



# CANADA

SUBMISSION TO UN HUMAN RIGHTS COMMITTEE

132<sup>ND</sup> SESSION, 27 JUNE-23 JULY 2021, LIST OF ISSUES PRIOR TO REPORTING

**Amnesty International is a movement of 10 million people which mobilizes the humanity in everyone and campaigns for change so we can all enjoy our human rights. Our vision is of a world where those in power keep their promises, respect international law and are held to account. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.**

© Amnesty International 2021  
Except where otherwise noted, content in this document is licensed under a Creative Commons (Attribution, non-commercial, no derivatives, international 4.0) licence.  
<https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode>  
For more information please visit the permissions page on our website: [www.amnesty.org](http://www.amnesty.org)  
Where material is attributed to a copyright owner other than Amnesty International this material is not subject to the Creative Commons licence.  
First published in 2021  
by Amnesty International Ltd  
Peter Benenson House, 1 Easton Street  
London WC1X 0DW, UK

Index: AMR 20/4149/2021  
Original language: English

[amnesty.org](http://amnesty.org)



# CONTENTS

|   |           |
|---|-----------|
| <b>1. INTRODUCTION</b>  | <b>4</b>  |
| <b>2. EQUITABLE ACCESS TO VACCINES (ARTICLE 6)</b>                        | <b>4</b>  |
| <b>3. CORPORATE ACCOUNTABILITY, TRADE AND HUMAN RIGHTS (ARTICLE 2.3)</b>  | <b>5</b>  |
| 3.1 CORPORATE OMBUDSPERSON FOR RESPONSIBLE ENTERPRISE                     | 5         |
| 3.2 CORPORATE ACCOUNTABILITY  | 5         |
| <b>4. CLIMATE CRISIS (ARTICLES 2A AND 6)</b>                              | <b>7</b>  |
| <b>5. CANADIANS DETAINED IN SYRIA (ARTICLES 7, 9 AND 24)</b>              | <b>8</b>  |
| <b>6. HUMAN RIGHTS DEFENDERS (ARTICLES 2, 6, 7 AND 9)</b>                 | <b>8</b>  |
| <b>7. REFUGEE RIGHTS (ARTICLES 7, 9 AND 13)</b>                           | <b>9</b>  |
| 7.1 REFUGEE STATUS DETERMINATION  | 9         |
| 7.2 ORDERS IN COUNCIL   | 9         |
| 7.3 SAFE THIRD COUNTRY AGREEMENT  | 10        |
| <b>8. IMMIGRATION DETENTION &amp; OVERSIGHT (ARTICLES 2, 7, 9 AND 12)</b> | <b>11</b> |
| 8.1 CONDITIONS OF DETENTION   | 11        |
| 8.2 INDEFINITE DETENTION  | 11        |
| 8.3 CHILDREN IN DETENTION   | 11        |
| 8.4 CANADA BORDER SERVICES AGENCY OVERSIGHT                               | 12        |
| <b>9. GENDER RIGHTS (ARTICLES 2 AND 3)</b>                                | <b>13</b> |
| 9.1 VIOLENCE AGAINST INDIGENOUS WOMEN, GIRLS, AND TWO-SPIRIT PERSONS      | 13        |
| 9.2 NATIONAL ACTION PLANS ON GENDER-BASED VIOLENCE                        | 13        |
| 9.3 GENDER, INDIGENOUS RIGHTS AND ENERGY DEVELOPMENT                      | 14        |
| 9.4 STERILIZATION OF INDIGENOUS WOMEN WITHOUT CONSENT                     | 15        |
| 9.5 THE RIGHTS OF INTERSEX PERSONS  | 15        |
| 9.6 PROTECTING THE HUMAN RIGHTS OF SEX WORKERS                            | 16        |

# 1. INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Human Rights Committee, in advance of the adoption of the List of Issues Prior to Reporting for Canada's 7<sup>th</sup> periodic report under the International Covenant on Civil and Political Rights, in June-July 2021. This submission is not an exhaustive account of Amnesty International's concerns but highlights several of the organization's key concerns in relation to implementation of the Covenant in Canada.

## 2. EQUITABLE ACCESS TO VACCINES (ARTICLE 6)

Under international human rights law, countries have an obligation to work together to respond to the COVID-19 pandemic, and wealthier states have a special responsibility to provide technical and financial assistance to states with fewer resources.<sup>1</sup>

As of March 2021, wealthy countries representing just 16% of the world's population have purchased over half of the world's vaccine supply.<sup>2</sup> The scale of these bilateral agreements contravenes states' human rights obligations. While the obligation to protect the right to health requires states to purchase vaccines for their populations, these purchases must be proportionate and take into consideration the urgent needs of other countries.<sup>3</sup>

States must ensure that intellectual property rights do not prevent any countries from upholding the right to health. This includes a waiver on the TRIPS agreement to produce COVID-19 health products, supporting the WHO's COVID-19 Technology Access Pool (C-TAP), and placing conditions on public funding to ensure pharmaceutical companies share their innovations, technology, and data with other manufacturers.<sup>4</sup>

As early as December 2020, Canada had secured contracts for enough doses to vaccinate the country's population five times over. Canada has also drawn from COVAX, the global initiative aimed at equitable access, with the first 316,800 doses arriving on 8 April 2021. Canada committed to sharing excess doses, but not until after domestic vaccination is complete. Plans for the vaccine roll out nationally have generally followed the WHO SAGE Roadmap for Prioritizing Uses of COVID-19 Vaccines.<sup>5</sup>

Amnesty International is concerned that Canada has engaged in vaccine nationalism, which negatively affects global access to vaccines, and failed to clearly support a TRIPS waiver at the WTO.

---

<sup>1</sup> WHO, "[International Health Regulations](#)," Third Edition, 1 January 2016 and UN General Assembly, "[Ensuring equitable, affordable, and timely universal access for all countries to vaccines in response to the coronavirus disease \(COVID-19\) pandemic](#)," A/HRC/46/L.25/Rev.1, 17 March 2021.

<sup>2</sup> Amnesty International, "[COVID-19: Pharmaceutical companies and rich states put lives at risk as vaccine inequality soars](#)," 11 March 2021.

<sup>3</sup> UN Committee on Economic, Social and Cultural Rights, "[Statement on the Coronavirus Disease \(COVID-19\) Pandemic and Economic, Social and Cultural Rights](#)," E/C.12/2020/1, 17 April 2020, para. 20.

<sup>4</sup> UN General Assembly, "[Ensuring equitable, affordable, and timely universal access for all countries to vaccines in response to the coronavirus disease \(COVID-19\) pandemic](#)," A/HRC/46/L.25/Rev.1, 17 March 2021; and Amnesty International, "[UN Human Rights Council resolution a welcome step towards ensuring fair and universal access to COVID-19 vaccines](#)," 23 March 2021.

