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Submission to the UN Universal Periodic Review

**Fourth session of the UPR Working Group of the
Human Rights Council
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Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review:¹

- Under section B, Amnesty International raises concerns about Canada's failure to ratify or support a number of international human rights instruments, position with respect to extra-territorial protection of human rights, approach to implementing international human rights obligations and failure consistently to provide disaggregated data about human rights protection.
- Section C highlights Amnesty International's concerns about protection of the rights of Indigenous peoples, and of refugees and migrants, human rights concerns associated with counter-terrorism and with the administration of justice, and protection of economic, social and cultural rights.
- In section D, Amnesty International makes a number of recommendations for action by the Canadian government.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

B. Normative and institutional framework of the State

International human rights instruments

Amnesty International has called on Canada to ratify the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of Persons with Disabilities;² and the Convention on the Protection of All Persons from Enforced Disappearances.

Canada was one of four countries to vote against the UN Declaration on the Rights of Indigenous Peoples at the General Assembly on 13 September 2007. The Canadian government continues to oppose the Declaration, discouraging its application nationally and internationally. Meritless claims by Canadian officials that the Declaration is inconsistent with the Canadian Constitution are harmful to the reconciliation of Indigenous and non-Indigenous peoples and contrary to Canada's duty to promote the human rights of all. Amnesty International supports the call made by a large number of organizations in a submission to this Review, for Canada to reverse its position.³

Implementation of Canada's international human rights obligations

Amnesty International has highlighted shortcomings in Canada's record of implementing recommendations of UN human rights bodies and experts. UN human rights bodies themselves have repeatedly raised this concern with Canada. Amnesty International agrees with recommendations outlined in a broad-based NGO submission to this review highlighting this concern.⁴ There is an urgent, long overdue need for a transparent, publicly accessible system for overseeing implementation of international human rights recommendations in Canada that is well-coordinated among government departments and between different levels of government.

Providing adequate statistical information

Canada has been criticized by UN treaty bodies for failing to provide adequate data on differences in enjoyment of rights by gender, Aboriginal identity, ethnicity, age, citizenship and disability.⁵ This failure to systematically provide disaggregated data can obscure critical human rights concerns for vulnerable populations. Gaps in the collection of data are particularly acute in respect to Indigenous peoples. Amnesty International has repeatedly urged the government of Canada to take action consistent with the Human Rights Committee's outstanding recommendation that Canada "should gather accurate statistical data throughout the country on violence against Aboriginal women."

Extra-territorial protection of human rights

A recent court ruling about the handling of prisoners apprehended by the Canadian military in Afghanistan, accepted the government's position that the Canadian Charter of Rights and Freedoms does not apply to soldiers outside Canada.⁶ The ruling is under appeal. Courts have held that Canada's international obligations can only be enforced in Canadian courts through the provisions of the Charter of Rights or other domestic laws. The government's position, therefore, dramatically restricts the extra-territorial enforcement of Canada's international human rights obligations.

² Signed by Canada on March 30, 2007 but not yet ratified.

³ Joint Submission to the United Nations Human Rights Council in regard to the Universal Periodic Review Concerning Canada, September 2008.

⁴ Promise and Reality: Canada's International Human Rights Implementation Gap, Joint NGO Submission to the United Nations Human Rights Council, 8 September 2008.

⁵ Committee on the Elimination of Racial Discrimination, 2007; Committee on Economic, Social and Cultural Rights, 2006; Human Rights Committee, 2005; Committee on the Rights of the Child, 2003; Committee on the Elimination of Discrimination against Women, 2002.

⁶ *Amnesty International Canada and British Columbia Civil Liberties Association and Chief of the Defence Staff for the Canadian Forces, Minister of National Defence and Attorney General of Canada*, 2008 FC 336, 12 March 2008.

National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry Operating in Developing Countries have examined difficulties in ensuring that Canadian corporations operating abroad comply with human rights standards. The government has not acted on the vast majority of recommendations outlined in a report from an Advisory Group to the Roundtables, which proposes a national corporate social responsibility framework, including a new Ombudsman. Amnesty International calls on the government to implement the recommendations.

