# CANADA

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

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AMNESTY INTERNATIONAL

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

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

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

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# SUMMARY OF RECOMMENDATIONS

Amnesty International has drawn frequent attention in recent years to mounting concerns that Canada's domestic human rights record and global human rights standing are both in serious and deeply troubling decline.[1] This submission, prepared for the United Nations Committee on Economic, Social and Cultural Rights (the Committee), highlights the opportunities and the urgency of reversing that decline and advancing stronger economic, social, and cultural (ESC) rights protections in Canada.

In this submission, Amnesty International expands upon and presents updates on its concerns presented its March 2015 briefing to the Pre-Sessional Working Group in advance of the preparation of the List of Issues for the review of the sixth periodic report of Canada, at the 57th Session of the Committee from 22 February to 4 March 2016. Amnesty International sets out its recommendations about the implementation of the *International Covenant on Economic, Social and Cultural Rights* (the Covenant) by Canada within the framework set out by this Committee in the List of Issues prepared for this review.

Amnesty International sets out its recommendations in the aftermath of an October 2015 election that has brought a new federal government to power—a time where considerable opportunity exists for the country to overhaul its approach to the realization of ESC rights. The organization welcomes many of the commitments expressly laid out in the mandate letters that the Prime Minister has provided to his new Cabinet detailing goals regarding a range of important national and international human rights issues. Amnesty International encourages the Committee to call on the Canadian government to bring ongoing violations of ESC rights to an immediate halt, pursue reforms that will better protect ESC rights in the future, and provide effective remedies for individuals and communities that have experienced and continue to experience violations.

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

## IMPLEMENTATION OF HUMAN RIGHTS OBLIGATIONS

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

- Recognize the indivisibility of human rights and comply with its international economic, social, and cultural rights obligations when interpreting and applying the *Charter of Rights and Freedoms*.

- Cease arguing in court that economic, social and cultural rights are not amenable to

[1] See e.g. Amnesty International, *Canada: Submission to the United Nations Human Rights Committee* (2015) online: <https://www.amnesty.org/en/documents/amr20/1806/2015/en/>; *Submission to the Human Rights Council in Advance of the Universal Periodic Review of Canada* (2013) online: <http://www.amnesty.ca/sites/amnesty/files/upr_16_amnesty_international_submission_on_canada_external.pdf>.

judicial enforcement and commit to reviewing human rights and other legislation so as to ensure that Covenant rights are subject to meaningful and accessible remedies in all jurisdictions.

- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

## INDIGENOUS PEOPLES

- Ensure that the positions taken by government in negotiations or litigation over Indigenous land disputes are consistent with the obligation to respect, protect and fulfil the rights of Indigenous peoples under Canadian and international law.

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

- Reject or rescind approval of projects with potential significant harm to the rights of Indigenous peoples where such consent has not been granted.

- Take immediate measures to eliminate inequities in funding for education for First Nations children and youth on reserves and ensure that the level of funding takes account of First Nations children's culture and specific circumstances.

- Collaborate with First Nations to foster on reserve educational systems consistent with preserving the best interests of the child, protecting and restoring Indigenous languages and cultures, honouring treaty rights, and respecting the inherent rights of self-government and self-determination.

- Work with First Nations to eliminate the gap in funding for First Nations child and family services, provide a level of funding that takes the specific needs and circumstances of First Nations communities into account, and ensure equitable access to culturally-appropriate programmes and support services within families and communities.

- Ensure that Treaty and Aboriginal rights to harvest wild foods are recognized and protected and that the food security of Indigenous peoples is prioritized in development decisions.

- Collaborate with First Nations to ensure that all First Nations communities have access to clean drinking water and adequate sanitation, including through provision of adequate, sustained funding for such services.

- Amend the *Safe Drinking Water for First Nations Act* to ensure respect for First Nations self-government rights in regulating First Nations water systems. Ensure timely follow-up to its commitment to support the construction of an all-weather road providing access to the Shoal Lake #40 First Nation, work collaboratively with the First Nation to take all necessary measures to ensure safe year-round travel to and from the community, and provide access to clean, safe drinking water at Shoal Lake 40.

- Ensure adequate treatment of and compensation to the victims of mercury poisoning at Grassy Narrows and neighbouring First Nations, undertake measures to effectively reduce the risk of continued exposure to mercury poisoning, and work with Grassy Narrows to carry out a comprehensive health study to identify their needs.

- Refrain from licensing logging on the traditional territory of Grassy Narrows without the free, prior and informed consent of the First Nation.

- Suspend construction of the Site C dam and commit to ensuring that the project will not proceed so long as affected Indigenous peoples have withheld their free, prior and informed consent.

## GENDER EQUALITY

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

- Ensure that the independent public inquiry into missing and murdered Indigenous women and girls examines issues of due diligence, systemic discrimination, and access to justice in all jurisdictions in Canada, leads to the adoption of a comprehensive plan of action to address the social and economic factors placing Indigenous women and girls at risk, and ensure appropriate and unbiased responses from police and the justice system.

- Take immediate measures to implement outstanding recommendations from UN human rights bodies and others to address urgent and longstanding right violations related to violence and discrimination against Indigenous women and girls, including increased funding for women's shelters and other supports in Indigenous communities.

- Increase and enhance data collection on incidents of violence against women and girls in Canada.

- Ensure that all provinces investigate the gendered implications of funding policies in the development of annual budgets and the extent to which austerity policies disproportionately impact women, and make revisions where the effect is to perpetuate systematic discrimination against women.

- Amend its foreign policy stance so that Canada upholds international standards on sexual and reproductive rights and funds safe abortion services for survivors of sexual violence as part of its overseas development assistance.

- Pass legislation that would add gender identity and gender expression to the prohibited grounds of discrimination under the *Canadian Human Rights Act* and the hate crimes provisions of the Criminal Code.

## MIGRANTS AND REFUGEES

- Follow up on the commitment to restore the Interim Federal Health Program for refugee claimants and refugees in Canada.

- Ensure equal access to essential health care for all individuals in Canada, including

irregular migrants, regardless of immigration status.

- Allow migrant domestic workers to move freely between employers by offering open work permits, thereby improving working and living conditions and rendering them less susceptible to abuse.

- Provide a guaranteed pathway to permanent residency for migrant domestic workers, including reasonable extensions to temporary visas.

- Ensure that migrant domestic workers who experience human rights violations have effective access to justice, including legal aid.

## PERSONS WITH DISABILITIES

- Ensure that the education policy across all provinces prohibits the use of restraint, seclusion, and aversive interventions.

- Prioritize inclusive assessments that recognize the diverse needs of the entire student body, including students with disabilities.

- Provide teachers with sufficient resources and expertise to ensure that children with disabilities and their families receive adequate support both inside and outside the classroom.

## BUSINESS AND HUMAN RIGHTS

- Pass laws that ensure access to domestic courts for victims of human rights abuses arising from the overseas operations of Canadian extractive firms.

- Ensure the creation of an extractive-sector Ombudsperson, with the power to independently investigate complaints into human rights abuses and make recommendations.

- Institute legal and policy reforms to require companies domiciled or headquartered in Canada to carry out adequate human rights due diligence throughout their global operations.

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

## PRISONERS

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

## ADEQUATE LIVELIHOOD

- Follow-up to its commitment to develop a national housing strategy designed to respect, protect, promote and fulfil the right to adequate housing including prioritising the crisis of homelessness.

- Develop a comprehensive, human rights-based national food strategy, in consultation with civil society, for combatting food insecurity which ensures that discriminated groups are prioritised and protected against barriers that impede access to food.

- Repeal Bill C-43 and ensure that all individuals seeking Canada's protection receive adequate social security.

- Promote a practice whereby all governments in Canada—federal, provincial and territorial—assess budgetary cuts so as to ensure compliance with the Covenant.

- Ensure that the government of Quebec adequately considers the extent to which its austerity policies disproportionately impact disadvantaged and marginalized groups and revises its 2015-16 budget accordingly to ensure such groups are prioritised and safeguarded against any retrogressive measures, and that there is no systematic discrimination in the areas of access to education, health, and other public services across the province.

# I. GENERAL OBSERVATIONS

In this section, Amnesty International provides general observations on areas which the organization encourages the Committee to address in its Concluding Observations on Canada.

## IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Canada's approach to implementing its international human rights obligation suffers from longstanding inadequacy, which has severely limited its ability to implement this Committee's previous recommendations. This concern has been raised repeatedly by UN treaty monitoring bodies, including this Committee, which in 2006 expressed concern that most of its recommendations in relation to Canada's second and third periodic reports in 1993 and 1998, respectively, had not been implemented.[2]

The government's mechanisms for ensuring that international obligations are implemented effectively at the domestic level are severely lacking. This shortcoming is compounded by the fact that Canada's federalist government distributes constitutional authority between two levels of government—national and provincial/territorial—which means that the responsibility for acting on any particular human rights obligation or UN recommendation may rest with one or both levels of government. This is particularly pronounced with respect to ESC rights because constitutional responsibility for many areas relevant to those rights, such as health care, education and social assistance, lies with provincial/territorial governments. In some cases that responsibility is then further devolved in whole or in part from the province/territory to municipal governments, as is the case with authority over housing issues.

An integrated system is needed to bring these different levels of governments together in a transparent and politically accountable manner to ensure implementation of the country's international human rights obligations. Such implementation should involve meaningful engagement with vulnerable groups, Indigenous peoples, and civil society. There has been no meeting of ministers responsible for human rights in the country since 1988.

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Convene periodic meetings of federal, provincial, and territorial ministers responsible for human rights, and initiate a process of law, policy, and institutional review and reform that ensures effective, transparent, and politically accountable implementation of Canada's international human rights obligations; and**

- **Recognize the indivisibility of human rights and comply with its international economic, social, and cultural rights obligations when interpreting and applying the *Charter of Rights and Freedoms*.**

[2] United Nations 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.

## ACCESS TO JUSTICE

The position advanced by the government on numerous occasions that ESC rights are of a different nature and not susceptible to the same level of judicial enforcement as civil and political rights undermines Canada's commitments under the Covenant and effectively denies access to justice to victims of abuses.[3] As such, efforts by disadvantaged groups to rely on international human rights such as the rights to an adequate livelihood or access to healthcare as a basis for interpreting the Charter and other laws in Canada have faced stiff opposition from government lawyers. There is no basis in international law for the Canadian government's position but judges have generally ruled in its favour.[4]

Despite the urging from this Committee for federal, provincial, and territorial governments to incorporate Covenant rights into the country's domestic legislation, effective remedies remain out of reach for victims of ESC rights violations.[5] For example, while the Quebec *Charter of Human Rights and Freedoms* enjoys precedence[6] over all provincial legislation, section 52 explicitly excludes its provisions on economic and social rights from the list of rights that no other laws may derogate from.[7] Legislation that excludes ESC rights from the protections afforded to other human rights creates a growing incompatibility between the way in which Canadian law is interpreted and applied and Canada's obligations under international human rights law to ensure access to justice and effective remedies.

Canada's failure to initiate consultations to consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights illustrates government reticence about the status and standing of ESC rights on the international stage.