<sup>5</sup> Government of Canada, "[Preliminary guidance on key populations for early COVID-19 immunization](#)," National Advisory Committee on Immunizations; Mia Rabson, "[Minister says COVAX clearly working, as vaccine-sharing program reaches 100 countries](#)," The Canadian Press, 8 April 2021; Government of Canada, "[Vaccines for COVID-19: Shipments and deliveries](#);" Government of Canada, "[Guidance on the prioritization of initial doses of COVID-19 vaccine\(s\)](#)," National Advisory Committee on Immunizations.

# 3. CORPORATE ACCOUNTABILITY, TRADE AND HUMAN RIGHTS (ARTICLE 2.3)

## 3.1 CORPORATE OMBUDSPERSON FOR RESPONSIBLE ENTERPRISE

Human rights abuses at Canadian-owned mining, oil and gas sites globally are widespread and well documented, yet those who have been harmed often lack access to remedy. UN treaty bodies and the Inter-American Commission of Human Rights have noted human rights violations involving Canadian extractive companies overseas and have called on Canada to create effective mechanisms for investigating and/or preventing abuses.<sup>6</sup>

Canada addressed this by appointing in 2019, the Canadian Ombudsperson for Responsible Enterprise (CORE).<sup>7</sup> Civil society believed the CORE would be more effective than its predecessor (the Office of the Extractive Sector Corporate Social Responsibility Counsellor). The government committed to giving CORE the power to compel documents and testimony—powers necessary to effectively investigate allegations of human rights abuse linked to Canadian companies' global operations.<sup>8</sup> Regrettably, the Canadian government has since backtracked on this commitment.<sup>9</sup>

In March 2021, the CORE office opened for complaints, without the power to conduct effective investigations. In April 2021, the federal budget increased CORE's budget, but did not increase its investigatory powers.<sup>10</sup>

## 3.2 CORPORATE ACCOUNTABILITY

The UN Guiding Principles on Business and Human Rights clarify that business enterprises have a responsibility to exercise human rights due diligence to identify, prevent, mitigate, and account for the human rights impacts of their operations.<sup>11</sup> In March 2021, the Vice Chair of the UN Working Group on Business and Human Rights called on Canada to "enact a comprehensive, mandatory human rights due diligence legislation governing business activities, both inside and outside Canada. Only then would Canada be able to claim rightfully global leadership in promoting business respect for human rights."<sup>12</sup>

The UN Committee for the Elimination of Racial Discrimination (CERD) issued an Early Warning and Urgent Action Procedure to Canada on 13 December 2019, urging a withdrawal of police forces from the traditional

---

<sup>6</sup> Canadian Network on Corporate Accountability, "[International human rights authorities call for extractive sector ombudsperson](#)," 31 January 2017.

<sup>7</sup> Business and Human Rights Resource Centre, "[Canada creates Ombudsperson & multi-stakeholder advisory body to strengthen responsible business conduct abroad](#)," 16 January 2018.

<sup>8</sup> Global Affairs Canada website about trade and corporate social responsibility, accessed 21 January 2018. The text read "The Government is committed to ensuring that the Ombudsperson has all the tools required to ensure compliance with information requests - including the compelling of witnesses and documents - in the hopefully very rare circumstances where a company is not fully and appropriately cooperating" but was subsequently removed from the website. <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-rse.aspx?lang=eng>

<sup>9</sup> Mike Blanchfield, "[UN official criticizes Canadian delays setting up corporate ethics watchdog](#)," CBC, 30 April 2019.

<sup>10</sup> Government of Canada, "[Budget 2021: A Recovery Plan for Jobs, Growth and Resilience](#)," 19 April 2021, p. 295

<sup>11</sup> [UN Guiding Principles on Business and Human Rights](#), 2011.

<sup>12</sup> [Presentation by Surya Deva, Vice Chair of the UN Working Group on Business and Human Rights, to the House of Commons Standing Committee on International Human Rights](#), Ottawa, 23 March 2021.

territories of the Secwepemc and Wet'suwet'en peoples, and a halt to pipeline construction. The Committee also called on Canada to suspend construction on the Site C hydroelectric dam on the Peace River in Treaty 8 territory until authorities obtain free, prior, and informed consent of all Indigenous peoples affected.<sup>13</sup> The use of injunctions to clear blockades at the behest of companies is controversial.<sup>14</sup> Despite CERD's recommendations, on 7 January 2020 the Royal Canadian Mounted Police enforced an interlocutory injunction obtained by Coastal Gaslink to remove a blockade at a land defence camp on Wet'suwet'en Yintah (territory).<sup>15</sup> Heavily-armed police arrested dozens of people and threatened to arrest journalists.<sup>16</sup> Solidarity actions across Canada resulted in further arrests of land defenders and supporters.<sup>17</sup> At other sites opposing development projects, land defenders report further arrests and human rights abuses by non-state actors.<sup>18</sup> However, construction on the Site C dam and the TransMountain and Coastal Gaslink pipelines continues.<sup>19</sup>

Human rights defenders opposing industrial development face threats, smear campaigns, and violence,<sup>20</sup> and UN bodies including the UN Working Group on Business and Human Rights have noted concern about attacks in the context of Canadian business operations.<sup>21</sup> The UN Special Rapporteur on the situation of human rights defenders called on governments, businesses and financial institutions to acknowledge the risks to land, environment and Indigenous rights defenders and invest in support mechanisms to protect and respect their rights, and called on social media companies to shut down accounts threatening human rights defenders.<sup>22</sup> Canada encourages Canadian companies to put into practice proactive measures to acknowledge and support human rights defenders.<sup>23</sup> It also calls on diplomatic missions to recognize the risks particular to women, Indigenous, and land rights or environmental defenders and put into practice steps to support them, even when they oppose Canadian investment projects.<sup>24</sup> Despite these efforts, human rights violations in the context of Canadian development projects continue.<sup>25</sup>

Over the last decade, Canada recorded the second highest number of tailings dam failures in the world.<sup>26</sup> Between 2017 and 2020, various UN bodies and Special Rapporteurs called on Canada to hold those responsible for the 2014 Mount Polley copper mine tailings dam breach in British Columbia to account, and to take steps to prevent similar disasters.<sup>27</sup> Despite an investigation and recommendation of charges, Canada failed to act and considers the investigation ongoing.<sup>28</sup> Canadian officials have said they would hold those

<sup>13</sup> The Committee on the Elimination of Racial Discrimination, "Prevention of Racial Discrimination, Including Early Warning and Urgent Action procedure, Decision 1 (100)," 2019; and Amnesty International, "[Open letter urges Canadian, B.C., and Alberta governments to heed UN racism committee's call to respect Indigenous rights](#)," 13 January 2020.

