.<sup>14</sup>

Canada is renegotiating for a North American Free Trade Agreement that includes provisions on gender and Indigenous rights,<sup>15</sup> and exploring a free trade deal with China. Canada's trade agreement with Chile was updated to include gender provisions.<sup>16</sup> Canada does not, however, subject all trade agreements to independent human rights impact assessments.<sup>17</sup>

### **Economic, social and cultural rights**

Amnesty International is concerned that the government lacks effective enforcement mechanisms for economic, social and cultural rights, and advances an interpretation of the *Charter of Rights and Freedoms* denying judicial protection of these rights.<sup>18</sup>

## **PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

Despite welcome steps towards addressing concerns in a number of areas, further reforms are needed to strengthen human rights protection in Canada.

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<sup>12</sup> These concerns have been addressed by UN bodies such as: UN Special Rapporteur on the situation of human rights defenders, *Report of the Special Rapporteur on the situation of human rights defenders*, 30 July 2015, UN Doc. A/70/217, paras 38, 68; UN Special Rapporteur on the situation of human rights defenders, *Report of the Special Rapporteur on the situation of human rights defenders*, 3 August 2016, UN Doc. A/71/281, paras 3, 18-20, 24-31, 34, 37, 40, 45-46, 73-77, 87-88; UN Working Group on Business and Human Rights (UNWGBHR), *supra* note 10.

<sup>13</sup> *Voices at risk: Canada's guidelines on supporting human rights defenders*: [http://international.gc.ca/world-monde/issues\\_development-enjeux\\_developpement/human\\_rights-droits\\_homme/rights\\_defenders\\_guide\\_defenseurs\\_droits.aspx?lang=eng](http://international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng).

<sup>14</sup> This includes special measures to provide protection to human rights defenders working on territory, land and environmental issues.

<sup>15</sup> Global Affairs Canada, "Address by Foreign Affairs Minister on the modernization of the North American Free Trade Agreement (NAFTA)," 14 August 2017: [https://www.canada.ca/en/global-affairs/news/2017/08/address\\_by\\_foreignaffairsministeronthemodernizationofthenorthame.html](https://www.canada.ca/en/global-affairs/news/2017/08/address_by_foreignaffairsministeronthemodernizationofthenorthame.html).

<sup>16</sup> Global Affairs Canada, "Canada breaks new ground as it signs modernized free trade agreement with Chile focusing on trade and gender," 5 June 2017: [https://www.canada.ca/en/global-affairs/news/2017/06/canada\\_breaks\\_newgroundasitsignsmodernizedfreetradeagreementwith.html](https://www.canada.ca/en/global-affairs/news/2017/06/canada_breaks_newgroundasitsignsmodernizedfreetradeagreementwith.html).

<sup>17</sup> An annual human rights assessment of the Canada/Colombia Free Trade Agreement has adopted a limited and largely ineffective approach focused only on identifying human rights impact flowing directly from specific actions taken under the Agreement, such as a particular tariff reduction. There is no wider policy in place requiring all trade details to be assessed for their human rights impact.

<sup>18</sup> *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852.

## INDIGENOUS PEOPLES

### Land rights, treaty obligations and free, prior and informed consent

Serious concerns exist regarding government failure to respect land rights of Indigenous Peoples and uphold treaty obligations; particularly Canada's refusal to uphold their right of free, prior and informed consent.<sup>19</sup> The UN Committee on the Elimination of Racial Discrimination (CERD) recently expressed concern about this failure.<sup>20</sup>

The Site C dam in northeast British Columbia is a stark illustration.<sup>21</sup> Federal and provincial governments approved this massive hydroelectric dam despite First Nations objections and concerns that proceeding violates treaty-protected rights.<sup>22</sup> In a court challenge from two affected First Nations, the federal government maintained it was not obliged to resolve allegations of treaty breaches before authorizing construction, and that treaty-related issues should be dealt with through separate legal actions. That position was upheld in court.<sup>23</sup>