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Cease arguing in court that economic, social and cultural rights are not amenable to judicial enforcement and commit to reviewing human rights and other legislation so as to ensure that Covenant rights are subject to meaningful and accessible remedies in all jurisdictions; and**

- **Ratify the Optional Protocol to the *International Covenant on Economic, Social and Cultural Rights*.**

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[3] In the case of *Tanudjaja v Canada*, for example, in which homeless people sought positive measures from governments to protect their right to life, government lawyers argued that the case should not be heard because ESC rights are not justiciable. See *Tanudjaja v Canada (Attorney General)*, 2013 ONSC 5410, 116 OR (3d) 574; *Tanudjaja v Canada (Attorney General),* 2014 ONCA 852, 123 OR (3d) 161.

[4] See *ibid*.

[5] *Supra* note 2 at para 40.

[6] Only the Constitution of Canada, including the Canadian *Charter of Rights and Freedoms*, enjoys priority over the Quebec Charter.

[7] Section 52 states that "No provision of any Act, even subsequent to the Charter, may derogate from sections 1 to 38, except so far as provided by those sections, unless such Act expressly states that it applies despite the Charter." The provisions on social and economic rights are enshrined in sections 39 to 49. *Charter of Human Rights and Freedoms*, CQLR c C-12.

# II. OBSERVATIONS RELATING TO GENERAL PROVISIONS OF THE COVENANT

## THE COMMITTEE ASKS:

4. Please provide information on the measures taken, including legislative, regulatory, policies and guidance, to ensure that private companies respect economic, social and cultural rights throughout their operations, including when operating abroad. In doing so, please also inform on remedies available for victims and describe grievance mechanisms in place and elaborate on their mandates.

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

Canadian mining companies dominate the industry worldwide and now operate in every corner of the globe, not shying away from the frontlines of armed conflict, grave human rights violations, and extreme poverty.[8] In 2010, the government opposed private member's legislation establishing human rights standards for Canadian extractive companies.[9] On October 1, 2014, Bill C-584, a private member's Bill calling for the creation of an ombudsman for the corporate social responsibility (CSR) of Canadian extractive corporations working outside Canada, was also defeated.[10] A corporate social responsibility strategy that companies were encouraged to adopt voluntarily 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.

The federal government's revised CSR strategy, *Doing Business the Canadian Way*, released in November 2014, conditions the ability of companies to access assistance through what the government terms "economic diplomacy" on the companies' compliance with CSR best practices and willingness to participate in the CSR strategy's dispute resolution processes.[11]

[8] Amnesty International has pointed to human rights concerns associated with the operations of several Canadian companies around the world: see, e.g. Amnesty International, *Guatemala: Impunity, insecurity and discrimination*, Amnesty International Submission to the UN Universal Periodic Review (November 2012) online: <http://www.amnesty.org/en/library/asset/AMR34/004/2012/en/989d1e67-cd75-40e2-97cf-229fe23cd150/amr340042012en.pdf>; Amnesty International, *Guatemala: Submission to the UN Human Rights Committee for the 104th Session of the Human Rights Committee* (March 2012) online: <http://www.amnesty.org/en/library/asset/AMR34/001/2012/en/f787f76b-edfe-478a-bbfb-c612ce3b507e/amr340012012en.pdf>; Amnesty International, *Amnesty International, Undermining Rights: Forced evictions and police brutality around the Porgera Goldmine, Papua New Guinea* (January 2010) online: <http://www.amnestyusa.org/sites/default/files/asa340012010eng.pdf>; Amnesty International, "Salvadoran environmental activists killed and radio station staff threatened" (5 January 2010) online: <http://www.amnesty.org/en/news-and-updates/salvadoran-environmental-activists-killed-radio-station-staff-threatened-20100105>; Amnesty International, "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>.

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

[10] Bill C-584, Corporate Social Responsibility of Extractive Corporations Outside Canada Act, 2nd Sess, 41st Parl, 2013 online: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&Bill=C584&Parl=41&Ses=2>.

[11] 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>.

"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.[12] While a welcomed small step, as the Canadian Network on Corporate Accountability (of which Amnesty International is a member) has noted, the new CSR Strategy fails to establish an independent Ombudsman to investigate human rights complaints against transnational corporations operating abroad, despite widespread public support for such a role to be created.[13]

A compelling example of the gap in oversight of Canadian companies operating abroad is the Monywa copper mining project in Myanmar, and the role of Canadian mining firm Turquoise Hill Resources (formerly Ivanhoe Mines Ltd.).[14] In 1996-1997, the Myanmar government nationalised 5411 acres of farmland and forcibly evicted between 8,000 and 13,000 people in the Monywa area to make way for the Sabetaung and Kyisintaung mine. The evictions were carried out without any due process, consultation, payment of adequate compensation and resettlement and had ruinous impacts for families who lost their main source of livelihood. Amnesty International obtained documentary evidence confirming the land had been nationalised to enable the mine and the joint venture between Myanmar's Mining Enterprise No. 1 (a state owned company) and Turquoise Hill Resources to proceed.[15] Amnesty International's investigation confirmed that Turquoise Hill Resources knew or should have known that people were at risk of forced evictions as a result of the project. It did not, however, build in any safeguards to ensure that the land acquisition did not involve forced evictions and other human rights violations. Turquoise Hill Resources also did not take any corrective measures once the forced evictions were carried out by the government.

Turquoise Hill Resources failed to properly clean up hazardous waste materials that were dumped at the site by earlier mining operations, some of which still remain there 20 years later. During its own operations, Turquoise Hill Resources' joint venture reported various environmental incidents that include groundwater. None of the companies involved undertook a comprehensive assessment of the impact of the hazardous waste materials or other environmental incidents on the local community. People living in the area still have serious concerns about the long-term environmental impacts of the mine on their rights to health and access to water.

Turquoise Hill Resources has also never explained how its former stake in the Monywa project was transferred between 2007 and 2010 to its current owners, the Myanmar military-owned conglomerate Union Myanmar Economic Holdings Limited (UMEHL) and Chinese company Wanbao Mining. Full details of the sale still remain shrouded in secrecy. However,

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[12] *Ibid* at 12-13.

[13] 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/>.

[14] Amnesty International carried out an extensive investigation into human rights abuses and illegal activity linked to the Monywa project. See Amnesty International, *Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine* (February 2015) online: <www.amnesty.org/en/documents/ASA16/0003/2015/en>.

[15] This included copies of the orders passed by the Sagaing Division Law and Restoration Council in May 1996 and November 1997, nationalising 2477.88 and 2933.14 acres of farmland respectively; copies of letters written by the General Manager of ME1 to the District Governor requesting a contract/lease for the land in order to meet its agreement with a foreign organization and responses from the District Governor's office agreeing to the request; and other orders passed by the Ministry of Home Affairs and Ministry of Agriculture confirming that the land had been allocated to ME1 for use for the mining project.

information obtained by Amnesty International through the company registry and other searches in multiple jurisdictions as well as Wikileaks disclosures suggest that the company may have breached Canadian economic sanctions through its oversight of transactions which may have made economic resources available to sanctioned entities, associated with human rights abuses in Myanmar.

Despite the fact that concerns around Turquoise Hill Resources' Myanmar interests were raised publicly at various points, and even after information came to light which indicated that Canadian laws may have been breached, the Canadian government failed to adequately respond to them. The government should have carried out a full investigation into the transactions surrounding the sale of Turquoise Hill Resources' Myanmar assets, and ensured that the company carried out due diligence to prevent, mitigate and address adverse human rights impacts linked to the project.

In 2012, the Committee on the Elimination of Racial Discrimination (CERD) expressed concern that Canada had "not yet adopted measures with regard to transnational corporations registered in Canada whose activities negatively impact the rights of indigenous peoples outside Canada, in particular in mining activities."[16] In 2015, the Human Rights Committee urged Canada to "develop a legal framework that affords legal remedies to people who have been victims of activities of [corporations] operating abroad."[17]

Judges have generally ruled that cases launched by victims of corporate human rights abuses should be heard in the country where the mine is located rather than in Canada or have dismissed such lawsuits at the outset on other grounds. However, the Ontario Superior Court recently ruled that a case against HudBay Minerals related to its operations in Guatemala may proceed in Canadian courts. The HudBay case involves allegations by Maya-Q'eqchi villagers from eastern Guatemala that security personnel employed by HudBay Minerals' local subsidiary shot and killed school teacher Adolfo Ich Chamán, shot and paralyzed youth German Chub Choc, and gang-raped 11 Maya-Q'eqchi' women. HudBay Minerals did not appeal the decision, and a hearing will be conducted before the Ontario Superior Court.[18] Given that the HudBay decision came from a lower court, its precedential value remains to be seen. In June 2014, a new action was filed by seven men in British Columbia against Canadian company Tahoe Resources for injuries suffered when Tahoe's security personnel allegedly opened fire on them at close range during a peaceful protest against the mine.[19] On 9 November 2015 a court ruling held that the lawsuit should not go ahead in Canada because it would be more appropriate for it to be heard in Guatemala. The plaintiffs have

[16] United Nations Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*, 80th Sess, UN Doc CERD/C/CAN/CO/19-20 (4 April 2012) at para 14.

[17] United Nations Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, 114th Sess, UN Doc CCPR/C/CAN/CO/6 (13 August 2015) at para 6. There are few effective mechanisms to hold corporations to account for their impact on human rights, and business policies and practices in the area of human rights protection remain largely voluntary. Nicholas Caivano, "Sustaining Underdevelopment: Human Rights Accountability and the Business of Food" (2016) online: Harvard Health and Human Rights Journal <http://www.hhrjournal.org/2016/01/sustaining-underdevelopment-human-rights-accountability-and-the-business-of-food/>.

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

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

notified Amnesty International Canada that they are appealing the ruling. On 20 November 2015, 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.[20]

Existing non-judicial grievance mechanisms, such as Canada's National Contact Point to the Organization for Economic Cooperation and Development,[21] have proven to be ineffective.[22]

The lack of human rights standards for Canadian companies is exacerbated by a failure to anchor Canada's trade policies in a strong human rights framework. Canada continues to pursue bilateral and multilateral free trade agreements without specific attention to or incorporation of international human rights obligations. This is a particularly troubling omission given that recent trade agreements have been negotiated with countries that have worrying human rights records, such as Columbia[23] and Honduras.[24]

The agreement with Colombia includes a requirement for yearly reports assessing the human rights impact of the deal to be prepared by both governments and tabled in their respective Parliaments. Despite being informed on numerous occasions by representatives of the National Indigenous Organization of Colombia about concerns over serious human rights abuses by the resource extraction sector, including economic, social and cultural rights that threaten the physical and cultural survival of indigenous communities, the Canadian government has failed to address these concerns in any way in its yearly reports.[25]

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Pass laws that ensure access to domestic courts for victims of human rights abuses arising from the overseas operations of Canadian extractive firms;**

[20] 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>.

[21] 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>.

[22] For instance, Canadian NGO Mining Watch Canada reports that a complaint submitted to the National Contact Point regarding human rights harms by communities affected by Canadian company Goldcorp in Guatemala was closed without ruling on the allegations of human rights violations. See Mining Watch Canada, "Canadian government Abdicates Responsibility to Ensure Respect for Human Rights" (6 May 2011) online: <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 Comisión Ecuménica de Derechos Humanos, and MiningWatch 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. A year later, the complainants have not yet received even a preliminary assessment of the case, despite the National Contact Point procedures indicating that this step should be undertaken within three months: See MiningWatch Canada, "Human Rights Organizations Urge Canada to Take Action Against Corporate Abuses in Ecuador" (27 June 2014) online: <http://www.miningwatch.ca/news/human-rights-organizations-urge-canada-take-action-against-corporate-abuses-ecuador>.