<sup>14</sup> Yellowhead Institute, "Land Back: A Yellowhead Institute Red Paper," October 2019, p. 30. See also Indigenous Climate Action and the Union of BC Indian Chiefs, "[Canada: Climate Change and the Cultural Rights of Indigenous peoples](#)," Submission to Ms Karima Bennoune, Special rapporteur in the field of cultural rights, 1 May 2020, p. 7.

<sup>15</sup> [Coastal Gaslink Pipeline Ltd](#), is owned and operated by TC Energy and is building a 670 kilometre pipeline to carry liquified natural gas from north eastern British Columbia to the LNG Canada liquefaction and storage plant in Kitimat, British Columbia.

<sup>16</sup> Amnesty International, "[RCMP crackdown on journalists in Wet'suwet'en territory threatens free press](#)," 7 February 2020 and Chantel Bellrichard, "[RCMP spent more than \\$13m on policing Coastal GasLink conflict on Wet'suwet'en territory](#)," CBC, 21 October 2020.

<sup>17</sup> See "[Map of Wet'suwet'en Solidarity Economic Disruptions and Actions](#)," 25 February 2020 for a sampling of actions across Canada. Also, see [Open Letter 'Amnesty International visits Tyendinaga, urges Trudeau to act on reconciliation'](#), 25 February 2020.

<sup>18</sup> See Jamie Polmateer, "[RCMP launch investigation following alleged attack on Tiny House Warriors camp](#)," Clearwater Times, 21 April 2020 and Jorge Barrera, "[1492 Land Back Lane files 11<sup>th</sup> hour constitutional question as injunction hearing looms](#)," CBC, 22 October 2020 and [Yellowhead Statement Regarding Arrests at 1492 Land Back Lane](#), 8 September 2020.

<sup>19</sup> Coastal Gaslink, "[Construction Update](#)," 21 March 2021; BC Hydro, "[Site C Construction Schedule: April 17 – April 30, 2021](#)," 16 April 2021; and TransMountain Expansion Project, "[Construction in All Communities](#)," 16 April 2021.

<sup>20</sup> Michel Forst, "[They spoke truth to power and were murdered in cold blood: Analysis of the situation of environmental human rights defenders and concrete recommendations to better protect them](#)," 2017. See also, Amnesty International, "[Open Letter to the Attorney General of Guatemala re: Criminal Proceedings Against Human Rights Defender Bernardo Caal](#)," AMR 34/2678/2020, July 2020; and Amnesty International, "[Export Development Canada: Stop investing in environmental and human rights harm](#)," 22 June 2020.

<sup>21</sup> Report of the UN Working group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada, A/HRC/38/48/Add.1 Paras 20, 45, 47, and 83 April 2018. See also, S Imai, L Gardner, and S Weinberger, "[The 'Canada Brand': Violence and Canadian Mining Companies in Latin America](#)," Osgoode Legal Studies Research Paper No. 17/2017, 1 December 2017; and Amnesty International, "[Attacks Against Xinka Leaders Continue](#)," AMR 34/3697/2021, 16 February 2021.

<sup>22</sup> UN Human Rights Council, "[Final Warning: death threats and killings of human rights defenders: Report of the UN Special Rapporteur on the situation facing human rights defenders](#)," A/HRC/46/35, 24 December 2020.

<sup>23</sup> Global Affairs Canada, "[CSR Snapshot #7 – Private Sector Support for Human Rights Defenders: A Primer for Canadian Businesses](#)."

<sup>24</sup> Government of Canada, "[Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders](#)," 2019.

<sup>25</sup> Amnesty International, "[We are Defending the Land with our Blood: Defenders of the land, territory and environment in Honduras and Guatemala](#)," AMR 01/4562/2016, 2016.

<sup>26</sup> C Roche, K Thygesen, and E Baker, "[Mine Tailings Storage: Safety is no Accident. A UNEP Rapid Response Assessment](#)," UN Environment Programme and GRID-Arendal, ISBN 978-82-7701-170-7, 2017.

<sup>27</sup> UN Human Rights Council, "[Report of the working group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada](#)," A/HRC/38/48/Add.1, 23 April 2018, para. 79(j); Committee on the Elimination of Racial Discrimination, "[Concluding observations of the combined twenty-first to twenty-third periodic reviews of Canada](#)," CERD/C/CAN/CO/21-23, 13 September 2017, para. 19 (e)(f); and Human Rights Council, "[Visit to Canada: Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes](#)," A/HRC/45/12/Add.1, 4 September 2020, para. 89.

<sup>28</sup> Letter from Environment and Climate Change Canada to Amnesty International, September 2020. In the letter, Environment and Climate Change Canada stated there is no specific time limitation on indictable offenses and that Canada can still prosecute the incident under the

## CANADA

### SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE, 132<sup>ND</sup> SESSION, LOIPR

Amnesty International

responsible to account and ensure that the polluter will pay for the full clean-up of the disaster.<sup>29</sup> However, the company responsible, Imperial Metal's subsidiary the Mount Polley Mining Corporation, has not paid any fines nor has it been subject to any charges. The company is permitted to discharge filtered mine waste into Quesnel Lake despite the objections of surrounding and downstream Indigenous and settler communities.<sup>30</sup> Community organizations have taken legal action to overturn the company's liquid waste discharge permit.<sup>31</sup>

## 4. CLIMATE CRISIS (ARTICLES 2A AND 6)

Canada is one of the world's highest greenhouse gas emitters and continues to subsidize the fossil fuel industry, providing an estimated C\$1.9 billion in fossil fuel subsidies in 2020 alone.<sup>32</sup> Its greenhouse gas emissions reduction targets and climate plans are inconsistent with the goal of limiting temperature increase to no more than 1.5 degrees Celsius above pre-industrial levels,<sup>33</sup> which the Intergovernmental Panel on Climate Change says is needed to avoid the most catastrophic impacts of climate change.

Climate change heightens social inequalities and disproportionately affects those that experience structural inequalities and multiple and intersecting forms of discrimination, including women and girls, Indigenous and racialized communities, people with disabilities, children, and youth. In 2019, the youth-led environmental group EnJeu brought a class action suit against the Canadian government for allegedly violating the rights guaranteed under the Canadian Charter of Rights and Freedoms and the Quebec Charter of Rights and Freedoms by failing to meet sufficient greenhouse gas emission targets. A Quebec Superior Court judge ruled that it did not meet the requirements to proceed as a class action, questioning the "arbitrary and inappropriate" cut-off age of 35.<sup>34</sup>

Canada has committed to investing millions of dollars in clean technologies, zero-emission vehicles, and the creation of one million jobs in the sector.<sup>35</sup> However, unless adequate human rights safeguards are put in place, the rush to extract energy transition minerals may put at further risk communities already facing violations of their rights in the context of mineral extraction and who bear the brunt of the climate crisis. Canada's energy transition should not happen in a way that sacrifices human rights.<sup>36</sup>

---

federal Fisheries Act. It noted that the Public Prosecution Service of Canada with support from British Columbia's Crown Prosecution Service is "engaged in the charge assessment process" and that the investigation is not complete.