### Substantive equality for Indigenous Peoples

Human rights violations experienced by Indigenous Peoples in Canada are flagrantly evident in access to government services.<sup>24</sup> These violations exacerbate vulnerabilities of Indigenous Peoples to other human rights violations, including violence against Indigenous women and disproportionate incarceration of Indigenous persons. The glaring differences in the nature of the services provided to First Nations children, persons living on reserve, and Inuit communities across the Arctic have frequently attracted condemnation by UN human rights experts<sup>25</sup> and bodies<sup>26</sup> and Canadian courts and tribunals.<sup>27</sup> CERD has called on Canada to "ensure that all children, on and off reserve, have access to all services available to other children in Canada, without discrimination."<sup>28</sup>

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<sup>19</sup> Federal, provincial and territorial governments frequently violate the land rights of Indigenous Peoples by proceeding with major resource developments on Indigenous lands and territories in disregard of treaty obligations and without proper consideration of Indigenous Peoples' own priorities for the use of the affected lands.

<sup>20</sup> CERD noted "violations of the land rights of Indigenous Peoples continue in [Canada], in particular environmentally destructive decisions for resource development which affect their lives and territories continue to be undertaken without the free, prior and informed consent of the Indigenous Peoples, resulting in breaches of treaty obligations and international human rights law."<sup>20</sup> CERD further noted "costly, time consuming and ineffective litigation is often the only remedy in place of seeking free, prior and informed consent, resulting in [federal and provincial governments] continuing to issue permits which allow for damage to land." CERD, *supra* note 10, paras. 19(a) and 19(b).

<sup>21</sup> As of October 5, 2017, the future of the Site C dam was uncertain, as a new provincial government had mandated its Utilities Commission with assessing the dam's economic viability.

<sup>22</sup> Treaty 8 between the Canadian Government and First Nations, first entered into in 1899 and subsequently expanded through adhesion of additional First Nations.

<sup>23</sup> *Prophet River First Nation v. Canada (Attorney General)*, 2015 FC 1030; *Prophet River First Nation v. Canada (Attorney General)*, 2017 FCA 15.

<sup>24</sup> Including education, housing, health care, safe water and sanitation, and child and family services.

<sup>25</sup> Special Rapporteur on the rights of Indigenous peoples, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Addendum—The situation of indigenous peoples in Canada*, 4 July 2014, UN Doc. A/HRC/27/52/Add.2, paras 15-16, 31, 84-85.

<sup>26</sup> Most recently, CERD, *supra* note 10, paras 27-30.

<sup>27</sup> *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2.

<sup>28</sup> CERD, *supra* note 10, para 28(b).

## **Methylmercury contamination**

Indigenous Peoples in northwest Ontario, including the Grassy Narrows First Nation,<sup>29</sup> have endured chronic health problems as a consequence of a company being allowed, in the 1960s, to release 9 metric tonnes of mercury into the river system they relied upon for fishing. Independent studies confirm extensive mercury poisoning or Minamata disease among the community, including children born long after mercury dumping ended.<sup>30</sup> The Ontario government would not fund clean-up efforts until 2017, despite a two-decade old report stating such a clean-up was possible. Federal and provincial governments have failed to provide the health monitoring or specialized care needed by affected communities.<sup>31</sup>

Grassy Narrows is just one example of widespread concerns over the impact of methylmercury contamination on Indigenous Peoples whose health and culture often relies on consumption of fish, seals and other species in which methylmercury accumulates.<sup>32</sup> Expert reports highlight that downstream risks of methylmercury contamination, overlooked in the approval of the Muskrat Falls dam in Labrador, were much higher than previous models had indicated.<sup>33</sup>

## **Truth and Reconciliation Commission**

Canada has committed to implement fully the Truth and Reconciliation Commission's (TRC)<sup>34</sup> 94 *Calls to Action*. For more than 100 years, approximately 150,000 Indigenous children were separated from their families, communities and cultures and forced to attend poorly-funded and inadequately supervised residential schools, where many were subjected to physical and sexual abuse and forbidden from speaking their languages. The TRC<sup>35</sup> and the Chief Justice of the Supreme Court of Canada<sup>36</sup> have condemned the residential school program as cultural genocide. The government's commitment to the TRC *Calls to Action* requires a concrete action plan to ensure full implementation. This includes

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<sup>29</sup> The Asubpeeschoseewagong First Nation, widely referred to as the Grassy Narrows First Nation.