[23] 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>.

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

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

- **Ensure the creation of an extractive-sector Ombudsperson, with the power to independently investigate complaints into human rights abuses and make recommendations;**

- **Institute legal and policy reforms to require companies domiciled or headquartered in Canada to carry out adequate human rights due diligence throughout their global operations; 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.**

## THE COMMITTEE ASKS:

5. Please provide information on the impact of the austerity measures introduced in 2010 and onwards, as suggested in paragraph15 of the State party's report (E/C.12/CAN/6), on the actual enjoyment of economic, social and cultural rights. Please also indicate the steps taken to ensure that the measures under the 2010 federal budget did not generate disproportionate impact on disadvantaged and marginalized groups and individuals.

## MAXIMUM AVAILABLE RESOURCES (ART. 2)

New austerity measures introduced by the province of Quebec for implementation in 2015-2016 have reduced access to essential public services and impacted the realization of economic and social rights in the province. Amnesty International is particularly concerned by the Quebec government's intention to continue cutting public spending in the areas of health care, education, and other services, which will disproportionately affect the most disadvantaged and marginalized groups in Quebec society.[26]

The impact of Quebec's new austerity policies is far-reaching. Some of the most alarming measures have appeared in the province's health care system. In 2015, the Quebec government ordered hospitals and other health facilities to slash $150 million from their budgets for medical tests, imaging scans, and procedures.[27] The budget also reduces funding to a program devoted to improving women's welfare and position in society, which reinforces gender inequality.[28] Since the economic crisis of 2008, $23 billion of government spending has been cut from the Quebec economy.[29] One study showed that $13 billion of these cuts disproportionately impacted women, in comparison to $3 billion of the cuts affecting men.[30] Observers have noted that government investment privileges sectors dominated by men, such

[26] Béatrice Vaugrante & Julia Grignon, "Mesures d'austérité du Québec et l'impact sur les droits des personnes" (2 December 2014) online: <https://amnistieca.wordpress.com/2014/12/02/mesures-d-austerite-du-quebec-et-limpact-sur-les-droits-des-personnes/>.

[27] These cuts are the result of an optimization measure the government refers to as "pertinence of care and physical health services." Aaron Derfel, "In bid to cut costs, Quebec won't fund hospitals for next year's leap year day, February 29" (29 July 2015) online: National Post <http://news.nationalpost.com/news/canada/in-bid-to-cut-costs-quebec-wont-fund-hospitals-for-next-years-leap-year-day-february-29>.

[28] Geoffrey Vendeville, "Quebec slashes budget for improving women's status" (26 March 2015) online: Montreal Gazette <http://montrealgazette.com/news/quebec/quebec-slashes-budget-for-improving-womens-status>.

[29] Eve-Lyne Couturier, "7 milliards ça fait beaucoup" (7 March 2015) online: IRIS <http://iris-recherche.qc.ca/blogue/7-milliards-ca-fait-beaucoup#more-5047>.

[30] Simon Tremblay-Pepin & Eve-Lyne Couturier, "Les mesures d'austérité et les femmes: analyse des documents budgétaires depuis novembre 2008" (2 March 2015) online: IRIS <http://iris-recherche.qc.ca/publications/austerite-femmes>.

as construction, to the detriment of those where workers are predominantly female, such as health care, education and public services.[31]

Budget cuts to the education sector threaten to interfere with children with disabilities' access to inclusive education. The Quebec government has cut funding to the province's 72 school boards by $1 billion over the past five years, resulting in fewer services to at-risk students.[32] The city of Montreal's largest school board, the *Commission scolaire de Montréal* (CSDM), has been ordered by the government to slash $42 million from its budget over the next two years and has informed parents that the cuts would include a reduction in resource teachers for students with disabilities.[33]

The government of Quebec has not fulfilled its obligation to consider the impact of its proposed cuts on vulnerable groups. Amnesty International also notes that the detrimental impact of austerity measures is cumulative and that violations of ESC rights occur over time. Those who already experience systemic discrimination also suffer the worst consequences of austerity measures, such as, children, persons with disabilities, and persons with low incomes.

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Promote a practice whereby all governments in Canada—federal, provincial and territorial—assess budgetary cuts so as to ensure compliance with the Covenant;**

- **Ensure that the government of Quebec adequately considers the extent to which its austerity policies disproportionately impact disadvantaged and marginalized groups and revises its 2015-16 budget accordingly to ensure such groups are prioritised and safeguarded against any retrogressive measures, and that there is no systematic discrimination in the areas of access to education, health, and other public services across the province; and**

- **Ensure that all provinces investigate the gendered implications of funding policies in the development of annual budgets and the extent to which austerity policies disproportionately impact women, and make revisions where the effect is to perpetuate systematic discrimination against women.**

## THE COMMITTEE ASKS:

3. In the light of the increasing resource development projects in the State party, please demonstrate how the State party is ensuring the free, prior and informed consent of the indigenous peoples affected by such projects in advance to the Government launching these projects. Please explain if and how gender-based analysis of development projects is carried out before embarking on such projects on or nearby lands,

[31] *Supra* note 29.

[32] Catherine Wilton, "Teachers, specialists and parents decry cuts to services for special needs students" (14 October 2015), online: The Montreal Gazette <http://montrealgazette.com/news/local-news/teachers-specialists-and-parents-decry-cuts-to-services-for-special-needs-students>.

[33] Michelle Lalonde, "Parents and teachers disrupt CSDM meeting to denounce budget cuts" (17 July 2015) online: The Montreal Gazette <http://montrealgazette.com/news/local-news/parents-and-teachers-disrupt-csdm-meeting-to-denounce-budget-cuts>.

territories and resources traditionally owned, occupied or otherwise used or acquired by indigenous peoples.

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

Canada has persistently failed to provide timely and effective redress for violations of Indigenous peoples' land and resource rights or ensure that Indigenous peoples are able to control and benefit from the lands and resources essential to the economic well-being and cultural and spiritual identities. UN treaty bodies and experts have on several occasions called on the Canadian government to take concrete and urgent steps to restore and respect Indigenous peoples rights to own and use their lands, territories and resources.[34] Failure to respect and uphold Indigenous peoples' lands rights can profoundly impair the ability of Indigenous individuals and families to enjoyment of their rights to an adequate standard of living, the highest attainable standard of health, to participate in the cultural life of their community, and to gain their living through the pursuit of traditional occupations such as hunting, trapping and fishing.

In 2009, in a 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 traditional 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. [35]

On 26 June 2014 the Supreme Court of Canada released a unanimous decision recognizing the right of the Tsilhqot'in people to own, control, and enjoy the benefits of approximately 2,000 $km^2$ of land at the heart of their traditional territory in central British Columbia.[36] This decision marked the first time that a court in Canada had upheld the continued right of an Indigenous nation to own and control traditional lands claimed by the state as public lands. The decision recognized the obligation of governments to obtain the consent of Indigenous peoples in decisions over their own lands and set out a clear and rigorous test for when it would be permissible for government 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.

First Nations, Inuit and Métis peoples are under increasing pressure from large-scale resource development projects and related infrastructure development on and near their traditional territories. The federal government has previously predicted that at least 600 more major resource development projects will get underway across Canada in this decade.[37] Federal

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[34] United Nations Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN Doc E/C.12/1/Add/31 (10 December 1998); United Nations Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, UN Doc CCPR/C/79/Add.105 (7 April 1999); United Nations Commission on Human Rights, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Addendum: Mission to Canada*, 61st Sess, UN Doc E/CN.4/2005/88/Add.3 (2 December 2004); United Nations Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Addendum: The Situation of indigenous peoples in Canada*, 27th Sess, Un Doc A/HRC/27/52/Add.2 (4 July 2014) at para 78.

[35] Hul'qumi'num Treaty Group, *Inter-Am Comm HR, Petition 592-07, Admissibility Report No 105-09* (2009) online: <http://www.cidh.oas.org/annualrep/2009eng/Canada592.07eng.htm>.

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

[37] Government of Canada, "Responsible Resource Development Creates Jobs for Canadians" Canada's Economic Action Plan (19 February 2013)

government claims that these projects will "translate hundreds of thousands of jobs in every sector of the Canadian economy and in every region of the country" fail to account for the potential impact on the traditional occupations of Indigenous peoples which remain important sources of food and livelihood for people who are otherwise marginalized in the Canadian economy.[38]

Resource development projects can have differing impacts for women and girls than for men and boys. This is especially true in situations in which women and girls are more deeply engaged in traditional land use activities such as tending plant medicines or, as is often the case, have less access to the high paying jobs and other benefits that may come from resource development projects. Most large-scale resource development projects in Canada rely on bringing large numbers of outside workers into the regions where the resources are being extracted. This model of development often leads to greatly inflated local housing prices, and an overall higher cost of living, as well as increased demands on government services in the region. This can adversely impact those who do not have access to the high wages offered by industry, which is a situation that disproportionately affects women and their families. A growing number of studies also link the stressful work conditions and other factors associated with the conditions of temporary work camps with increased rates of violence against women when workers are off shift.[39] While environmental assessments in Canada are intended to weigh environmental harm against the social benefits of a proposed project, these gendered impacts are routinely ignored.[40]

Despite concerns raised by many Indigenous peoples about the potential harmful impacts of unfettered large-scale resource development, the federal government has failed to establish sufficiently rigorous formal mechanisms and processes to ensure that Indigenous Peoples are meaningfully consulted and their rights adequately protected when such projects affect their traditional territories.[41] Supreme Court rulings affirming that there are circumstances in which decisions should only be made with the consent of the affected Indigenous peoples,[42] and international standards affirming Indigenous peoples' right of free, prior and informed consent have been ignored in the process of review and approval of some of the proposed resource development projects. The environmental impact assessment process, promoted by

online: <http://actionplan.gc.ca/en/blog/responsible-resource-development-creates-jobs>.

[38] *Ibid.*

[39] See e.g. Clarice Eckford & Jillian Wagg, *The Peace Project: Gender Based Analysis of Violence against Women and Girls in Fort St. John – revised, The Fort St. John Women's Resource Society* (February 2014). See also Conseil du statut de la femme Quebec, *Opinion - Women and Plan Nord: For Equality in Northern Development* (October 2012); Pauktuutit Inuit Women of Canada and University of British Columbia School of Social Work, *The Impacts of Resource Extraction on Inuit Women and Families in Qamani'tuaq, Nunavut Territory (Report for the Canadian Women's Foundation)* (2014); Janis Shandro et al, *Ten Steps Ahead: Community Health and Safety in the Nak'al Bun/Stuart Lake Region During the Construction Phase of the Mount Milligan Mine* (2014).

[40] See Amnesty International, "Open Letter to Justin Trudeau and Christy Clark : Site C Dam and the Human Rights of Indigenous Peoples in the Peace Valley" (18 November 2015) online: <http://www.amnesty.ca/sites/amnesty/files/2015.11.18%20TG%20AMR%202029022015%20Open%20Letter%20to%20PM%20Canada%20and%20Premier%20of%20BC.pdf>.