<sup>29</sup> Amnesty International, "[A Breach of Human Rights: The human rights impact of the Mount Polley mine disaster](#)," May 2017.

<sup>30</sup> *Supra* p. 15.

<sup>31</sup> Gordon Hoekstra, "[Appeal challenges discharge of Mt. Polley mine effluent to Quesnel Lake](#)," Vancouver Sun, 15 August 2018.

<sup>32</sup> Vanessa Corkal, "[Fossil fuel subsidies in Canada: COVID-19 edition](#)," International Institute for Sustainable Development, 25 February 2021.

<sup>33</sup> Climate Action Tracker, "[Canada](#)."

<sup>34</sup> Amnesty International, "[Amnesty International to intervene in class action certification appeal concerning the climate crisis](#)," 23 February 2021.

<sup>35</sup> Government of Canada, "[A Stronger and more resilient Canada: Speech from the Throne to open the Second Session of the Forty-Third Parliament of Canada](#)," 23 September 2020.

<sup>36</sup> Amnesty International, "[Powering Change: Principles for Businesses and Governments in the Battery Value Chain](#).

# 5. CANADIANS DETAINED IN SYRIA (ARTICLES 7, 9 AND 24)

Following the March 2019 defeat of the Islamic State in Iraq and Syria (ISIS) in Baghouz, Syria, at least 47 Canadian citizens with alleged links to ISIS were detained in North East Syria (NES).<sup>37</sup> Those who remain in detention are held in conditions that UN experts have stipulated “may well amount to torture or other cruel, inhuman or degrading treatment or punishment.”<sup>38</sup> This forms part of a broader problem, whereby thousands of people of numerous nationalities are detained in NES without charge or trial, many in horrendous conditions. Although Canada repatriated one orphan child to Canada in October 2020 and allowed another to return in March 2021, the government has not developed a plan to address the human rights violations of the remaining Canadian children who are being arbitrarily and indefinitely detained in NES.

By failing to take appropriate steps to repatriate and reintegrate Canadian children from camps in Syria, Canada has breached its obligations under the *Convention on the Rights of the Child*. The return of children must be treated as a humanitarian and human rights priority<sup>39</sup> and Canada should ensure consular assistance to all Canadians detained in the camps.

Canada also has an obligation to assess the integration needs of Canadian children individually and comprehensively, without stigmatization or discrimination based on nationality, birth status, immigration status and statelessness.<sup>40</sup>

# 6. HUMAN RIGHTS DEFENDERS (ARTICLES 2, 6, 7 AND 9)

Human rights defenders around the world—people who peacefully advocate for human rights—are increasingly under attack, facing harassment, intimidation, smear campaigns, ill-treatment, unlawful detention, and violence for their legitimate human rights work.<sup>41</sup> Threats against some human rights defenders are so severe they are forced to re-locate to Canada, sometimes very far from their family and community.

While re-location to Canada often significantly decreases the risks experienced by human rights defenders, some are at risk of harassment and violence while living in exile in Canada. Re-location causes additional difficulties, including the loss of professional and support networks, lengthy and complicated immigration

<sup>37</sup> Human Rights Watch, “Plight of Canadians Held in Northeast Syria for Alleged ISIS Links,” 29 June 2020.

<sup>38</sup> OHCHR, “Syria: UN experts urge 57 States to repatriate women and children from squalid camps,” 8 February 2021.

<sup>39</sup> UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3; Amnesty International, “Canada: Submission to the UN Committee on the Rights of the Child, 87<sup>th</sup> Pre-sessional Working Group, 1-5 June 2020, List of Issues,” 2 March 2020, pp. 18-19; Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism & Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, “Extra-territorial jurisdiction of States over Children and their Guardians in Camps, Prisons or Elsewhere in Northern Syrian Arab Republic.”

<sup>40</sup> UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Article 6 & Article 19; and CCPR General Comment No. 17: Article 24 (Rights of the child), para. 8.

<sup>41</sup> Amnesty International, “Human Rights Defenders Under Threat: A shrinking space for civil society,” ACT 30/6011/2017, 2017.

proceedings, difficulties finding human rights work, lack of access to psycho-social supports, trouble finding safe and affordable housing, and lack of connection to other activists.<sup>42</sup> The death by suicide of Egyptian LGBTI rights defender Sarah Hegazi,<sup>43</sup> and suspicious death of Pakistani women human rights defender Karima Baloch<sup>44</sup> in 2020 underscore the lack of supports available to, and the ongoing security concerns faced by human rights defenders living in exile in Canada.

In 2019, Canada released an updated version of “Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders.”<sup>45</sup> The guidelines enable Canadian officials to better support human rights defenders internationally, but do not apply to those in Canada. Human rights defenders must be able to live in safety and dignity, able to freely carry out their work no matter where they are located. Canada must adopt a coordinated and systematic approach to supporting human rights defenders living in exile in Canada.

# 7. REFUGEE RIGHTS (ARTICLES 7, 9 AND 13)

## 7.1 REFUGEE STATUS DETERMINATION

In June 2019, Canada amended the *Immigration and Refugee Protection Act* (IRPA) to render claims for refugee protection ineligible for referral to the Immigration and Refugee Board (IRB) in cases where the claimant has previously requested refugee protection in Australia, New Zealand, the United Kingdom, or the United States.<sup>46</sup>

The new measures are inconsistent with Canada’s obligations under international refugee law. They significantly narrow the scope of claims that can be referred to Canada’s in-land refugee status determination system, the IRB. It constitutes an automatic bar, which the UNHCR has previously commented about in the context of other ineligibility criteria contemplated under the IRPA.<sup>47</sup>

It also discriminates amongst refugee claimants by giving access to an independent status determination procedure to some, while providing an inferior process to others. By introducing a new ineligibility criterion in Bill C-97, refugees who have made a prior claim in the four countries listed do not have access to the IRB, and can only have their claims examined by a government official.<sup>48</sup> While claimants in the former category have access to an independent, expert, quasi-judicial decision-maker with internal appeal mechanisms, the latter is subject to a process before a government official acting in an administrative capacity, who is not bound by the same guidelines and procedures that are applicable at the IRB.

## 7.2 ORDERS IN COUNCIL

On 20 March 2020, Canada enacted Order in Council (OIC) 2020-0161.<sup>49</sup> Premised as a temporary measure in response to COVID-19, the OIC prohibits foreign nationals from entering Canada from the United

---

<sup>42</sup> Sisters Trust Canada and Université du Québec à Montréal, “Women Human Rights Defenders in Exile in Canada,” 2020.

<sup>43</sup> Nick Boisvert, “LGBTQ activist Sarah Hegazi, exiled in Canada after torture in Egypt, dead at 30,” CBC, 16 June 2020.