<sup>30</sup> Shigeru Takaoka, et al. "Signs and symptoms of methylmercury contamination in a First Nations community in Northwestern Ontario, Canada." *Science of the Total Environment* 468–469, 2014. pp 950–957; Masazumi Harada, et al. "Mercury Pollution in First Nations Groups in Ontario, Canada: 35 years of Canadian Minamata Disease." English translation of an article original published in the *Journal of Minamata Studies* 3, 2011. pp 3-30. <http://freegrassy.net/wp-content/uploads/2012/06/Harada-et-al-2011-English.pdf>.

<sup>31</sup> Donna Mergler and Laurie Chan. "Opinions on Dr. Masazumi Harada's studies in Ontario based on articles provided by the Mercury Disability Board." October 29, 2009 (Updated September 15, 2010).

<sup>32</sup> See for example, Leeanne Simpson, "Toxic Contamination Undermining Indigenous Food Systems and Indigenous Sovereignty," *Pimatiziwin: A Journal of Aboriginal and Indigenous Community Health*. 1 (2), 2003, pp 129-134; J. Van Oostam et al, "Human Health Implications of environmental contaminants in Arctic Canada: A review," *Science of the Total Environment*, 351-352, 2005, pp 161-146; Assembly of First Nations, *Traditional Foods: Are They Safe for First Nations Consumption*, March 2007 and Assembly of First Nations, *Environmental Health and First Nations Women*, March 2009.

<sup>33</sup> Ryan S.D Calder et al., "Future Impacts of Hydroelectric Power Development on Methylmercury Exposures of Canadian Indigenous Communities," *Environmental Science and Technology*, 50 (23), 2016, pp 13115–13122.

<sup>34</sup> The Truth and Reconciliation Commission was established in 2008 to document the experiences, abuses and legacy of the residential school experience and make recommendations for reconciliation. The TRC issued its final report in December 2015.

<sup>35</sup> Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, 2015, 1: [http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec\\_Summary\\_2015\\_05\\_31\\_web\\_o.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf).

<sup>36</sup> Globe and Mail, "Chief Justice says Canada attempted 'cultural genocide' on aboriginals," May 28, 2015, <https://beta.theglobeandmail.com/news/national/chief-justice-says-canada-attempted-cultural-genocide-on-aboriginals/article24688854/?ref=http://www.theglobeandmail.com&>.

cultural competency training with respect to Indigenous Peoples across a range of sectors and professions in Canada, so as to better protect rights and encourage and enable reconciliation.<sup>37</sup>

## GENDER EQUALITY

### Violence against Indigenous women, girls and Two-Spirit People

First Nations, Inuit and Métis women and girls face a heightened risk of violence compared to other women and girls in Canada. Many underlying causes remain unaddressed. In a step forward, the National Inquiry into Missing and Murdered Indigenous Women, Girls and Two-Spirit People commenced in September 2016. There have, however, been growing concerns about the slow pace of the Inquiry over the course of its first year.

Meanwhile, Canada has failed to take many of the immediate actions necessary to end violence against Indigenous women, girls and Two-Spirit People; including most of the recommendations from a provincial inquiry,<sup>38</sup> in-depth investigations by the UN Committee on the Elimination of Discrimination against Women<sup>39</sup> and the Inter-American Commission on Human Rights,<sup>40</sup> and a parliamentary committee report.<sup>41</sup> Three areas of particular concern are the lack of shelters and culturally-relevant services for Inuit, First Nations, and Métis women escaping violence;<sup>42</sup> the failure to ensure consistent police reporting of the Indigenous identity of victims of violent crime;<sup>43</sup> and the lack of independent mechanisms to re-examine cases of missing and murdered women, girls and Two-Spirit People where bias and other factors may have led to inadequate investigations.<sup>44</sup>

### Gender-based violence

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<sup>37</sup> Truth and Reconciliation Commission Calls to Action 23, 24, 27, 28, 57 and 92 urge cultural competency training for health-care professionals, medical and nursing schools, lawyers, law schools, federal, provincial, territorial and municipal public servants and management and staff in the corporate sector.

<sup>38</sup> The Honourable Wally T. Opat, QC, Commissioner, *Forsaken: The Report of the Missing Women Commission of Inquiry Executive Summary*, 19 November 2012: <http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf>.

<sup>39</sup> UN Committee on the Elimination of Discrimination against Women, *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*, 30 March 2015, UN Doc. CEDAW/C/JOP.8/CAN/1, paras 216-220.