C. Promotion and protection of human rights on the ground

Indigenous Peoples

a) Violence against Indigenous Women

A 1996 government figure reveals that Indigenous women between the ages of 25 and 44 with status under the Indian Act are five times more likely than other women to die from violence. There has been widespread acknowledgement of the role of racism, discrimination and indifference in contributing to this violence, including by the Canadian Association of Chiefs of Police. There have been initiatives in several jurisdictions to improve police response and increase access to culturally appropriate services for women escaping violence. However the federal government has yet to institute a national strategy consistent with the severity of threats facing Indigenous women.

b) Lands, territories and resources

Resource extraction on the traditional lands of Indigenous people grows dramatically. In Ontario, minerals exploration increased fourfold between 2002 and 2007. Ontario is reforming the provincial Mining Act to incorporate Indigenous rights protections. Throughout Canada, government regulatory agencies involved typically have no mandate to uphold Indigenous rights. Legal duties of consultation and consent are routinely ignored. This raises concerns that Indigenous peoples' rights may be dramatically eroded before the numerous outstanding disputes over Indigenous land rights are resolved. The potential to profit from developing disputed lands may provide a disincentive for governments in Canada to work toward a fair resolution of these disputes.

c) Ipperwash Inquiry

A public inquiry into the 1995 police killing of Indigenous rights protestor Dudley George at Ipperwash Provincial Park in Ontario resulted in important recommendations for resolving Indigenous land rights disputes and ensuring an appropriate police response to protests. The government of Ontario has committed to full implementation of the recommendations, but there has been little progress since the report's release in May 2007.

d) Indigenous child welfare

In June 2008, the government apologized for the historic policy under which Indigenous children were forcibly removed from their families to attend residential schools. Related concerns continue. Three times the number of Indigenous children are now in state care than during the residential school era.⁷ The government acknowledges that Indigenous children are four to six times more likely than non-Indigenous children to be removed from their families.⁸ A recent study of three provinces found that Indigenous children were fifteen times more likely to be removed from their families. In most cases it is not because of abuse, but neglect, often due to poverty.⁹ Funding for Indigenous child and family services is 22% lower than for non-Indigenous

⁷ First Nations Child and Family Caring Society of Canada. *Children without Parental Care - The Chance to Make a Difference for this Generation of Indigenous Children*, 16 August 2005.

⁸ "Building a Brighter Future for Urban Aboriginal Children: Report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities," June 2003.

⁹ The First Nations Child and Family Caring Society of Canada. *Wen:de - We are coming to the light of day*. October 2005. pp.14, 44.

children. Amnesty International is concerned that the right of Indigenous children to have their best interests protected is often violated.¹⁰

Refugees and Migrants

a) Canada/US Safe Third Country Refugee Agreement

A December 2004 Canada/US agreement bars access to the Canadian refugee system for most refugee claimants who pass through the US before coming to Canada. In 2007 the Federal Court overturned the agreement,¹¹ ruling that it contravened the Charter of Rights. That decision was reversed on appeal, without addressing the substantive human rights issues.¹² Amnesty International calls for the agreement to be suspended unless measures are introduced ensuring full protection of the rights of refugee claimants.

b) Refugee appeal process

In 2001, a new Canadian Immigration and Refugee Protection Act established an independent appeal for refugee claimants whose claims are rejected. The government has refused to implement this part of the Act and the Refugee Appeal Division has never been created. Amnesty International is concerned that genuine refugees remain at risk of having valid claims rejected without access to a meaningful appeal.

c) *Non-refoulement* rights violated

Under the Immigration and Refugee Protection Act, individuals who are found to pose security risks can be removed from Canada to countries where they face a serious risk of torture. The Supreme Court of Canada ruled this might be justified in exceptional circumstances.¹³ The Human Rights Committee and the Committee against Torture have repeatedly called on Canada to bring its law and practice into line with the absolute nature of the protection against *refoulement* in cases involving torture. The Canadian government has failed to implement those recommendations.