<sup>44</sup> Flora Drury, “Karima Baloch: Activist's family mourns a 'mountain of courage',” BBC, 24 December 2020.

<sup>45</sup> Government of Canada, “Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders,” 2019.

<sup>46</sup> See IRPA, s. 101(1)(c.1).

<sup>47</sup> See, for example: United Nations High Commissioner for Refugees (UNHCR), UNHCR Comments on Bill C-11: An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger, 5 March 2001, para. 40; UNHCR, UNHCR Submission on Bill C-31: Protecting Canada's Immigration System Act, May 2012.

<sup>48</sup> IRPA, s. 101(1)(c.1).

<sup>49</sup> Government of Canada, Order in Council 2020-0161, 20 March 2020.

States (US) to claim refugee protection. Canada has renewed the measure 18 times.<sup>50</sup> It applies to all persons entering Canada from the US between official ports of entry along the land border, and at air and marine ports of entry, subject to narrow exceptions.<sup>51</sup> Those who do not meet an exception are pushed back to the US.

Although Canadian authorities indicate they have an “agreement” with US authorities governing how those pushed back are to be processed,<sup>52</sup> the details have not been made public and its legal authority has not been established. Although those claiming refugee protection are given a “direction to return” to the border once it reopens,<sup>53</sup> there is no indication as to when this will take place.

This contravenes Canada’s international legal obligations under the 1951 *Convention Relating to the Status of Refugees*, as Article 32 prohibits expulsion of refugees except in accordance with the due process of law. By denying entry, or expelling, persons seeking to enter Canada from the US for the purpose of making a refugee protection claim, the OIC constitutes a blanket measure inconsistent with Canada’s international legal obligations. The measure is also contrary to the UN High Commissioner for Refugee’s guidance on legal considerations surrounding refugee protection in the context of COVID-19, notably that “blanket measures to preclude the admission of refugees or asylum-seekers, or of those of a particular nationality or nationalities, without evidence of a health risk and without measures to protect against refoulement, would be discriminatory and would not meet international standards.”<sup>54</sup>

Over 200 people were subjected to the measure as of November 2020.<sup>55</sup> According to media reports, at least eight of these people were detained upon return to the US, and at least one person subject to the measure was subsequently deported from the US.<sup>56</sup>

## 7.3 SAFE THIRD COUNTRY AGREEMENT

The *Agreement between the Government of Canada and the Government of the United States of America For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries* (Safe Third Country Agreement, STCA) is a bilateral treaty that came into effect in 2004. Subject to narrow exceptions, individuals seeking asylum after entering Canada from the US at land ports of entry are deemed ineligible to have their claims referred to the Immigration and Refugee Board and are returned to the US. In December 2019, the Prime Minister issued a mandate letter to the Minister of Public Safety, instructing him to “work with the United States to modernize the Safe Third Country Agreement.”<sup>57</sup>

In July 2020, the Federal Court of Canada determined that the STCA violates s. 7 of Canada’s Charter of Rights and Freedoms, which protects the right to life, liberty and security of the person. The decision deemed that those returned under the STCA face arbitrary immigration detention in conditions that “shock the conscience,” and the judge expressed concern about the heightened risk of *refoulement* for those who are returned to the US under the STCA.<sup>58</sup> In April 2021, the Federal Court of Appeal overturned the lower court’s decision.<sup>59</sup>

<sup>50</sup> Government of Canada, Orders in Council: 2020-0185; 2020-0263; 2020-0370; 2020-0442; 2020-0469; 2020-0538; 2020-0565; 2020-0672; 2020-0795; 2020-0810; 2020-0838; 2020-0886; 2020-0968; 2020-1128; 2021-0009; 2021-0076; 2021-0173; 2021-0314.

<sup>51</sup> Government of Canada, “Coronavirus disease (COVID-19): Refugees, asylum claimants, sponsors and PRRA applicants.” At land ports of entry, the Safe Third Country Agreement applies.

<sup>52</sup> Public Safety Canada, “Special Committee on the COVID-19 Pandemic - Hot Issues Notes – May 2020,” 5 May 2020.

<sup>53</sup> Government of Canada, “CIMM - Asylum Claimants and Border Restrictions (Orders in Council 10 and 14. STCA),” 5 January 2021.

<sup>54</sup> UNHCR, “Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response,” 16 March 2020.

<sup>55</sup> Emma Jacobs, “Asylum seekers turned back from Canada face detention, deportation,” WBFO, 30 December 2020.

<sup>56</sup> Amanda Coletta, “Canada is turning asylum seekers away at the border. In the U.S., they face deportation,” The Washington Post, 29 December 2020.

<sup>57</sup> Prime Minister of Canada Justin Trudeau, “Minister of Public Safety and Emergency Preparedness Mandate Letter,” 13 December 2019.

<sup>58</sup> Canadian Council for Refugees v. Canada (Immigration, Refugees and Citizenship), 2020 FC 770, para. 94, 137.

<sup>59</sup> Canada (Citizenship and Immigration) v. Canadian Council for Refugees, 2021 FCA 72.

# 8. IMMIGRATION DETENTION & OVERSIGHT (ARTICLES 2, 7, 9 AND 12)

## 8.1 CONDITIONS OF DETENTION

In the 2019-2020 fiscal year, the Canadian Border Services Agency (CBSA) placed 8,825 people in immigration detention.<sup>60</sup> Immigration detainees are held at facilities dedicated to immigration detention (immigration holding centres), in temporary facilities (local police cells, cells at ports of entry, etc.) and in provincial jails. When in provincial jails, immigration detainees are routinely comingled with persons accused or convicted of criminal offences. This contravenes the UN Working Group on Arbitrary Detention's determination that immigration detention "must not take place in facilities...designed for those within the realm of the criminal justice system," and that "the mixing of migrant and other detainees who are held under the remit of the criminal justice system must not take place."<sup>61</sup>

Canada's use of immigration detention during the COVID-19 pandemic has raised significant concerns regarding the rights to health and security of the person. In February 2021, detainees at the Immigration Holding Centre in Laval, Quebec, engaged in a hunger strike to protest their conditions of detention, particularly considering the COVID-19 pandemic. They alleged that they were provided inadequate healthcare, held in unsanitary conditions, and subjected to solitary confinement.<sup>62</sup>

## 8.2 INDEFINITE DETENTION

In its concluding observations during Canada's 6th periodic review, the Committee expressed its concern that "individuals who enter onto the territory of the State party irregularly may be detained for an unlimited period of time" and urged Canada to set a "reasonable time limit for detention."<sup>63</sup>

Canadian law does not contain a limit to the length of immigration detention, and a case seeking to challenge the absence of a time limit was denied leave to appeal by the Supreme Court of Canada on 11 March 2021.<sup>64</sup>

## 8.3 CHILDREN IN DETENTION

Canada's treatment of children in immigration detention violates the *Convention on the Rights of the Child*.<sup>65</sup> Under section 60 of the IRPA, a child should only be detained as a last resort, "taking into account the other

<sup>60</sup> Canada Border Services Agency, "[Arrests, detentions and removals - Annual detention, fiscal year 2019 to 2020](#)."