<sup>40</sup> Organization of American States' Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada*, 21 December 2014, Doc. 30/14.

<sup>41</sup> Special Committee on Violence Against Indigenous Women, *Invisible Women: A Call to Action: A Report on Missing and Murdered Indigenous Women*, 2<sup>nd</sup> Sess., 41<sup>st</sup> Parl., March 2014: <https://www.ourcommons.ca/DocumentViewer/en/41-2/IWFA/report-1>.

<sup>42</sup> There is a troubling lack of accessible shelters for Indigenous women escaping violence. To serve the 53 Inuit communities across the Arctic there are approximately 15 shelters, many of which are accessible only by air. At the current time the federal government indicates that there are only 41 federally funded shelters serving 634 recognized First Nations communities in the country. Some shelters serve multiple First Nations, therefore the government claims that 55% of First Nations are served by federally-funded shelters, a claim that is contested by Indigenous women's organizations.

<sup>43</sup> There continues to be a lack of regularly collected, publicly available data disaggregated by gender, sexual orientation, gender identity, ethnicity, Indigenous identity, type of crime, relationship between victim and perpetrators, protection orders, prosecutions, sentences for perpetrators and other factors. This lack of data is a hindrance to efforts to understand patterns of violence, take focused actions to eliminate violence, put in place appropriate supports for survivors, eliminate any bias in policing responses, and monitor progress. The Royal Canadian Mounted Police issued reports in 2014 and 2015 on the numbers of murders and disappearances of Indigenous women and girls, but the reporting was based on inconsistent police practices for recording such information. Statistics Canada has begun including police data on murders of Indigenous women and girls in its annual homicide report, but this excludes data on women and girls who are missing or whose deaths are considered suspicious.

<sup>44</sup> CERD, *supra* note 10, para. 24 (c).

Canada has taken numerous measures to advance women's rights and gender equality, both domestically and globally. Despite this, too many women and girls in Canada continue to experience gender-based violence.<sup>45</sup> In June 2017, the federal government announced a strategy on gender-based violence.<sup>46</sup> While laudable, this strategy falls short of what is needed: a national action plan on all forms of violence against women and girls, covering all levels of government in Canada, and with particular attention to violence against Indigenous women, girls, and Two-Spirit People.

### Gender-based analysis

Amnesty International welcomes Canada's commitment to gender-based analysis, including instituting gender budgeting;<sup>47</sup> however, implementation remains uneven. Some federal departments have policies on gender-based analysis, but not all of them are public. There is no explicit accountability for adherence to such analysis, and the Auditor-General has reported little impact on policy development and programming decisions.<sup>48</sup> Amnesty International has documented the serious human rights impact – particularly on Indigenous women and girls – of the failure to ensure gender-based analysis in the approval of major resource development projects.<sup>49</sup>

## REFUGEES AND MIGRANTS

### Canada/US Safe Third Country Agreement

Amnesty International is gravely concerned that the 2004 "Safe Third Country Agreement" (STCA) between Canada and the United States exposes refugee claimants to human rights violations, forcing thousands of individuals into irregular, dangerous border crossings to make refugee claims in Canada. Under the STCA, refugee claimants who present at a United States/Canada border post are deemed ineligible to make claims in Canada and returned to the United States to pursue asylum claims.<sup>50</sup> The STCA does not apply if individuals cross irregularly into Canada; their claims are allowed to proceed.

In the wake of various Executive Orders issued by US President Trump concerning refugees, admission to the United States, and immigration and border enforcement, the number of refugee claimants undertaking irregular border crossings into Canada has risen significantly. Amnesty International and the Canadian Council for Refugees submitted a brief<sup>51</sup> calling for the STCA to be suspended.<sup>52</sup> Along with the Canadian Council of Churches, the two organizations have

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<sup>45</sup> According to Statistics Canada, in 2014 women self-reported over 1.2 violent victimization incidents, which represents 56% of all violent incidents: Statistics Canada, "Women and the Criminal Justice System," *Women in Canada*, June 2017.

<sup>46</sup> Status of Women Canada, *It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence*, 19 June 2017: [https://www.canada.ca/en/status-women/news/2017/06/its\\_time\\_canadasstrategytopreventandaddressgender-basedviolence.html](https://www.canada.ca/en/status-women/news/2017/06/its_time_canadasstrategytopreventandaddressgender-basedviolence.html).