[41] Amnesty International, "Pushed to the Edge": The Land Rights of Indigenous Peoples in Canada (September 2009), AI Index No. AMR20/02/2009 online: <http://www.amnesty.org/en/library/info/AMR20/002/2009/en>; Amnesty International, Americas: Governments must stop imposing development projects on Indigenous peoples' territories (8 August 2012) AI Index No. AMR 01/005/2012 online: <http://www.amnesty.org/en/library/info/AMR01/005/2012/en>.

[42] *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.

government as a key means for Indigenous Peoples' voices to be heard when projects are considered, was gutted by new laws which reduced the likelihood of projects being subject to federal reviews and allowed the federal government to more readily override the findings of those reviews that are held.[43]

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.[44] If the project goes ahead, it would lead to pipeline construction across roughly 1000 rivers and streams in the traditional territories of Indigenous peoples in Alberta and British Columbia. The decision to certify the Northern Gateway Project is currently subject to a judicial review before the Federal Court of Appeal.

On 26 June 2014, the National Energy Board approved seismic testing in Baffin Bay and Davis Strait off of Nunavut. The Hamlet of Clyde River, on behalf of its majority Inuit population, and the Nammautaq Hunters and Trappers Organization are challenging that decision, arguing that they were not adequately consulted during the project approval process, and that seismic testing significantly threatens the sea mammals on which they rely on to maintain their traditional culture and livelihood.[45]

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Ensure that the positions taken by government in negotiations or litigation over Indigenous land disputes are consistent with the obligation to respect, protect and fulfil the rights of Indigenous peoples under Canadian and international law;**

- **Recognize the right of free, prior and informed consent (FPIC) of Indigenous peoples, fully incorporate FPIC in all laws, policies, and practices related to extractive industries at home and abroad;**

- **Include social, cultural and gender impacts in the assessment and regulation of resource development projects; and**

- **Reject or rescind approval of projects with potential significant harm to the rights of Indigenous peoples where such consent has not been granted.**

## THE COMMITTEE ASKS:

8. Further to the Committee's previous concerns (E/C.12/CAN/CO/4- E/C.12/CAN/CO/5, paras. 11(d) and 15), please elaborate on the impact of the measures taken to reduce disparities between indigenous and non-

[43] Canadian Environmental Assessment Act, 2012 (SC 2012, c 19, s 52); Fisheries Act (RSC, 1985, c F-14); National Energy Board Act (RSC, 1985, c N-7); Indian Oil and Gas Act (RSC, 1985, c I-7); Species at Risk Act (SC 2002, c 29); Navigation Protection Act (RSC, 1985, c N-22).

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

[45] See "Clyde River supports Greenpeace petition against seismic testing" CBC News (9 November 2014) online: <http://www.cbc.ca/news/canada/north/clyde-river-supports-greenpeace-petition-against-seismic-testing-1.2829154>.

indigenous peoples in relation to poverty prevalence and access to basic rights, including housing, education and health-care services.

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

The federal government significantly underfunds schools in First Nations reserves when compared to provincial funding of schools in predominantly non-Indigenous communities.[46] The Canadian Centre for Policy Alternatives estimates that the accumulated funding shortfall between 1996 and 2014 amounted to more than $3 billion.[47] Inadequate and inequitable funding of First Nations schools has directly contributed to lower educational achievement and deprived First Nations students of the kind of language and cultural skills training needed to help undo the harms inflicted by colonial policies and programmes such as the residential schools system.[48]

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.[49] In 2014, the federal government announced plans to significantly increase funding for First Nations schools and school programmes beginning in 2016.[50] However, the funding commitment was conditional on First Nations support for controversial proposed legislation known as the *First Nations Control of First Nations Education Act*.[51] The proposed act, which failed to pass into law, was widely rejected by First Nations as failing to respect their inherent rights and as imposing a single national model of school administration and accountability in place of the more regional approach considered necessary to respect the diversity of First Nations cultures, histories and needs.

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Take immediate measures to eliminate inequities in funding for education for First**

[46] First Nations Child and Family Caring Society, "First Nations children demand that the Canadian Government stop racially discriminating against them" Submission to the UN Committee on the Rights of the Child (28 January 2011).

[47] Canadian Centre for Policy Alternatives, "Striking a Better Balance: Alternative Federal Budget 2014" (2014) at 80-81, online: <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/02/AFB2014_MainDocument.pdf>.

[48] Scott Haldane, George E Lafond & Caroline Krause, Nurturing the Learning Spirit of First Nation Students: The Report of the National Panel on First Nation Elementary and Secondary Education for Students on Reserve (2012) online: <http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-EDU/STAGING/texte-text/nat_panel_final_report_1373997803969_eng.pdf>.

[49] Scott Haldane, George Lafond & Caroline Krause, *Nurturing the Learning Spirit of First Nation Students: The Report of the National Panel on First Nation Elementary and Secondary Education for Students on Reserve* (2012) online: <http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-EDU/STAGING/texte-text/nat_panel_final_report_1373997803969_eng.pdf>.

[50] Treasury Board of Canada, "Canada's Economic Action Plan: First Nations Education Act" (2014) online: <http://actionplan.gc.ca/en/initiative/first-nations-education-act>.

[51] Minister of Aboriginal Affairs and Northern Development, Bill C-33, *An Act to establish a framework to enable First Nations control of elementary and secondary education and to provide for related funding and to make related amendments to the Indian Act and consequential amendments to other Acts* (First Nations Control of First Nations Education Act ) , 2nd Session, Forty-first Parliament. See also, Canadian Press. "How the First Nations education act fell apart in matter of months" (11 May 2014) online: <http://www.cbc.ca/news/politics/how-the-first-nations-education-act-fell-apart-in-matter-of-months-1.2639378>.

**Nations children and youth on reserves and ensure that the level of funding takes account of First Nations children's culture and specific circumstances; and**

- **Collaborate with First Nations to foster on reserve educational systems consistent with preserving the best interests of the child, protecting and restoring Indigenous languages and cultures, honouring treaty rights, and respecting the inherent rights of self-government and self-determination.**

# III. OBSERVATIONS RELATING TO SPECIFIC PROVISIONS OF THE COVENANT

## THE COMMITTEE ASKS:

12. Please update the Committee on the coverage of employment insurance benefits, indicating whether workers in part-time and temporary jobs have access to such benefits. Please also provide information on the measures taken to ameliorate the situation of migrant workers who are under the federal Live-In Caregiver Programme, and indicate if all jurisdictions have adopted or plan to adopt legislation aimed at protecting migrant domestic workers.

### INADEQUATE PROTECTIONS FOR MIGRANT DOMESTIC WORKERS (ART. 7)

Migrant domestic workers are brought into Canada on terms that leave them open to exploitation and human rights violations whilst facing barriers to accessing justice and securing effective remedies.[52] No jurisdiction in Canada has adopted legislation aimed specifically at protecting the estimated 70,000 women in the country who are employed as domestic workers.[53] Limited job opportunities in some parts of the world have forced many women to seek employment in wealthier countries such as Canada as caregivers.[54] They are frequently underpaid, overworked, and denied enjoyment of their economic and social rights such as adequate housing, health, and safety at work.[55] Once these workers arrive, they are wary of asserting their rights, afraid that doing so could mean losing their employment.

Under the federal government's Live-in Caregiver Program (LCP), established in 1992, workers from other countries were brought in to take care of children, the elderly, and people with disabilities in the private homes of Canadian citizens.[56] Caregivers were required to complete 24 months of professional experience within 48 months to obtain permanent residency.[57] They are given a work permit which authorizes them to work only for the

[52] Metcalf Foundation, "Made in Canada: How the Law Constructs Migrant Workers' Insecurity" (2012) online: <http://www.metcalffoundation.com/stories/publications/made-in-canada-how-the-law-constructs-migrant-workers-insecurity/>.

[53] Migrant Workers Alliance, "Massive "Stop Mass Deportations" sign to be delivered to Joe Oliver's office" (4 March 2015) online: <http://www.migrantworkersalliance.org/massive-stop-mass-deportations-sign-to-be-delivered-to-joe-olivers-office/>; Ethel Tungohan, "Migrant advocacy groups fight April 1 temporary foreign worker deportations" (30 March 2015) online: <http://rabble.ca/news/2015/03/migrant-advocacy-groups-fight-april-1-temporary-foreign-worker-deportations>.

[54] The number of temporary foreign workers in Canada more than tripled between 2000 and 2010. In 2008, more temporary residents than permanent residents entered Canada for the first time; a trend that continues today. *Supra* note 52; Canadian Union of Public Employees, "Temporary Foreign Workers Program and the Live-in Caregiver Program" (2014) online: <http://cupe.ca/sites/cupe/files/fact_sheet_temporary_foreign_workers_program_and_the_live-in_caregiver_program.pdf>.

[55] *Supra* note 52.

[56] Canadian Union of Public Employees, "Fact Sheet: Temporary Foreign Workers Program and the Live-in Caregiver Program" (8 January 2015) online: <http://cupe.ca/fact-sheet-temporary-foreign-workers-program-and-live-caregiver-program>.

[57] Alia Dharssi, "Trudeau urged by workers to drop stringent migrant rules so they aren't trapped with one employer" (29 October 2015) online:

employer listed on the document. As a result, migrant domestic workers are not free to change jobs without risk of deportation.[58] A caregiver wishing to change employers must restart the process of obtaining a work permit which can take up to 8 months. They must often find a new place to live as well as a new employer, while facing the possibility that they might lose their right to work legally in Canada.

In October 2014, Canada announced significant changes to the Live-in Caregiver Program (LCP) that did not fundamentally address the problematic provisions that leave migrant domestic workers susceptible to exploitation and abuse.[59] The changes effectively cancelled the LCP and now require that caregivers be hired through the regular process of hiring foreign workers, known as the Temporary Foreign Workers Program (TFWP).[60] Under the new rules, caregivers are no longer required to live with their employer.[61] In some ways, however, the changes have increased migrant domestic workers' vulnerability to human rights abuses.

Migrant domestic workers remain tied to their employers by their work permit, and face a wait time of several months to obtain permission to change employer.[62] For this reason, many caregivers often feel as though they must accept poor work conditions to avoid losing their right to be legally employed in Canada. Abuse can be physical, sexual, verbal, psychological, social, or financial. Some caregivers have reported being intimidated, threatened with being fired, having their pay withheld, having their property withheld, or being punished in a variety of ways.[63] Others report having had their passports taken away by their employer.[64] Migrant workers may not know that the law prevents them from giving up any of their rights as a condition of employment. Even when they know their rights, they have few resources, such as legal aid, to support them in what can be complex and lengthy legal proceedings to seek redress for abuses.

The new rules have also removed the guaranteed pathway to permanent residency for migrant domestic workers who complete 2 years of work over a 4-year period and imposed a limit of 5,500 individuals working as caregivers who can be granted residency each year.[65] Before these changes, as many as 8,000 caregivers were granted permanent residency in a single year.[66] The changes place limitations on the nature of the work needed to fill the 2-year

<http://news.nationalpost.com/news/canada/trudeau-urged-by-workers-to-drop-stringent-migrant-rules-so-they-arent-trapped-with-one-employer>.