d) Protecting victims of trafficking

Canadian law does not adequately protect the rights of individuals who have been trafficked into Canada. Legal provisions criminalize trafficking and provide for the possibility of immigration enforcement action against both traffickers and victims of trafficking. Guidelines adopted by the government in May 2006 have proven inadequate. Amnesty International supports the proposal for law reform developed by the Canadian Council for Refugees which will ensure more effective protection of the rights of victims of trafficking.¹⁴

e) Migrant workers

Some migrant workers come to Canada with temporary immigration status. An untold number of migrants who work in Canada lack any immigration status. Amnesty International has highlighted human rights concerns associated both with migrant workers with status and those without, including that the requirement that domestic caregivers live with their employers makes them vulnerable to abuse; as well as a variety of restrictions on the labour rights of agricultural workers, including health and safety standards and working conditions. Migrant workers who lack immigration status are at heightened risk of domestic violence and of having their rights violated by unscrupulous employers and landlords.

¹⁰ First Nations Child and Family Services Joint National Policy Review, June 2000.

¹¹ *Canadian Council for Refugees, Canadian Council of Churches, Amnesty International and John Doe and Her Majesty the Queen*, 2007 FC 1262, 29 November 2007.

¹² *Her Majesty the Queen and Canadian Council for Refugees, Canadian Council of Churches, Amnesty International and John Doe*, 2008 FCA 229, 27 June 2008.

¹³ *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1.

¹⁴ <http://www.ccrweb.ca/trafficking/proposal.htm>

Human Rights and Counter-Terrorism

a) Immigration Security Certificates

In February 2007 the Supreme Court of Canada ruled that the security certificate process under which non-citizens alleged to pose a serious threat to Canada's national security can be arrested, detained and deported, contravened the Charter of Rights. Under the secretive process, individuals were denied access to much of the evidence against them. Amnesty International has criticized new legislation which adds a Special Advocate to the procedure, who is given access to the secret evidence but thereafter can have no further contact with the individual concerned unless given special permission by the judge.

b) Prisoners in Afghanistan

Under a December 2005 agreement prisoners apprehended by Canadian forces in Afghanistan are turned over to Afghan officials. A further agreement in May 2007 guarantees that Canadian officials can have access to prisoners after they have been transferred. However, transferred prisoners face a serious risk of torture in Afghan custody and credible allegations of torture have been made by transferred prisoners to journalists and Canadian officials. Amnesty International is concerned that assurances from Afghan officials and opportunities to visit prisoners do not provide sufficient protection against torture.

c) The case of Omar Khadr

Omar Khadr, a Canadian citizen, was apprehended by US forces in Afghanistan in July 2002 when he was fifteen years old. He was transferred to Guantánamo Bay in October 2002. A military commission will begin the trial of Omar Khadr's case on October 8, 2008. There has been no recognition of his juvenile status, nor the applicability of international law with respect to child soldiers or juvenile detainees. There has been no investigation of allegations that he has been subjected to torture and ill-treatment. The Canadian government supports the current unfair trial process and refuses to request that Omar Khadr be repatriated to face justice and/or rehabilitation in Canada.

d) Canadian citizens imprisoned and tortured abroad

There has been little progress in implementing recommendations from the public inquiry into the case of Maher Arar, a Canadian citizen detained and tortured in Syria, including a proposed new framework for reviewing the national security activities of the Royal Canadian Mounted Police and other Canadian law enforcement and security agencies. A further inquiry into the role of Canadian officials in the cases of three other Canadians detained and tortured in Syria and/or Egypt has concluded eighteen months of work behind closed doors and is set to report in October 2008.

Administration of Justice

a) Use of Conducted Energy Devices (Tasers®)

Taser guns¹⁵ are used by most police and some correctional forces across Canada.¹⁶ The number of cases of excessive use of force and deaths of individuals following use of tasers grows. The Office of the Commissioner of Public Complaints against the RCMP has made recommendations directed at restricting taser use. A public inquiry is underway in British Columbia following the 2007 death of Robert Dziekanski. Amnesty International has called for a moratorium on the use of tasers and similar devices until there is an independent, comprehensive and rigorous study of CEDs and their impact.

¹⁵ Tasers are dart-firing electro-shock projectile weapons which can also be used close-up as stun guns, and are among a class of weapon known collectively as "conducted energy devices" (CEDs).