<sup>47</sup> "Chapter 5—Equal Opportunity: Budget 2017's Gender Statement," in The Honourable William Francis Morneau, P.C., M.P., Minister of Finance, *Building a Strong Middle Class: #Budget2017*, 22 March 2017, 217-243.

<sup>48</sup> Auditor General of Canada, *Implementing Gender Based Analysis*, Fall 2015, [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201602\\_01\\_e\\_41058.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_201602_01_e_41058.html).

<sup>49</sup> Amnesty International, *Out of Sight, Out of Mind: Gender, Indigenous Rights and Energy Development in Northeast British Columbia, Canada*, AMR 20/4872/2016, November 2016, [https://www.amnesty.ca/sites/amnesty/files/Out%20of%20Sight%20Out%20of%20Mind%20EN%20FINAL\\_o.pdf](https://www.amnesty.ca/sites/amnesty/files/Out%20of%20Sight%20Out%20of%20Mind%20EN%20FINAL_o.pdf).

<sup>50</sup> The STCA has limited exceptions, primarily for individuals with close family members with status in Canada.

<sup>51</sup> Amnesty International Canada and the Canadian Council for Refugees, *Contesting the Designation of the US as a Safe Third Country*, 19 May 2017; <http://www.amnesty.ca/sites/amnesty/files/Contesting%20the%20Designation%20of%20the%20US%20as%20a%20Safe%20Third%20Country.pdf>.

<sup>52</sup> Concerns include a bar on asylum claims by individuals who have been in the United States for more than one year; an expedited removal procedure which heightens the risk of *refoulement*; numerous concerns about immigration detention, including its punitive

launched a legal challenge to the STCA.<sup>53</sup> The Minister of Immigration, Refugees and Citizenship has stated that the government believes the “U.S. remains a safe country for asylum claimants to seek protection there”.<sup>54</sup>

### Immigration detention

There is no upper time limit for immigration detention;<sup>55</sup> consequently, individuals can be detained indefinitely.<sup>56</sup> Children are held in immigration detention<sup>57</sup> although legislation provides that “a minor child shall be detained only as a measure of last resort”.<sup>58</sup> Many children are not officially detained, but are held alongside their detained parents. Amnesty International has called for a ban on detaining children for immigration purposes and law reform to prioritize the best interests of the child in decisions to detain parents.

Since March 2016, three people have died in immigration detention,<sup>59</sup> leading to calls for increased accountability of the Canadian Border Services Agency, which is not subject to independent oversight.<sup>60</sup> Canada’s Minister of Public Safety has indicated a willingness to consider proposals for CBSA oversight,<sup>61</sup> but has yet to make any firm commitments.

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and arbitrary nature, extensive detention of children and families, prison-like and harsh conditions in many detention facilities, isolated locations of facilities making access to legal counsel difficult and psychological harm for many detainees; possibility of criminal prosecution of asylum seekers for crossing into the United States unlawfully; inconsistent recognition of gender-based asylum claims; and widely varying rates of recognition of asylum claims in different parts of the country raising concerns about arbitrary decisions.

<sup>53</sup> *Canadian Council for Refugees v. Canada (Minister of Immigration, Refugees and Citizenship)*, 2017 FC, Court File No. IMM-2977-17.

<sup>54</sup> Letter to Amnesty International and Canadian Council for Refugees from the Honourable Ahmed Hussen, Minister of Immigration, Refugees and Citizenship, 19 June 2017.

<sup>55</sup> Stephanie Silverman and Petra Molnar, ‘Everyday Injustices: Barriers to Access to Justice for Immigration Detainees in Canada,’ *Refugee Survey Quarterly* (Index: 35:1), 2016, p. 116.

<sup>56</sup> A recent court ruling noted, ‘[i]f it is typical for Canada to detain persons for seven or more years for immigration purposes, then this country has a much more serious problem with its immigration process than is currently understood.’ *Ali v Canada (Attorney General)*, 2017 ONSC 2660 at para 19.

<sup>57</sup> University of Toronto Human Rights Clinic, *Invisible Citizens: Canadian Children in Immigration Detention*, 2017, [http://ihrp.law.utoronto.ca/utfl\\_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf](http://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf).