<sup>61</sup> UN Working Group on Arbitrary Detention, "[Revised Deliberation No. 5 on deprivation of liberty of migrants](#)," 7 February 2018, para. 44.

<sup>62</sup> Justin Mohammed and Marisa Berry Méndez, "[Hunger strikes in Laval immigration detention centre highlight dire conditions, COVID-19 risks](#)," Rabble, 23 March 2021; and Canadian Press, "[Advocates say seven detainees on hunger strike against conditions in Laval immigrant holding centre](#)," CTV, 5 March 2021. 7

<sup>63</sup> Human Rights Committee, "[Concluding observations on the sixth periodic report of Canada](#)," CCPR/C/CAN/CO/6, 13 August 2015, para. 12.

<sup>64</sup> Alvin Brown, et al. v. Minister of Citizenship and Immigration, et al., [SCC Case No. 39408](#), 11 March 2021.

<sup>65</sup> The CRC states that "no child shall be deprived of his liberty arbitrarily" and that detention must "be used only as a measure of last resort and for the shortest appropriate period of time" (Article 37(b)), and "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 3.

applicable grounds and criteria including the best interest of the child.<sup>66</sup> Despite Canada's commitment to reducing the rates of children in immigration detention "except in extremely limited circumstance,"<sup>67</sup> government statistics reveal there was a 17% increase in the number of detained minors in 2019-2020 compared to the previous fiscal year.<sup>68</sup>

In November 2017, the Minister of Public Safety and the CBSA issued policy directives<sup>69</sup> that emphasize non-detention of children and the need to preserve family unity. They also acknowledge that the best interest of the child must be a primary consideration,<sup>70</sup> rather than only one weighed against others. In practice, these directives are implemented inconsistently,<sup>71</sup> and the best interest of the child is often left out of CBSA arguments at detention reviews before the Immigration and Refugee Board.<sup>72</sup> Moreover, these policy directives do not have the force of law.

Detention can never be in a child's best interest.<sup>73</sup> Where measures short of detention are legal, necessary and proportionate with respect to the circumstances of the individual case, alternatives to immigration detention that prioritize family unity should be considered.<sup>74</sup> The UN Special Rapporteur on the human rights of migrants reaffirmed this, calling on states to "preserve the family unit by applying alternatives to detention to the entire family,"<sup>75</sup> as did the UN Committee on the Elimination of Racial Discrimination, which expressed regret about Canada's use of immigration detention in relation to children.<sup>76</sup>

## 8.4 CANADA BORDER SERVICES AGENCY OVERSIGHT

The Canada Border Services Agency (CBSA) is responsible for border security in Canada. The CBSA lacks an independent oversight mechanism to investigate and provide an effective remedy for human rights violations committed by its officers. Although the government has twice introduced legislation to create an oversight body,<sup>77</sup> the bills were never enacted, and the government has failed to re-introduce the legislation in the current session of Parliament.

In 2019, the UN Working Group on Arbitrary Detention determined that Ebrahim Toure's immigration detention was arbitrary, and thus urged Canada to conduct a "full and independent investigation," but the Canadian government failed to do so.<sup>78</sup> In November 2020, another detention review hearing involving

---

<sup>66</sup> [Immigration and Refugee Protection Act, SC 2001, c. I-27](#), 1 November 2001, s 60.

<sup>67</sup> Canada Border Services Agency, "[National Directive for the Detention or Housing of Minors](#)," 6 November 2017.

<sup>68</sup> Canada Border Services Agency, "[Annual detention, fiscal year 2019 to 2020](#)," 13 April 2021.

<sup>69</sup> Public Safety Canada, "[Ministerial Direction to the Canada Border Services Agency: Minors in Canada's Immigration Detention System](#)," (6 November 2017).

<sup>70</sup> "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration" (Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), Article 3.1.)

<sup>71</sup> Canadian Council for Refugees, "[Immigration detention and children: Rights still ignored, two years later](#)" (November 2019), at p. 8; UN High Commissioner for Refugees, "[UNHCR's position regarding the detention of refugee and migrant children in the migration context](#)" January 2017; UN Special Rapporteur on Torture, [Thematic Report on torture and ill-treatment of children deprived of their liberty](#), 5 March 2015 (A/HRC/28/68).

<sup>72</sup> Canadian Council for Refugees, "[Immigration detention and children: Rights still ignored, two years later](#)" (November 2019), at p. 8.

<sup>73</sup> See: Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, available at: <https://www.refworld.org/docid/5a12942a2b.html>.

<sup>74</sup> Canadian Council for Refugees, "[Immigration detention and children: Rights still ignored, two years later](#)" (November 2019), at p. 8; UN High Commissioner for Refugees, "[UNHCR's position regarding the detention of refugee and migrant children in the migration context](#)" January 2017; UN Special Rapporteur on Torture, [Thematic Report on torture and ill-treatment of children deprived of their liberty](#), 5 March 2015 (A/HRC/28/68).

<sup>75</sup> United Nations General Assembly, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, UNGA, 20th Sess, A/HRC/20/24 (2012) at paras 40 and 72(h). United Nations General Assembly, Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, 11th Sess, UN Doc A/HRC/11/7 (14 May 2009) at para 62.

<sup>76</sup> United Nations Committee on the Elimination of Racial Discrimination, "Letter Addressed to Her Excellency Ms. Leslie Norton, Permanent Representative of Canada to the United Nations Office Geneva," CERD/100th session/FU/MJA/ks (13 December 2019).

<sup>77</sup> Government of Canada, "[C-98: An act to amend the Royal Canadian Mounted Police Act and the Canada Border Services Agency Act and to make consequential amendments to other Acts;](#)" 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session; and Government of Canada, "[C-3: An act to amend the Royal Canadian Mounted Police Act and the Canada Border Services Agency Act and to make consequential amendments to other Acts,](#)" 43<sup>rd</sup> Parliament, 1<sup>st</sup> Session.

<sup>78</sup> UN Working Group on Arbitrary Detention, "[Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 23 April-3 May 2019](#)," A/HRC/WGAD/2019/7, 7 June 2019.