¹⁶ The provinces of Newfoundland and Saskatchewan have decided not to deploy tasers.

b) Death Penalty

In October 2007 Canada announced it would no longer seek clemency for Canadian citizens sentenced to death in “democratic countries which adhere to the rule of law.” The change came in the case of Ronald Smith, a Canadian citizen sentenced to death in the US state of Montana. Amnesty International called on Canada to restore the previous policy and seek clemency in all cases, demonstrating full commitment to abolition of the death penalty.

c) Women Prisoners

The UN Human Rights Committee, the Canadian Human Rights Commission and a 1996 public inquiry have all raised concerns about the protection of the human rights of women prisoners held in federal prisons. Amnesty International has repeatedly called on Canada to establish an independent oversight body for federally-sentenced women prisoners, including a process for independent adjudication of decisions related to involuntary segregation.

d) International Justice

Canadian law allows for the criminal prosecution of individuals accused of committing crimes against humanity and war crimes abroad. In the past eight years only one prosecution has been launched. The preference continues to be to deport individuals instead, which often means perpetrators escape justice or may experience serious human rights violations. It is difficult to use Canadian courts to pursue civil suits against foreign governments accused of serious human rights violations due to the provisions of Canada’s *State Immunity Act*, thus denying redress to many victims.

Protecting Economic, Social and Cultural Rights**a) Legal enforcement**

The government generally asserts that economic, social and cultural rights cannot be enforced in court.¹⁷ Canada takes this position internationally as well and has indicated it is unlikely to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights if it is adopted by the General Assembly. Amnesty International supports the Canadian Human Rights Commission recommendation that “social condition” be added to the enumerated prohibited grounds of discrimination under the Canadian Human Rights Act.

b) Addressing poverty

UN treaty bodies have raised concerns about high levels of poverty among vulnerable groups in Canada, including Indigenous peoples, women, children, the elderly, persons with disabilities, immigrants and refugees, and racial minorities. Indigenous people living in urban environments are twice as likely as non-Indigenous people to be living in poverty and “visible minority” children are twice as likely as the overall population of children to be living in poverty.¹⁸ There is a need for a comprehensive national plan of action to address poverty across Canada.

D. Recommendations for action by the State under review**Amnesty International calls on the government to:***International human rights instruments*

- Ratify the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or

¹⁷ *Louise Gosselin and The Attorney General of Quebec*, 2002 SCC 84.

¹⁸ Canadian Council on Social Development, *Urban Poverty in Canada: A Statistical Profile*, 2000.

Degrading Treatment or Punishment; the Convention on the Rights of Persons with Disabilities; and the Convention on the Protection of All Persons from Enforced Disappearances;

- Support domestic and international application of the Declaration on the Rights of Indigenous Peoples.

Implementation of international human rights obligations

- Develop a transparent, accountable and coordinated inter-governmental process for implementing international human rights obligations;
- Consistently provide data about human rights protection disaggregated by gender, Indigenous identity and other vulnerable groups.

Extra-territorial protection of human rights

- Recognize jurisdiction of courts to enforce extra-territorial application of human rights obligations;
- Adopt the recommendations from the report of the Advisory Group to the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry.

Indigenous Peoples

- Develop a national strategy for addressing violence against Indigenous women;
- Ensure that governments across Canada, in full collaboration with Indigenous peoples, revise natural resource laws and policies to recognize and protect Indigenous rights;
- Work with governments across Canada towards national implementation of recommendations from the Ipperwash Inquiry;
- Ensure equitable funding for Indigenous child and family services agencies.

Refugees and Migrants

- Suspend operation of Canada/US Safe Third Country refugee agreement until associated human rights concerns are addressed;
- Establish the Refugee Appeal Division of the Immigration and Refugee Board;
- Reform Canadian law to provide absolute protection against *refoulement* to torture;
- Reform Canadian law to better protect the rights of victims of trafficking;
- Review and reform Canadian law to ensure full protection of rights of all migrant workers.

Human Rights and Counter-Terrorism

- Reform immigration security certificate system to meet international fair trial standards;
- Suspend prisoner transfers in Afghanistan until concerns about torture are adequately addressed;
- Seek the repatriation of Omar Khadr from Guantánamo Bay;
- Implement outstanding recommendations from public inquiry into case of Maher Arar.