<sup>58</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 60.

<sup>59</sup> Faculty of Law, International Human Rights Program, ‘We Have No Rights’: *Arbitrary imprisonment and cruel treatment of migrants with mental health issues in Canada*, University of Toronto, 2015, 79-81; Nicholas Keung, ‘Healthcare providers urge Ontario to end immigration detention,’ *The Toronto Star*, 17 May 2016; and End Immigration Detention Network, *No justice for Abdurrahman, who died mysteriously in immigration detention*, 15 July 2016.

<sup>60</sup> British Columbia Civil Liberties Association, et al. ‘Human rights groups react to news of another death in immigration detention,’ News Release, 8 March 2016.

<sup>61</sup> CBC, *The Current*, Transcript for September 29, 2016: <http://www.cbc.ca/radio/thecurrent/the-current-for-september-29-2016-1.3783556/september-29-2016-full-episode-transcript-1.3784874#segment3>.

## Denial of health care

Numerous UN bodies<sup>62</sup> have called on Canada to provide essential health care for undocumented migrants, noting that the lack of coverage raises concerns with respect to the rights to life, health and non-discrimination.

## NATIONAL AND PUBLIC SECURITY

### *Non-refoulement*

The Human Rights Committee<sup>63</sup> and the Committee against Torture<sup>64</sup> have called on Canada to revoke legal provisions that allow for the deportation of a person found to pose a security threat, where so doing places them at risk of torture or other ill-treatment, in contravention of the absolute protection against *refoulement*.

### Torture and intelligence-sharing

New Ministerial Directions prohibit officials from sharing with or requesting information from other states if that gives rise to a substantial risk of torture or other ill-treatment. However, Amnesty International is concerned that the Directions allow for the possibility of seeking assurances against torture and other ill-treatment from foreign officials. The Directions also allow information obtained under torture or other ill-treatment to be used in limited circumstances, if Canadian officials did not request it.

### National security legal reform

A national security law reform in 2015<sup>65</sup> gave rise to serious human rights concerns. The current government has introduced reforms<sup>66</sup> addressing some of these concerns, including effective review and oversight of national security agencies. Nevertheless, other problems persist, including insufficient information-sharing safeguards, inadequate “no fly list” appeal provisions and expanded mass surveillance and data-mining powers.<sup>67</sup> Amnesty International has called on Canada to recognize human rights as a foundational component to the country’s national security framework.

### Solitary confinement

UN human rights bodies have expressed frequent concern about the prevalence of solitary confinement, noting it must be a short-term measure of last resort<sup>68</sup> that is avoided for inmates with serious mental illness,<sup>69</sup> or calling for its abolition.<sup>70</sup> The government has proposed reforms establishing a presumed maximum period of 20 days in segregation,<sup>71</sup>

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<sup>62</sup> UN Human Rights Committee, *supra* note 10, para. 12; UN Committee on Economic, Social and Cultural Rights, *Concluding observations: Canada*, 23 March 2016, UN Doc. E/C.12/CAN/CO/6, para. 50; CERD, *supra* note 10, para. 34(f).

<sup>63</sup> UN Human Rights Committee, *supra* note 10, para 13.

<sup>64</sup> UN Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention: Concluding observation of the Committee against Torture: Canada*, 25 June 2012, UN Doc. CAT/C/CAN/CO/6, paras 9-11.

<sup>65</sup> Canada, Bill C-51, *An Act to enact the Security of Canada Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts*, 2<sup>nd</sup> Sess., 41<sup>st</sup> Parl., 2015.

<sup>66</sup> Canada, Bill C-59, *An Act respecting national security matters*, 1<sup>st</sup> Sess., 42<sup>nd</sup> Parl., 2017.

<sup>67</sup> Amnesty International, Canada: *Amnesty among 40 Signatories to Joint Letter raising serious concerns with C-59 National Security Reform Bill*, September 19, 2017, <http://www.amnesty.ca/news/canada-amnesty-among-40-signatories-joint-letter-raising-serious-concerns-c-59-national>.

<sup>68</sup> UN Human Rights Committee, *supra* note 10, para. 14; CAT, *supra* note 64, para 19(c).