Ebrahim Toure surfaced allegations of misconduct by a CBSA officer.<sup>79</sup> Despite an announced investigation, the CBSA allowed the officer to continue to testify in another immigration detainee's review hearing.<sup>80</sup>

## 9. GENDER RIGHTS (ARTICLES 2 AND 3)

### 9.1 VIOLENCE AGAINST INDIGENOUS WOMEN, GIRLS, AND TWO-SPIRIT PERSONS

Indigenous women, girls, and two-spirit persons are more likely to experience violence than non-Indigenous women and girls in Canada. Canada's failure to prevent, address, and redress this violence remains one of the country's most egregious human rights concerns. The release of the National Inquiry into Missing and Murdered Indigenous Women and Girls' final report on 3 June 2019 supplemented an extensive body of knowledge about the threats facing Indigenous women, girls, and two-spirit persons, and the measures necessary to end the violence and ensure justice for survivors.<sup>81</sup>

Canada must take urgent, concrete action to adopt a national action plan which employs a human rights-based approach and centres the needs, voices, and expertise of Indigenous women, girls, and two-spirit persons, to effectively address the systemic and root causes of violence. This involves addressing the impacts of colonization, intersectional discrimination, inherent biases, and continued social and economic marginalization, including the heightened risks of violence in situations of overcrowded housing, homelessness, and commercial sex,<sup>82</sup> and the failure to publicly condemn, investigate, and punish acts that normalize violence and discrimination against Indigenous peoples in Canada.<sup>83</sup>

The federal government committed to developing a national action plan to implement the National Inquiry's findings. In December 2020, it announced the setup of a network of working groups to co-develop the plan,<sup>84</sup> however almost two years have passed since the National Inquiry tabled its final report, and the government of Canada has not provided its official response, nor has it articulated a timeline or process to create and implement the national action plan.

### 9.2 NATIONAL ACTION PLANS ON GENDER-BASED VIOLENCE

A comprehensive National Action Plan to prevent and address gender-based violence involving federal, provincial, territorial, municipal, and Indigenous governments and governance is needed to fulfil Canada's international human rights obligation domestically. It must address gaps and shortcomings in policies, programs, and services, and ensure their coherence and consistency. The Plan must be well-resourced, including significant new funds for women's rights and equality-seeking organizations.

---

<sup>79</sup> Brendan Kennedy, "Border agent showed 'willingness to go rogue,' says lawyer for longtime immigration detainee," The Toronto Star, 16 November 2020.

<sup>80</sup> Brendan Kennedy, "Border agent who is under investigation for procuring fraudulent Gambian passport is still involved in deportations," The Toronto Star, 5 February 2021.

<sup>81</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, "Final Report," June 2019.

<sup>82</sup> Amnesty International, "No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence against Indigenous Women in Canada," AMR 20/012/2009.

<sup>83</sup> Final Written Submission to the National Inquiry, *supra* note 4.

<sup>84</sup> Government of Canada, "Statement from the MMIWG National Action Plan Core Working Group," 6 December 2020.

In June 2017, the federal government launched *It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence*,<sup>85</sup> however the strategy is insufficient because it only covers areas under federal jurisdiction.<sup>86</sup>

In 2019, the government of Canada committed to developing a National Action Plan on Gender-Based Violence.<sup>87</sup> Women's rights and equality-seeking organizations released a revised blueprint for government outlining key principles to guide the plan and key components which must be included in it in 2020.<sup>88</sup>

As of April 2021, government was still developing the National Action Plan on Gender-Based Violence and the timeline and process to create and implement it was not publicly known.

The National Inquiry into Missing and Murdered Indigenous Women and Girls called for a National Action Plan on violence against Indigenous women, girls, and two-spirit persons. Prime Minister Justin Trudeau accepted this recommendation when the National Inquiry's report was released on 3 June 2019.<sup>89</sup> Such a plan should be harmonized with and sit alongside a broader National Action Plan on all forms of violence against all women, transgender, and non-binary people in Canada.

## 9.3 GENDER, INDIGENOUS RIGHTS AND ENERGY DEVELOPMENT

A growing body of research draws links between resource development and negative social impacts in communities which host those activities,<sup>90</sup> including social strain, gender-based violence, economic inequalities, and shortages of affordable housing.<sup>91</sup> Large-scale resource development projects in Canada can also have distinct, unintended and harmful impacts on women, and particularly Indigenous women, girls and two-spirit persons,<sup>92</sup> compounding already unacceptable risks to their lives.<sup>93</sup>

Amnesty International has documented the negative impacts of resource development on gender and Indigenous rights,<sup>94</sup> including increased risks of violence for Indigenous women, girls and two-spirit persons, compounded by dangerous patterns of anti-social behaviour among transient workers;<sup>95</sup> decreased access to already-strained social services; and the negative impacts of loss of land on culturally-based healing and wellness.<sup>96</sup> The impacts of resource development have also undermined the ability of Indigenous women and girls to meet their healing and wellness needs through traditional activities and ceremonies on the land.<sup>97</sup>

In June 2019, the Senate passed Bill C-69, the Impact Assessment Act, which calls for a holistic impact assessment of resource development projects, including an intersectional gender analysis to ensure that assessments consider how social, economic, health, and environmental impacts may be different for people of different genders. Although welcomed, gaps remain in the assessment process that continue to put human rights associated with resource development projects at risk. For instance, the Act only applies to projects under federal jurisdiction, and few provinces and territories include gender analysis in their assessment processes.<sup>98</sup>

---

<sup>85</sup> Status of Women Canada, “[Strategy to Prevent and Address Gender-Based Violence](#),” Government of Canada, 3 July 2018.

<sup>86</sup> Letter from Amnesty International and 25 organizations to Prime Minister Justin Trudeau, “[Urgent Need for National Action Plan to Prevent and Address Gender-Based Violence in Canada](#),” 8 March 2018.

<sup>87</sup> Government of Canada, “[Minister for Women and Gender Equality and Rural Economic Development Mandate Letter](#),” Office of the Prime Minister, 13 December 2019.

<sup>88</sup> Women's Shelters Canada, “[National Action Plan on Gender-Based Violence: Reissued Call](#),” Summer 2020.

<sup>89</sup> Catharine Tunney, “[Trudeau says deaths and disappearances of Indigenous women and girls amount to ‘genocide’](#).” CBC, 4 June 2019.

<sup>90</sup> Amnesty International, *Out of Sight, Out of Mind: Gender, Indigenous Rights, and Energy Development in Northeast British Columbia, Canada*, AMR 20/4872/2016, 2016.

<sup>91</sup> *Ibid*, pp. 17, 33-35.

<sup>92</sup> *Ibid*.

<sup>93</sup> Amnesty International, *Submission to House of Commons Committee on Bill C-69*, 6 April 2018.

<sup>94</sup> Amnesty International, *Out of Sight, Out of Mind*, *supra* note 16.

<sup>95</sup> *Ibid*, p. 37.

<sup>96</sup> *Ibid*, pp. 17, 33-35.

<sup>97</sup> Final Written Submission to the National Inquiry, *supra* note 4.

<sup>98</sup> Amnesty International, “[Does Canada's new impact assessment legislation protect human rights?](#)” 30 August 2019.