Administration of Justice

- Impose a moratorium on use of tasers and similar devices in Canada until an independent, comprehensive and rigorous study is conducted;
- Reinstate policy of seeking clemency on behalf of all Canadian citizens sentenced to death in other countries;
- Establish an independent oversight body for federally-sentenced women prisoners, including a process for adjudication of decisions related to involuntary segregation;

- Adopt a policy preferring prosecution to deportation with respect to individuals accused of committing international crimes subject to universal jurisdiction;
- Amend State Immunity Act to allow civil suits involving crimes that are subject to universal jurisdiction.

Protecting Economic, Social and Cultural Rights

- Support legal enforcement of economic, social and cultural rights in domestic courts;
- Ratify Optional Protocol to the International Covenant on Economic, Social and Cultural Rights if adopted by UN General Assembly;
- Add “social condition” as a prohibited ground of discrimination in Canadian Human Rights Act;
- Develop a comprehensive national plan of action to address poverty across Canada.

Appendix: Amnesty International documents for further reference¹⁹

Indigenous Peoples

- Upholding Indigenous Land Rights in Ontario: Amnesty International's Urgent Call for Action on Implementation of Key Recommendations from the Ipperwash Inquiry, June 2008.
- Critical breakthrough at Grassy Narrows a perfect opportunity for government of Ontario to take a stand for the human rights of Indigenous peoples, 6 June 2008.
- The law of the land: Amnesty International Canada's position on the conflict over logging at Grassy Narrows, 20 September 2007.
- Indigenous Peoples, Land Rights and the Justice System: Making Human Rights a Priority, Amnesty International's Submissions to Part II of the Ipperwash Inquiry, 28 July 2006.
- Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada, AMR20/003/2004, October 2004.
- Why there must be a public inquiry into the police killing of Dudley George, AMR 20/002/2003, 4 September 2003.
- "Time is wasting": Respect for the land rights of the Lubicon Cree long overdue, AMR 20/001/2003, April 2003.

Tasers

- Too Often, Too Soon: Current Concerns and Recommendations on the Use of Conducted Energy Devices (Tasers®) in Canada, Submission to the Thomas R. Braidwood, QC Study Commission, April 2008.
- Inappropriate and excessive use of tasers, AMR 20/002/2007, November 2007.
- Excessive and lethal force? Amnesty International's concerns about deaths and ill-treatment involving police use of tasers, AMR 20/002/2004, November 2004.

Counter-Terrorism

- Restoring his Rights, Addressing the Wrongs, Closing Submission to the Arar Inquiry, September 2005.
- Security through Human Rights, Submission to the Review of Canada's Anti-Terrorism Act, 16 May 2005.

Submissions to UN Treaty Bodies

- Human Rights for All, Submission to the Committee on the Elimination of Racial Discrimination, AMR 20/001/2007.
- It is a Matter of Rights, Submission to the Committee on Economic, Social and Cultural Rights, 27 March 2006.
- Protection Gap, Amnesty International Canada's Submission to the UN Human Rights Committee, October 2005.
- Redoubling the Fight against Torture, Submission to the Committee against Torture, October 2004.
- Equal Rights, Submission to the Committee on the Elimination of all Forms of Discrimination against Women, January 2002.

General

- Canada and the International Protection of Human Rights: An Erosion of Leadership?, An Update to Amnesty International's Human Rights Agenda for Canada, December 2007.
- Human Rights for All: No Exceptions, A Human Rights Agenda for Canada, December 2006.
- It is Time to Comply: Canada's Record of Unimplemented UN Human Rights Recommendations, An Update to Amnesty International's Human Rights Agenda for Canada, 19 December 2005.
- Above all Else: A Human Rights Agenda for Canada, December 2004.

¹⁹ These documents are available at: <http://www.amnesty.org/en/region/americas/north-america/canada> and http://www.amnesty.ca/themes/canada_overview.php.

- *At Home and Abroad: Amnesty International's Human Rights Agenda for Canada*, October 2003.
- *Real Security: A Human Rights Agenda for Canada*, 7 May 2002.