[58] Coalition for Migrant Worker Rights Canada, "Demands" (2015) online: <http://migrantrights.ca/en/demands/>.

[59] *Supra* note 56.

[60] Association des Aides Familiales du Québec, "Enjeux et Problématiques des Aides Familiales Immigrantes" (2015) online: <http://aafq.ca/dossiers/>.

[61] *Supra* note 56.

[62] *Supra* note 60.

[63] Ontario Women's Justice Network, "Rights and Protections for Live-in Caregivers under the Ontario Employment Protection for Foreign Nationals Act" (2013) online: <http://owjn.org/>.

[64] This constitutes human trafficking under the Canadian Criminal Code. Criminal Code, RSC, 1985, c C-46, s 402.2(1).

[65] Government of Canada, "Improving Canada's Caregiver Program" (31 October 2014) online: <http://news.gc.ca/web/article-en.do?nid=898719>.

[66] Joe Friese, "Foreign live-in caregivers demand Canadian permanent residency rights" (9 October 2014) online: <http://www.theglobeandmail.com/news/politics/foreign-live-in-caregivers-demand-canadian-permanent-residency-rights/article21042685/>; Debra Black, "New rules for federal live-in caregivers program" (28 November 2014) online: <http://www.thestar.com/news/canada/2014/11/28/new_rules_for_federal_livein_caregivers_program.html>.

requirement to be eligible for residency, among other restrictions.[67] Those that are not granted residency within 4 years are sent home, either because the cap has been filled or because they have failed to meet the more stringent work requirements in time.[68]

The new Liberal government has yet to detail its policies on these issues.[69] As long as Canada operates temporary labour migration programs for the benefit of employers, it must ensure that workers have effective enjoyment of their rights, including access to decent work, remedies for violations, and meaningful access to permanent residency.[70]

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Allow migrant domestic workers to move freely between employers by offering open work permits, thereby improving working and living conditions and rendering them less susceptible to abuse;**

- **Provide a guaranteed pathway to permanent residency for migrant domestic workers, including reasonable extensions to temporary visas; and**

- **Ensure that migrant domestic workers who experience human rights violations have effective access to justice, including legal aid.**

## THE COMMITTEE ASKS:

16. Please indicate if social assistance levels have been revised in all jurisdictions since 2009 and, if so, please explain whether the current rates allow individuals and families to meet their basic needs, including housing and food.

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

In April 2014, a government Member of Parliament tabled Bill C-585, *An Act to amend the Federal-Provincial Fiscal Arrangements Act (period of residence)*,[71] which allows provinces to

[67] The TFWP now requires that the entirety of these 24 months corresponds to one of two pathways: care of children, or care of persons with high medical needs. Under the now-defunct LCP, by contrast, a caregiver was eligible to apply for permanent residency after completing 24 months in 48 months, irrespective of the nature of the work. If a worker must change her or his pathway, the 24-month period restarts. The wait times to change employer and the possibility of restarting the 24-month count when changing pathways provide a significant deterrent to workers experiencing abuse to leave their employers, whose primary objective is to complete the requirements of the program within 48 months. The additional restrictions include education and language requirements. See Government of Canada, "Processing Applicants for the Live-In Caregiver Program" (2 October 2014) online: <http://www.cic.gc.ca/english/resources/manuals/op/op14-eng.pdf>; "Caregiver Program" (30 November 2014) online: <http://www.cic.gc.ca/english/immigrate/caregivers/>.

[68] Caregivers Action Centre, "Live-In Caregivers reject the conservative government's discriminatory policies" (3 September 2015) online: <http://caregiversactioncentre.org/permanent-status-now/campaign-updates/>; Ethel Tungohan, "Migrant advocacy groups fight April 1 temporary foreign worker deportations" (30 March 2015) online: <http://rabble.ca/news/2015/03/migrant-advocacy-groups-fight-april-1-temporary-foreign-worker-deportations>.

[69] Alia Dharssi, "Trudeau urged by workers to drop stringent migrant rules so they aren't trapped with one employer" (29 October 2015) online: <http://news.nationalpost.com/news/canada/trudeau-urged-by-workers-to-drop-stringent-migrant-rules-so-they-arent-trapped-with-one-employer>; Liberal Party of Canada, "A New Plan for Immigration and Canadian Economic Opportunity" (2015) online: <https://www.liberal.ca/files/2015/09/A-new-plan-for-Canadian-immigration-and-economic-opportunity.pdf>.

[70] *Supra* note 52 at 33-34.

[71] 41st Parl, 2nd Sess, 2013 (introduction and first reading 4 April 2014).

reduce access to social assistance to refugee claimants and other people without permanent status in Canada by imposing a minimum provincial residency requirement before allowing such individuals to apply for benefits. On 23 October 2014, the same provisions of this Bill were incorporated into Bill C-43,[72] a government omnibus budget Bill. The Bill received Royal Assent and became law on 16 December 2014. The new law has been widely condemned by refugee and human rights groups across Canada as it permits provinces to deny some of the most vulnerable people access to any social assistance.[73]

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Repeal Bill C-43 and ensure that all individuals seeking Canada's protection receive adequate social security.**

## THE COMMITTEE ASKS:

17. Please indicate if the State party has taken steps to criminalize domestic violence as a separate offence, and describe the measures adopted to address violence against women. Please also provide information on the steps taken to facilitate access to shelters and long- term housing solutions for girls and women victims of domestic violence, including indigenous women.

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

Indigenous women and girls in Canada face a significantly heightened risk of being subject to violence, including murder, as compared to other women and girls in the country. This risk is rooted in the social and economic marginalization that Indigenous women and girls experience in Canadian society.

One illustration of Canada's piecemeal and inadequate response to this violence is the fact that until 2014 there were no official statistics on the numbers of missing and murdered Indigenous women and girls. There are still no statistics about the numbers of suspicious deaths of Indigenous women and girls and no ongoing reporting on missing Indigenous women and girls. There are also no national protocols and very little training to ensure police consistently and accurately record the Indigenous identity of victims of crime.

In October 2015, Quebec's provincial police force suspended eight officers accused of abuse of power and assault involving Indigenous women in the remote mining town of Val-d'Or. The allegations involve women who were paid or forced to perform sexual acts to uniformed police officers—one allegedly inside a police station.[74]

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[72] A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on February 11, 2014 and other measures, 41st Parl, 2nd Sess, 2013 (introduction and first reading 23 October 2014) online: <http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&Bill=C43&Parl=41&Ses=2>.

[73] See Stephanie Levitz, "Refugee groups want welfare changes pulled from omnibus budget bill" CBC News (18 November 2014) online: <http://www.cbc.ca/news/politics/refugee-groups-want-welfare-changes-pulled-from-omnibus-budget-bill-1.2838774>.

[74] Allan Woods, "Quebec Probes Alleged Police Abuse of Aboriginal Women" (23 October 2015) online: <http://www.thestar.com/news/canada/2015/10/23/quebec-probes-police-treatment-of-aboriginal-women.html>.

In November 2015, the newly elected federal government made a commitment to convene an independent public inquiry into missing and murdered Indigenous women and girls. A pre-inquiry phase of consultation, including with affected families and communities, is presently underway, considering options for the mandate of and approach to be taken by the inquiry.

UN bodies and experts, as well as Indigenous women's organizations across Canada, have repeatedly stressed the need for a response to violence against Indigenous women and girls that is comprehensive, coordinated and properly resourced in keeping with the scale and severity of the violence.[75]

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Ensure that the independent public inquiry into missing and murdered Indigenous women and girls leads to the adoption of a comprehensive national plan of action to address the social and economic factors putting Indigenous women and girls at risk, and to ensure appropriate, effective and unbiased responses from police and the justice system;**

- **Involve the affected women, families and communities in the development of the inquiry and ensure they are able to effectively participate in its design, implementation, monitoring, and evaluation; and**

- **Take immediate measures to implement outstanding recommendations from UN human rights bodies and others to address urgent and longstanding right violations including increased funding for women's shelters and other supports in Indigenous communities.**

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

In addition to the lack of progress in addressing staggeringly high rates of violence against Indigenous women and girls in Canada, detailed above, there has been little or no progress in reducing violence against non-Indigenous women and girls. 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.[76] In a recent report, however, the Canadian Centre for Policy Alternatives estimated that rates of physical and sexual violence against women have risen by 2.4 percent for the adult population, while fewer and fewer of those crimes are being reported to the police.[77] The study found that "on any given day, more than 8,256 women and children will seek

[75] See e.g. United Nations 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/OP.8/CAN/1; 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.

[76] See Carol Goar, "Women struggle in information vacuum: Campaign to end violence against women stymied by lack of up-to-date information" The Star (23 September 2013) online:<http://www.thestar.com/opinion/commentary/2013/09/23/women_struggle_in_information_vacuum_goar.html>.

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

protection from a shelter or transition home."[78]

Recently, Canada has frequently undermined the protection of sexual and reproductive rights in other countries, in important UN fora dealing with violence against women. At the UN Human Rights Council in June 2013, Canada drafted the annual resolution on violence against women, themed around sexual violence, and neglected to include language adopted at the March 2013 UN Commission on the Status of Women outlining the full range of sexual and reproductive health services that should be made available to survivors of sexual violence.[79] 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.[80] 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.[81]

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Develop a comprehensive national plan of action to address violence against women and girls in the country;**

- **Increase and enhance data collection on incidents of violence against women and girls in Canada; and**

- **Amend its foreign policy stance so that Canada upholds international standards on sexual and reproductive rights and funds safe abortion services for survivors of sexual violence as part of its overseas development assistance.**

## THE COMMITTEE ASKS:

19. Please update the Committee on the impact of the measures taken to reduce poverty among marginalized and disadvantaged individuals and groups, including indigenous peoples, single mothers, recently arrived immigrants, persons with disabilities and children.

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

Under the Constitutional division of powers, the federal government bears the responsibility of funding services on First Nations reserves, and in the Yukon, that in other communities would generally be funded by the provincial and territorial governments. However, the federal government's funding of children and family services in First Nations reserves and in the Yukon is at least 22 per cent less per child than what provincial governments dedicate for

[78] *Ibid* at 11.

[79] 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>.

[80] 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>.

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

child protection services in other, predominantly non-Indigenous communities.[82] This is despite often greater needs and the higher costs of delivering services in small and remote First Nations communities.[83]

The persistent underfunding has limited the child and family services available in many First Nations communities to the point that the removal of children from their families, meant to be strictly a last resort, has far too often become the only option available when families are not able to provide adequate care.[84] In 2006, this Committee expressed concern that Aboriginal families "are overrepresented in families whose children are relinquished to foster care."[85] Today, the continued failure to adequately assist these families through culturally appropriate counselling and well-resourced 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.[86]

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*.[87] In January 2015, the Tribunal concluded that the federal government's arbitrary funding formula fails to consider "the actual service needs of First Nations children and families" and creates "incentives to remove children from their homes and communities."[88] It ordered the government to take immediate action to "remove the most discriminatory aspects" of its funding systems and to "properly implement" Jordan's Principle, a national standard which requires that measures to meet children's needs not be delayed or compromised by jurisdictional disputes. The Tribunal has retained jurisdiction to oversee talks between First Nations and the federal government to address more systemic reform.