<sup>69</sup> UN Human Rights Committee, *supra* note 10, para. 14; CEDAW, *supra* note 10, para. 49(d); CAT *supra* note 64, para. 19(d).

<sup>70</sup> CEDAW, *supra* note 10, para. 49(d).

transitioning to a 15-day limit<sup>72</sup> within 18 months of the law coming into force.<sup>73</sup> The reforms do not ban segregated detention of individuals with serious mental illness.

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

**Amnesty International calls on the government of Canada to:**

### *UPR Follow-Up*

- Adopt an International Human Rights Implementation Act, in concert with provincial and territorial governments.

### *Normative and Institutional Framework*

- Expedite the process to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention on the Rights of Persons with Disabilities; and initiate ratification processes for other human rights treaties to which Canada has not yet acceded;
- Accede to the Arms Trade Treaty, ensuring that the treaty will extend to arms transfers to the United States;
- Adopt a legislative framework for implementation of the Declaration on the Rights of Indigenous Peoples;
- Establish an Extractive Sector Ombudsperson to hold Canadian mining, oil and gas companies accountable for the negative human rights impact of their operations abroad;
- Fully implement the guidelines on supporting human rights defenders, including those at risk due to their work on issues related to land, territory or the environment;
- Adopt a policy of carrying out independent human rights impact assessments of all trade agreements;
- Support legal enforcement of economic, social and cultural rights in domestic courts.

### *Indigenous Peoples*

- Take a rights-based approach to the approval of resource development projects affecting Indigenous Peoples, including upholding treaty rights, respecting free, prior and informed consent and assessing gender impact;
- Take action to ensure substantive equality for Indigenous Peoples in the protection of the full range of international human rights, including education, adequate housing, healthcare, safe water and sanitation, and child and family services;
- Ensure Indigenous persons who are victims of mercury poisoning have access to specialized care and treatment;
- Develop training programs, in collaboration with Indigenous Peoples, to ensure State officials and employees are knowledgeable of the Truth and Reconciliation Commission's Calls to Action and the UN Declaration on the Rights of Indigenous Peoples, and have the cultural competency necessary to engage effectively with the Indigenous individuals and communities they serve.

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<sup>71</sup> Canada, Bill C-56, *An Act to amend the Corrections and Conditional Release Act and the Abolition of Early Parole Act*, 1<sup>st</sup> Sess., 42<sup>nd</sup> Parl., 2017 s. 4 (adding a new s. 35.1 to the *Corrections and Conditional Release Act*).

<sup>72</sup> The UN Special Rapporteur on Torture has called on states to ban the solitary confinement of prisoners, except in very exceptional circumstances wherein they impose a strict, 15 day limit on solitary confinement, beyond which continued detention may constitute torture or ill-treatment: Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, 5 August 2011, UN Doc. A/J66/268, para. 26; United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, 13 May 1977, rule 44.

<sup>73</sup> Bill C-56, *supra* note 71, s.5.

### *Gender equality*

- Implement existing recommendations to end violence against Indigenous women, girls and Two-Spirit People, including increased funding for shelters and other social services, recording the Indigenous identity of victims of violent crime, and ensuring independent re-examination of unresolved cases of missing and murdered Indigenous women, girls and Two-Spirit People;
- Adopt a comprehensive, measureable, well-resourced, time-bound National Action Plan to address all forms of violence against women and girls in Canada;
- Ensure all federal government departments have a publicly available gender-based analysis policy with resources to support implementation. Make gender-based analysis mandatory in the approval and regulatory process for large-scale resource development projects.

### *Refugees and migrants*

- Suspend the Canada/US Safe Third Country Agreement;
- Enact legal reforms to ensure immigration detention is a measure of last resort, setting a maximum period of time for immigration detention and prohibiting the holding of children in immigration detention;
- Provide essential health care to undocumented migrants present in Canada.

### *National and public security*

- Reform Canadian law to provide absolute protection against *refoulement* and ensure no one is transferred to a place where they are at risk of torture or other ill-treatment;
- Amend Ministerial Directions on intelligence-sharing to conform with the absolute ban on torture and other ill-treatment;
- Legally enshrine regard for human rights as a foundational principle in Canada's national security framework.
- Amend Canadian law to establish 15 days as the maximum period for solitary confinement and a prohibition on holding individuals with serious mental health problems in solitary confinement.