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Work with First Nations to eliminate the gap in funding for First Nations child and family services, provide a level of funding that takes the specific needs and circumstances of First Nations communities into account, and ensure equitable access to culturally-appropriate**

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

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

[84] For a detailed overview of First Nations child welfare services, see Assembly of First Nations, Kiskisik Awasisak: Remember the Children: Understanding the Overrepresentation of First Nations Children in the Child Welfare System (2011) online: <http://www.fncaringsociety.com/sites/default/files/docs/FNCIS- 2008-report.pdf>.

[85] *Supra* note 2.

[86] See "First Nations children still 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 >.

[87] RSC 1985, c H-6.

[88] *First Nations Child and Family Caring Society of Canada et al. v. AGC*, 2016 CHRT 2.

**programmes and support services within families and communities.**

## THE COMMITTEE ASKS:

20. Further to the Committee's previous recommendation (E/C.12/CAN/CO/4- E/C.12/CAN/CO/5, para. 61), please indicate the measures adopted to reduce hunger and food insecurity, in particular among indigenous peoples living on-reserve and living off- reserve, as well as among recently arrived immigrant households. Please also indicate if the State party intends to adopt a national right to food strategy.

## FOOD SECURITY (ARTS. 2, 11)

In 2006, this Committee strongly recommended that Canada

> significantly intensify its efforts to address the issue of food insecurity and hunger in Canada. In this regard, the Committee reminds the State party of its core obligation to fulfil (provide) the right to food when disadvantaged and marginalized individuals or groups are, for reasons beyond their control, unable to realize these rights for themselves through all means possible at their disposal.[89]

In 2012, the UN Special Rapporteur on the right to food, Olivier De Schutter, expressed serious concerns with the extent and depth of hunger and food insecurity in Canada.[90] In response, officials from the previous Canadian government made sharply critical and derisive remarks in the House of Commons and to the media about the value of investigating issues related to the right to food in an affluent country such as Canada, rather than focusing exclusively on developing countries.[91]

The previous government's dismissiveness of the Special Rapporteur's findings contrast sharply with the lack of progress made to address food insecurity in the country. Despite the country's wealth[92] and abundance of resources, one in eight Canadian households struggle to put food on the table; nearly 375,000 people in the province of Ontario alone use a food bank in a single month; and a staggering 62% of children living in the North (the Yukon, Northwest Territories, and Nunavut) are food insecure.[93] A report released in October 2015 reveals that the prevalence of food insecurity has "increased significantly" in major cities including Halifax, Montreal, and Calgary.[94]

Food insecurity continues to present a particularly serious and growing challenge in Canada's

[89] *Supra* note 2 at para 61.

[90] Olivier De Schutter, *Mission to Canada: Report of the Special Rapporteur on the right to food, Olivier De Schutter* (24 December 2012) UN Doc A/HRC/22/50/Add.1.

[91] See Amnesty International, "Canada - UN Special Rapporteur on the right to food presents his report" (4 March 2013) online: <http://www.amnesty.ca/news/news-releases/canada-un-special-rapporteur-on-the-right-to-food-presents-his-report>; National Post, "Harper government again at war with UN envoy over Canada's fight against poverty" (4 March 2013) online: <http://news.nationalpost.com/news/canada/harper-government-again-at-war-with-un-envoy-over-canadas-fight-against-poverty>.

[92] Canada is the world's eleventh-largest economy as of 2015, with a nominal GDP of approximately US$1.79 trillion. World Bank, "Gross Domestic Product Ranking Table" (29 December 2015) online: <http://databank.worldbank.org/data/download/GDP.pdf>.

[93] Canada Without Poverty, "The Right to Food" (2015) online: <http://www.cwp-csp.ca/poverty/a-human-rights-violation/the-right-to-food/>.

[94] Urshila Sriram & Valerie Tarasuk, "Changes in household food insecurity rates in Canadian metropolitan areas from 2007 to 2012" (2015) 106:5 Canadian Journal of Public Health 322 at 322.

northern and remote Aboriginal communities.[95] The territory of Nunavut has the highest documented rate of food insecurity for any Indigenous population living in a developed country.[96] According to estimates from the 2011 Canadian Community Health Survey, off-reserve Aboriginal households across Canada experience food insecurity at a rate that is more than double that of all Canadian households (27%).[97]

The concept of food sovereignty holds particular relevance to Indigenous peoples, many whom rely on local food systems. Food sovereignty "is based on the principle that decisions about food systems, including markets, production modes, food cultures, and environments, should be made by those who depend on them."[98] Food sovereignty also emphasizes the needs of local citizens in developing policies related to food security, rather than prioritizing the demands of international markets and corporations.[99] To address the specific needs of Indigenous peoples, policy should recognize Indigenous jurisdiction over traditional lands and waters and support both Indigenous fisheries and other community-based livelihood fisheries.

Particularly troubling is the federal government and the province of British Columbia's approval of the construction of a massive hydro-electric project, the Site C Dam, that would flood more than 80 km of the Peace River valley in north-eastern British Columbia. First Nations and Métis peoples rely on the affected lands and waters to provide for themselves and to practice their cultures and traditions, including by hunting, fishing, and gathering berries and plant medicines. There is also extensive farming by non-Indigenous families who benefit from the Valley's unique micro-climates. In addition, the Peace Valley is also the location of numerous cultural and heritage sites whose history spans some 10,000 years.[100]

The joint federal-provincial environmental assessment of the Site C dam concluded that many of the impacts on Indigenous peoples' cultural heritage and contemporary land use would be of high magnitude, permanent, and irreversible.[101] In conversations with Amnesty International, community members have expressed deep concern about the fact that opportunity to harvest culturally and economically significant wild species such as moose has already greatly diminished, both because of environmental disruptions and because of increased competition from new residents who have come to the region to work on resource development projects.

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[95] Council of Canadian Academics – Expert Panel on the State of Knowledge of Food Security in Northern Canada, *Aboriginal Food Security in Northern Canada: An Assessment of the State of Knowledge* (2014) online: <http://www.scienceadvice.ca/uploads/eng/assessments%20and%20publications%20and%20news%20releases/food%20security/foodsecurity_fullreporten.pdf> at xiv.

[96] *Ibid.*

[97] *Ibid.*

[98] *Ibid* at xix.

[99] Nandini Ramanujam, Nicholas Caivano & Semahagn Abebe, "From Justiciability to Justice: Realizing the Human Right to Food" (2015) 11:1 International Journal of Sustainable Development Law & Policy 1 at 18.

[100] Thomas Schultz-Jagow, "Open Letter from Amnesty International: Site C Dam and the Human Rights of Indigenous Peoples in the Peace Valley" (18 November 2015) online: <https://www.amnesty.org/en/documents/amr20/2902/2015/en/>.

[101] Amnesty International, "Open Letter: Site C Dam and the Human Rights of Indigenous Peoples in the Peace Valley" (18 November 2015) online: <https://www.amnesty.org/en/documents/amr20/2902/2015/en/>.

The additional harm that would be caused by the Site C dam would also erode the ability of Indigenous peoples to exercise fundamental human rights protected under both Canadian and international law. These rights include the right of Indigenous peoples to maintain their cultures and identities, to practice their traditional livelihoods, to practice their religions, and to pass on to future generations the knowledge of how to live on the land, as well as the right of all women and men to live in safety and security. The federal and provincial governments have failed to provide any clear and objective justification for the violation of these rights by the construction of the dam.

First Nations and non-Indigenous land-owners have challenged the approval of the Site C dam in federal and provincial courts. Even though some of these legal challenges are still ongoing, the project proponent, BC Hydro, has already been allowed to clear large areas of forest in preparation for the dam's construction.

Canada's new government has tasked its Minister of Agriculture and Agri-Food with developing "a food policy that promotes healthy living and safe food," although the government has not yet made a commitment to developing a national right to food strategy that addresses the root causes of hunger and food insecurity.[102]

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Develop a comprehensive, human rights-based national food strategy, in consultation with civil society, for combatting food insecurity which ensures that discriminated groups are prioritised and protected against barriers that impede access to food;**

- **Ensure that Treaty and Aboriginal rights to harvest wild foods are recognized and protected and that the food security of Indigenous peoples is prioritized in development decisions; and**

- **Suspend construction of the Site C dam and commit to ensuring that the project will not proceed so long as affected Indigenous peoples have withheld their free, prior and informed consent.**

## THE COMMITTEE ASKS:

21. Further to the Committee's previous concern (E/C.12/CAN/CO/4- E/C.12/CAN/CO/5, para. 28), and in the light of the State party's statement that the number of homeless persons is increasing in Canada (E/C.12/CAN/6, para. 125), please provide updated information on the impact of the measures taken to tackle homelessness. Please also describe the steps targeting groups who are more vulnerable to homelessness, including abused women and girls, persons with disabilities, families with low income, and indigenous peoples.

[102] Government of Canada, "Minister of Agriculture and Agri-Food Mandate Letter" (2015) online: <http://pm.gc.ca/eng/minister-agriculture-and-agri-food-mandate-letter>.

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

In 2006 this Committee recommended that Canada "address homelessness and inadequate housing as a national emergency."[103] It emphasized the responsibility of courts to fully consider Canada's international human rights obligations when interpreting the *Canadian Charter of Rights and Freedoms*, and urged the government to design and implement a national strategy to reduce homelessness.[104]

Successive governments have steadfastly refused to adopt a human rights based housing strategy. In February 2013, the previous government opposed and defeated private member's legislation which called upon the Minister responsible for the Canada Mortgage and Housing Corporation to "establish a national housing strategy designed to respect, protect, promote and fulfil the right to adequate housing as guaranteed under international human rights treaties ratified by Canada."[105] The new government, in its election platform, promised to develop a national housing strategy.[106]

The right to adequate housing was taken up recently by the Ontario Court of Appeal in a case brought by a group of homeless people who argued that the Ontario and Canadian governments' failure to develop a housing strategy had violated their rights under the *Canadian Charter of Rights and Freedoms*. The Court's decision[107] dismissed the landmark case without a full hearing, stating that the right to housing was not justiciable under the *Charter* and that the *Charter*'s section 7 right to life and security of the person did not confer a "general freestanding right to adequate housing"[108] One judge dissented, ruling that the case should have been allowed to proceed to a full hearing. The Supreme Court of Canada denied leave to appeal the case further.

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Follow-up to its commitment to develop a national housing strategy designed to respect, protect, promote and fulfil the right to adequate housing including prioritising the crisis of homelessness.**

## THE COMMITTEE ASKS:

27. Please provide information on the access of children with disabilities to inclusive education, as well as the availability of sufficient qualified staff and teachers, including in isolated and rural areas.

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[103] *Supra* note 2 at para 62.

[104] *Ibid.*

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

[106] Liberal Party of Canada, "Affordable National Housing Strategy" (2015) online: <https://www.liberal.ca/policy-resolutions/162-affordable-national-housing-strategy/>.

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

[108] *Ibid* at 30.

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

Canada has no federal legislation protecting children with disabilities' right to inclusive education because education falls under provincial and territorial jurisdiction. Although every province and territory has some form of policy on inclusive education, they vary widely in how they define inclusion and how they implement inclusive education in practice.[109] This inconsistency in policy and practice across provinces and the failure of many schools to abide by international standards contributes to lower educational and employment outcomes for children with disabilities and, in some cases, can lead to abuse.[110]

In British Columbia, a 2013 investigation revealed the widespread use of restraint and seclusion in schools, reporting that children with disabilities were being kept in small spaces—including closets and stairwells—for up to three hours when judged to be disruptive.[111] A seclusion room is a space where a child is involuntarily confined and from which he or she is physically prevented from exiting.[112] Parents of one British Columbia boy with autism reported, for example, that their son was repeatedly locked in a small room in his school for misbehaving.[113] Nearly half of all students surveyed as part of the 2013 investigation reported that physical injury or obvious signs of pain occurred during restraint, and more than three quarters reported emotional trauma.[114] These reports remain ongoing in 2015, and the provincial government has not followed up on its promise to conduct an inquiry.[115]

Student assessment models in schools are generally normative and designed with the majority in mind, which undermines inclusive education efforts. As education systems adapt to meet the diverse needs of students, it is counter-productive to require students to meet prescribed outputs on standardized assessments. Students who are new to Canada or whose first language is not English as well as students who are socioeconomically marginalized are particularly disadvantaged by standardized assessment mechanisms. The inadequacy of standardized assessment is compounded when considering students with disabilities. For these reasons, forms of inclusive assessments that recognize the diverse needs of the entire

[109] Canadian Centre for Policy Alternatives, "Disability and Inclusion in Canadian Education: Policy, Procedure, and Practice" (June 2015) online: <https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2015/07/Disability_and_Inclusion_in_Education.pd> at 5.

[110] See Nicholas Caivano, "Rights Remain Out of Reach for Many Persons with Disabilities in Canada" (14 December 2015) online: Amnesty International <http://www.amnesty.ca/blog/rights-remain-out-reach-many-persons-disabilities-canada>. See also Amnesty International, "Observations on the Draft General Comment No 4 of the Convention on the Rights of Persons with Disabilities" (2016) online: <https://www.amnesty.org/en/documents/ior40/3217/2016/en/>.

[111] Inclusion BC, Stop Hurting Kids: Restraint and Seclusion in BC Schools: Survey Results and Recommendations (November 2013) online: <http://www.inclusionbc.org/sites/default/files/StopHurtingKids-Report.pdf>.

[112] Jennifer Clibbon, "Seclusion rooms in schools do more harm than good, experts say" (12 October 2015) online: <http://www.cbc.ca/news/health/seclusion-rooms-1.3264834>.

[113] CTV News, "B.C. parents outraged after son with Down syndrome locked in 'quiet room'" (6 October 2015) online: <http://www.ctvnews.ca/canada/b-c-parents-outraged-after-son-with-down-syndrome-locked-in-quiet-room-1.2598678>.

[114] *Supra* note 109 at 5, 7.

[115] Inclusion BC, "Restraint and Seclusion in BC Schools Must be Banned" (7 October 2015) online: <http://www.inclusionbc.org/whats-new/restraint-and-seclusion-bc-schools-must-be-banned>.

student body, including students with disabilities, should be pursued and prioritized.[116]

The variation in inclusive education policies, their implementation, and the way that they are funded means that a student with a disability in one part of the country may be treated differently and receive a considerably different amount of support than a student with the same type of disability in another jurisdiction. In addition, the majority of special education policies in place across Canada are more than 10 years old. While some provinces are beginning the process of conducting reviews or reports assessing their special education approaches, many of these policies are out of step with current practices around inclusive education.[117]

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Ensure that the education policy across all provinces prohibits the use of restraint, seclusion, and aversive interventions;**

- **Prioritize inclusive assessments that recognize the diverse needs of the entire student body, including students with disabilities; and**

- **Provide teachers with sufficient resources and expertise to ensure that children with disabilities and their families receive adequate support both inside and outside the classroom.**

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[116] *Supra* note 109 at at 23.

[117] *Ibid* at 31.

# IV. FURTHER OBSERVATIONS

In this section, Amnesty International provides additional observations and recommendations to Canada to ensure strong and effective implementation of the Covenant.

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

In 2006, this Committee strongly recommended that Canada

> review its position on the right to water, in line with the Committee's general comment No. 15 (2002) on the right to water, so as to ensure equal and adequate access to water for people living in the State party, irrespective of the province or territory in which they live or the community to which they belong.[118]

Also in 2006, an expert panel appointed by the federal government concluded that drinking water problems in First Nations communities were primarily the result of federal underfunding. The panel urged the federal government to provide the resources necessary "to ensure that the quality of First Nations' water and wastewater is at least as good as that in similar communities and that systems are properly run and maintained."[119]

Instead of acting on the panel's concerns the federal government adopted new legislation, the *Safe Drinking Water for First Nations Act*,[120] which came into force on 1 November 2013. The legislation granted unilateral powers to the federal government to disregard constitutionally protected rights of Indigenous peoples – including self-government rights set out in treaties and other agreements – for the purpose of regulating First Nations water systems.[121] However, the Act did not provide any new resources to ensure that the needs of these communities are actually met.

As a result, an estimated 20,000 First Nations people living on reserves across Canada still have no access to running water or sewage.[122] In addition, at any one time more than 100 of those communities who do have running water will be under advisories to boil or not drink the water because of failures in the drinking water system.[123]

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[118] *Supra* note 2 at para 64.

[119] Report of the Expert Panel on Safe Drinking Water for First Nations (Ottawa: Minister of Public Works and Government Services Canada, 2006) at 50 online: <http://www.safewater.org/PDFS/reportlibrary/P3._EP_-_2006_-_V1.pdf>.

[120] SC 2013, s 21.

[121] The Act states, "For greater certainty, nothing in this Act or the regulations is to be construed so as to abrogate or derogate from any existing Aboriginal or treaty rights of the Aboriginal peoples of Canada under section 35 of the Constitution Act, 1982, except to the extent necessary to ensure the safety of drinking water on First Nation lands." Constance Blackhouse and Wilton Littlechild, "Legislation must not erode Aboriginal rights" (20 January 2013) online: <https://www.itk.ca/front-page- story/legislation-must-not-erode-aboriginal-rights>.

[122] Neegan Burnside Ltd, National Assessment of First Nations Water and Wastewater Systems - National Roll-Up Report, (Department of Indian Affairs and Northern Development Canada, April 2011) online: http://www.aadnc-aandc.gc.ca/eng/1313770257504/1313770328745.

[123] Ecojustice Canada, "Right to water, healthy environment must be immediate priorities for new government" (21 October 2015) <http://www.ecojustice.ca/right-to-water-healthy-environment-must-be-immediate-priorities-for-new-government/#sthash.QKB687JT.dpuf>.

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Collaborate with First Nations to ensure that all First Nations communities have access to clean drinking water and adequate sanitation, including through provision of adequate, sustained funding for such services; and**

- **Amend the *Safe Drinking Water for First Nations Act* to ensure respect for First Nations self-government rights in regulating First Nations water systems.**

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

In Canada and worldwide, transgender individuals face a heightened risk of murder, assault and other hate crimes and human rights violations.[124] They also experience widespread discrimination with respect to employment, housing and other essential rights. The impact is devastating. Transgender individuals face some of the highest levels of depression and suicide of any sector in society.[125] 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)*, passed in the House of Commons but became stalled in the Senate in the face of opposition from a number of Senators appointed by the previous government. It did not pass before the last session of Parliament ended in June 2015.[126] The Bill would have added gender identity to the prohibited grounds of discrimination under the *Canadian Human Rights Act* as well as the hate crime provisions in the *Criminal Code*. Notably it was endorsed by police forces in Canada, who indicated that it would significantly improve their ability to investigate and punish crimes committed against transgender individuals, particularly hate crimes. Eight provinces and territories are now ahead of the federal government in having added gender identity to the prohibited grounds of discrimination under provincial and territorial human rights laws.

Amnesty International strongly welcomes the fact that Canada's new Minister of Justice was mandated in November 2015 to "introduce government legislation to add gender identity as a prohibited ground for discrimination under the Canadian Human Rights Act, and to the list

[124] United Nations 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); United Nations 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 [A/HRC/19/41]. See also Jaime M Grant, Lisa A Mottet, 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: Egale Human Rights Trust, 2011) at 15-17 online: <http://egale.ca/wp-content/uploads/2011/05/EgaleFinalReport-web.pdf>.

[125] 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/>.

[126] 1st Sess, 41st Parl, 2013 (Second Reading in the Senate) status of Bill online: <http://www.parl.gc.ca/LEGISInfo/BillDetails.aspx?Language=E&Mode=1&billId=6251806>.

of distinguishing characteristics of 'identifiable group' protected by the hate speech provisions of the Criminal Code." It will be the first time that a proposal for federal legislation in this area goes forward as a government bill.

The initiative will be significantly strengthened if it is extended to cover both gender identity and gender expression, as was done, for example, in the province of Ontario. Gender identity is a person's individual sense of gender—whether they identify as a woman, man, both, or neither. Gender expression is how a person publicly presents their gender and can include behaviour and appearance. Gender non-conforming individuals may experience discrimination because of who they are (their gender identity) and/or because of how they express their gender outwardly (their gender expression), making it important to include both gender identity and expression as prohibited grounds of discrimination.

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Pass legislation that would add gender identity and gender expression to the prohibited grounds of discrimination under the *Canadian Human Rights Act* and the hate crimes provisions of the Criminal Code.**

## REFUGEE AND MIGRANT HEALTH (ARTS. 2, 12)

In 2012, the previous government made sweeping cuts to the program that funds health services for refugee claimants and refugees in Canada.[127] The cuts resulted in a new, tiered system of health benefits to persons in need of protection in Canada. Which tier a person is entitled to in the new Interim Federal Health Program depends on a number of factors. Refugee claimants lost access to often life-saving medications, such as, for instance, insulin to treat juvenile diabetes. Health coverage was limited to "urgent or essential care" and no longer extended to treatment that would be considered to be preventative in nature. 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 conducted on a *pro bono* basis.[128] Refugee claimants coming from countries designated as "safe countries of origin" were not even covered for urgent or essential care as a result of the cuts. Rather, they only would receive coverage for conditions that posed a risk to public health or public security. And individuals who were deemed inadmissible to Canada but were awaiting a final pre-removal risk assessment were excluded from any coverage whatsoever, *even if* their health conditions posed a risk to public health or public security.[129]

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 refugee claimants who require essential medicines and other health

[127] See Meagan Fitzpatrick, "Refugee health benefits scaled back by Tories" CBC News (25 April 2012) online: <http://www.cbc.ca/m/touch/politics/story/1.1164074>.

[128] CTV News, "Doctors group calls on Ottawa to rethink cuts to refugee health program" online: <http://www.ctvnews.ca/health/doctors-group-calls-on-ottawa-to-rethink-cuts-to-refugee-health-program-1.974798>.

[129] 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.

services at risk.

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.[130]

In July 2014, the Federal Court of Canada declared the cuts to be unconstitutional, finding them to be "cruel and unusual."[131] The Federal Court also found that the withholding of health care specifically from refugee claimants coming from safe countries of origin was discriminatory.[132] The previous government launched an appeal before the Federal Court of Appeal.[133] 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 health care pending the resolution of the case.[134] In December 2015, the new government dropped its appeal of the case, and has stated that it would reverse the cuts to the IFHP.[135]

Canada also refuses to provide health care to undocumented migrants. In a 2011 case involving the right to health of undocumented migrants in Canada, the Federal Court of Appeal held that "[t]he Charter does not confer a freestanding constitutional right to health care"[136] and that withholding health care in that case was in accordance with principles of fundamental justice.[137] Leave to appeal the case to the Supreme Court of Canada was denied. The UN Human Rights Committee, in its August 2015 review of Canada, called on Canada to ensure that all refugee claimants and irregular migrants have access to essential health care services irrespective of their status.[138]

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

[131] Canadian Doctors for Refugee Care v Canada (Attorney General), 2014 FC 651 at paras 636, 669, 688, 691, 1080.

[132] *Ibid* at paras 766.

[133] See Louise Elliott, "Refugee health-cuts ruling appealed by Ottawa" CBC News (1 October 2014) online: <http://www.cbc.ca/news/politics/refugee-health-cuts-ruling-appealed-by-ottawa-1.2783819>.

[134] 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>.

[135] Government of Canada, "Statement from the Minister of Immigration, Refugees and Citizenship and the Minister of Justice and Attorney General of Canada" (16 December 2015) online: <http://news.gc.ca/web/article-en.do?mthd=tp&crtr.page=1&nid=1025029&crtr.tp1D=980>.

[136] *Toussaint v Canada (Attorney General),* 2011 FCA 213 at para 77.

[137] 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."

[138] United Nations Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, UN Doc CCPR/C/CAN/CO/6 (13 August 2015) at para 12.

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Follow up on its commitment to restore the Interim Federal Health Program for refugee claimants and refugees in Canada; and**

- **Ensure equal access to essential health care for all individuals in Canada, including irregular migrants, regardless of immigration status.**

## SOLITARY CONFINEMENT (ART. 12)

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."[139] 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.[140] According to Correctional Services Canada data, the average length of stay in segregation between 2006 and 2011 was 40 days, and 13 per cent of segregated inmates stayed more than four months.[141]

In 2012, the UN Committee against Torture expressed its concern at Canada's use of "solitary confinement, in the forms of disciplinary and administrative segregation, often extensively prolonged, even for persons with mental illness."[142] The Committee recommended that Canada "limit the use of solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review," and "abolish the use of solitary confinement for persons with serious or acute mental illness."[143] In August 2015, the UN Human Rights Committee called on Canada to, "limit effectively the use of administrative or disciplinary segregation as a measure of last resort for as short a time as possible and avoid such confinement for inmates with serious illness." [144]

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2011 affirmed that being confined in isolation produces severe – and sometimes irreversible—physical and psychological effects, and can amount to torture.[145] The tragic effects of such practices in Canada have been widely publicized in the case of Ashley Smith, a mentally ill teenager who, in 2007, after being held in solitary confinement for almost four years, died by self-inflicted strangulation under the watch of guards and supervisors. In 2013, a jury in the inquest into Ms. Smith's death determined that it was a

[139] 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].

[140] Kirk Makin, "Canadian Prisons 'Out of Step' on Solitary Confinement," The Globe and Mail (21 March 2013).

[141] 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>..

[142] United Nations Committee against Torture, Concluding Observations of the Committee against Torture: Canada, 48th Sess, UN Doc CAT/C/CAN/CO/6 (25 June 2012) at para 19.

[143] *Ibid* at para 19.

[144] United Nations Human Rights Committee, Concluding observations on the sixth periodic report of Canada, UN Doc CCPR/C/CAN/CO/6 (13 August 2015) at para 14.

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

homicide.[146] 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.[147] 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.[148] 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.[149] That same month, the Canadian Civil Liberties Association and the Association of Elizabeth Fry Societies filed a lawsuit in Ontario challenging the constitutionality of legislative provisions which allow for solitary confinement in prisons.[150]

## RECOMMENDATIONS

Amnesty International recommends that Canada:

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

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

Rivers and lakes vital to the cultures and economies of First Nations in north-western Ontario were severely contaminated by an upstream pulp and paper mill which released approximately 9 metric tonnes of mercury into the river system in the 1960s. Despite widespread, serious health problems first identified among First Nations fishers, guides and their families, the federal and provincial governments have never formally acknowledged that mercury poisoning has taken place or has had a severe direct impact on the health and well-being of these communities[151]. Assistance provided by the federal and provincial governments has been insufficient to ensure adequate treatment or compensation to the victims of mercury poisoning or to effectively reduce the risk of continued exposure.

Today, elevated levels of mercury continue to be found in parts of the English and Wabigoon river system. Studies conducted at Asubpeeschoseewagong (Grassy Narrows) and Wabaseemoong (Whitedog) First Nations by scientists have found that members of these First Nations are suffering from debilitating physical and neurological harms caused by mercury

[146] *Smith (Re)*, 2013 CanLII 92762 (ON OCCO).

[147] Globe and Mail, "He Needed Help. He Got None" (14 July 2014).

[148] 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/>.

[149] "John Howard Society, BCCLA sue Ottawa over solitary confinement" CBC News (19 January 2015) online: <http://www.cbc.ca/news/canada/british-columbia/john-howard-society-bccla-sue-ottawa-over-solitary-confinement-1.2917930>.

[150] Canadian Civil Liberties Association, "CCLA and Canadian Association of Elizabeth Fry Societies Launch Lawsuit Challenging Solitary Confinement in Prisons" (27 January 2015) online: <https://ccla.org/ccla-and-canadian-association-of-elizabeth-fry-societies-launch-lawsuit-challenging-solitary-confinement-in-prisons-2/>.

[151] Kelly Crowe, "Grassy Narrows: Why is Japan still studying the mercury poisoning when Canada isn't?" (2014) <http://www.cbc.ca/news/health/grassy-narrows-why-is-japan-still-studying-the-mercury-poisoning-when-canada-isn-t-1.2752360>.

poisoning, including children born long after the contamination was first identified[152]. A 2009 government commissioned expert review of the Japanese studies supported these conclusions, stating that there is "no doubt that … many persons were suffering from mercury-related neurologic disorders" due to high level of exposure recorded in the 1970s and that mercury poisoning is "probably still a problem."

The government-commissioned review was also critical of the failure of Canadian officials to carry out extensive examinations and ongoing follow-up from the time that evidence of contamination first became available and called for "a comprehensive epidemiologic study" to now be undertaken as well as urgent action "to improve the general health of the two communities as the health status of the participants was clearly poor."[153] Limited government compensation provided to some of the community members exhibiting symptoms of mercury contamination has declined 50% in real dollars because they were never indexed to inflation. Compensation has been denied to a majority of people diagnosed by experts as being impacted by mercury. No specialized local facilities have ever been provided.

Provincially-licensed clearcut logging, carried out in the traditional territory of Grassy Narrows against the express wishes of the community, has put additional pressure on the culture, economy and well-being of the First Nation by disrupting trapping, hunting and gathering of berries and plant medicines, activities vital to the identity and subsistence of the people[154]. Such logging stopped in 2008, after a major newsprint manufacturer agreed not to process pulp from trees logged at Grassy Narrows without free, prior and informed consent[155]. The provincial government has continued to press for renewed clearcutting, however, and has included plans for continued clearcutting in the traditional territory of Grassy Narrows again in its approved forest management plans. In December 2014, the provincial government rejected a request by Grassy Narrows for an environmental assessment of these plans, despite concerns raised that clearcut logging could lead to introduction of additional mercury into the river system. The Ontario Ministry of Natural Resources and Forestry had previously called the potential for run-off from clearcut logging to introduce mercury to water systems "well documented and a serious concern."[156]

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Ensure adequate treatment of and compensation to the victims of mercury poisoning, and undertake measures to effectively reduce the risk of continued exposure to mercury**

[152] 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

[153] 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).

[154] Amnesty International, "A place to regain who we are': Grassy Narrows First Nation, Canada" (2009) online: <http://www.amnesty.ca/sites/default/files/2009-06-21amr200012009engrassynarrowscampaigndigest.pdf>.

[155] Stephen Earley, "Letter from Region Woodlands Manager" (27 February 2008) online: <http://understory.ran.org/wordpress/wp-content/uploads/2008/02/boises-letter.pdf>.

[156] Raveena Aulakh, "Grassy Narrows denied assessment on clear-cutting," Toronto Star, 30 December 2014.

**poisoning;**

- **Work with the affected First Nations communities to carry out a comprehensive health study to identify their needs; and**

- **Refrain from licensing logging on the traditional territory of Grassy Narrows without the free, prior and informed consent of the First Nation.**

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

One hundred years ago the Shoal Lake 40 community was relocated as part of the development of the city of Winnipeg's water supply system. As of the result of project, the community was flooded and cut off from the mainland. The clean waters of Shoal Lake were diverted to supply the residents of Winnipeg, while Shoal Lake 40 was deprived of access to safe, clean, drinking water. Its residents have lived under a boiled water advisory for almost two decades.[157]

The community is isolated from many of the necessities of life, from jobs, to groceries, to medical care on the mainland.[158] Community members rely on a small barge to travel off of their artificial island, or drive across the lake's frozen surface during winter. Before and after a hard freeze, community members must risk crossing the Shoal Lake by foot. This dangerous situation has resulted in the loss of lives through accidents or through tragic delays in getting patients to hospitals or emergency responders to the community. [159]

In order to address these dangers and improve access to economic, social and cultural rights of the Shoal Lake #40 community, its residents have been advocating for the construction of an all-weather road including bridge between their island and the mainland. The proposal was supported by surrounding cities, including the City of Winnipeg. The federal government, which must grant approvals for the on-reserve portion of the construction, repeatedly failed to meet with the community and refused to prioritize road access to the community.[160] However, in December 2015, the federal government publicly announced that it would support the construction of all-weather access road.

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[157] Craig Benjamin, "Justice almost within reach for Shoal Lake #40 First Nation" (10 July 2014) online: < http://www.amnesty.ca/blog/justice-almost-within-reach-for-shoal-lake-40-first-nation>. See also "Shoal Lake 40 'Human Rights Violations Museum' highlights water problems" CBC News (17 September 2014) online: < http://www.cbc.ca/news/canada/thunder-bay/shoal-lake-40-human-rights-violations-museum-highlights-water-problems-1.2769067>.

[158] The 2011 population of Shoal Lake 40 is 101 people. Statistics Canada, "Census Profile: Shoal Lake (Part) 40" (27 November 2015) online: <http://www12.statcan.gc.ca/census-recensement/2011/dp-pd/prof/details/page.cfm?Lang=E&Geo1=CSD&Code1=3560082&Geo2=CD&Code2=3560&Data=Count&SearchText=s&SearchType=Begins&SearchPR=35&B1=All&Custom=&TABID=1>.

[159] *Supra* note 167.

[160] *Ibid.*

## RECOMMENDATIONS

Amnesty International recommends that Canada:

- **Provide access to clean, safe drinking water at Shoal Lake 40; and**

- **Ensure timely follow-up to its commitment to support the construction of an all-weather road providing access to the Shoal Lake #40 First Nation and work collaboratively with the First Nation to take all necessary measures to ensure safe year-round travel to and from the community.**

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