## 9.4 STERILIZATION OF INDIGENOUS WOMEN WITHOUT CONSENT

Racial bias against Indigenous peoples in the provision of public services in Canada is well-known.<sup>99</sup> This discrimination has led to medically unnecessary sterilizations – mostly tubal ligations – without the informed consent of Indigenous patients. Forced or coerced sterilization of Indigenous women in Canada has been documented since the 1800s,<sup>100</sup> and while the total number of those sterilized without their consent is unknown, there is compelling evidence that the practice continues.<sup>101</sup> In the 1970s, there were about 1,200 cases, reportedly intended to reduce the numbers of Indigenous persons in Canada.<sup>102</sup> In July 2017, the Saskatoon Regional Health Authority released the report of an external review commissioned after at least four Indigenous women reported that they had been coercively sterilized in a Saskatoon hospital, primarily between 2008 and 2012.<sup>103</sup> As of February 2019, a lawyer leading a class action lawsuit in Saskatchewan had received over 100 disclosures from women that they had been sterilized without providing informed consent.<sup>104</sup> All but one of these women were Indigenous.<sup>105</sup>

In December 2018, the UN Committee Against Torture (UNCAT) affirmed that forced and coerced sterilization of women in Canada is a form of torture – because this practice is intentional, committed by state officials, causes serious harm, and is rooted in discrimination – and called on Canada to take steps to investigate the issue, halt the practice, ensure justice for survivors, and report back to the Committee on progress made within a year.<sup>106</sup>

In August 2019, the House of Commons Health Committee called on the federal government to take urgent action on forced and coerced sterilization in Canada. While expressing concern that the practice continues, the federal government has yet to take concrete action to implement the UNCAT recommendations.<sup>107</sup>

## 9.5 THE RIGHTS OF INTERSEX PERSONS

Every year, an estimated 1.7% of people worldwide are born with sex characteristics (genitals, gonads, hormones, chromosomes or reproductive organs) that vary from the established norms for ‘male’ and ‘female’.<sup>108</sup> Often, individuals whose sex characteristics are perceived to vary from those considered ‘male’ and ‘female’ are subjected to discrimination and attempts to ‘normalize’ their bodies through surgery and/or hormone treatments.<sup>109</sup>

Children in Canada born with visible variations to their sex characteristics undergo non-emergency, invasive, and irreversible surgeries and hormonal treatments that can cause short and long-term harm. Section 268(3) of the Criminal Code of Canada allows for parents and medical practitioners to undertake non-consensual, cosmetic surgeries on intersex infants that have proven to result in lifelong physical and psychological harm.<sup>110</sup> The current law functions to normalize surgical interventions based on assumptions about medically “correct” bodies.<sup>111</sup>

In 2018, the Egale Canada Human Rights Trust called on the government of Canada to “Investigate cases of intersex genital mutilation and other medical malpractices pertaining to non-consensual, cosmetic surgeries on intersex children; and follow best practices by providing free and informed consent, in compliance with its

<sup>99</sup> Dr. Judith Bartlett and Dr. Yvonne Boyer, *External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women*, Saskatoon Regional Health Authority, 2017, p.31.

<sup>100</sup> Maurice Law, “Request for a thematic hearing on the forced sterilization of Indigenous women in Canada. File no. 434.01.” Submission to Inter-American Commission on Human Rights, 6 December 2017; and Dr. Judith Bartlett and Dr. Yvonne Boyer, *External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women*, Saskatoon Regional Health Authority, 2017.

<sup>101</sup> “Indigenous women kept from seeing their newborn babies until agreeing to sterilization, says lawyer,” CBC, 13 November 2018.

<sup>102</sup> Roger Collier, “*Reports of Forced Sterilization of Indigenous Women in Canada Mirror Shameful Past*,” *Canadian Medical Association Journal*, Vol. 21, Issue 33, August 2017.

<sup>103</sup> “*Saskatoon health region apologizes after aboriginal women felt pressured by staff to have tubes tied*,” *National Post*, 17 November 2015; and “*Another Saskatoon Woman Says She Was Sterilized Against Her Will*,” CBC, 16 December 2015.

<sup>104</sup> Interview with Alisa Lombard, Maurice Law, 27 February 2019.

<sup>105</sup> *Ibid.*

<sup>106</sup> Amnesty International, “*Sterilizing Indigenous Women without Consent is Torture, says UN Committee*,” 7 December 2018.

<sup>107</sup> Kristy Kirkup, “*Committee ‘deeply disturbed’ by reports of coerced, forced sterilization*,” CBC, 7 August 2019.

<sup>108</sup> Amnesty International, *No Shame in Diversity: The Right to Health for People with Variations of Sex Characteristics in Iceland*, 2019 EUR 28/9498/2019, p. 8.

<sup>109</sup> *Ibid.*

<sup>110</sup> Egale Canada, “*Egale Canada urges the Federal Government to meet domestic and International Human Rights requirements of Intersex People on International Intersex Awareness Day*,” 26 October 2018; and Amnesty International, *No Shame in Diversity, supra* 34.

<sup>111</sup> Egale Canada, *supra* 36.

international treaty body obligations.”<sup>112</sup> As of April 2021, it had not taken steps to implement Egale’s recommendations.

Medically unnecessary surgeries are performed on intersex children in Canada without their free and informed consent,<sup>113</sup> and non-consensual surgeries and hormone treatments implicate the rights of the child, including the rights to the highest attainable standard of health, to a private life and to physical and bodily integrity, and the right to be free from discrimination, and should be eliminated as practices based on harmful gender stereotypes.

## 9.6 PROTECTING THE HUMAN RIGHTS OF SEX WORKERS

The criminalization of sex work, and the current state of domestic law with respect to sex work,<sup>114</sup> creates barriers to the realization of the human rights of sex workers in Canada.<sup>115</sup>

Sex workers in Canada are overwhelmingly women and LGBTI individuals and are among the most marginalized and stigmatized groups in society. Sex workers face an increased risk of violence and abuse, and crimes against them often go unreported, under-investigated, and/or unpunished.<sup>116</sup> Most abruptly lost their income due to COVID-19 lockdown measures across Canada, but unlike workers in other industries, due to the criminalization of sex work, sex workers were largely unable to access emergency income supports.<sup>117</sup>

In December 2013, the Supreme Court of Canada in *Canada (Attorney General) v. Bedford* declared that three provisions of Canada’s Criminal Code were unconstitutional: section 210 (keeping or being found in a bawdy house), section 212(1)(j) (living on the avails of prostitution), and section 213(1)(c) (communicating in public for the purpose of prostitution).<sup>118</sup> These were struck down for violating the right to security of the person under the Charter of Rights and Freedoms by imposing dangerous conditions on sex work.<sup>119</sup> The Court gave the federal government one year to introduce new Charter-compliant legislation. In December 2014, the *Protection of Communities and Exploited Persons Act* (PCEPA) was passed, however it has further marginalized and heightened risks to their security.

With a declared purpose to eliminate sex work, the PCEPA introduced four new criminal offences, including modifications to the provisions declared unconstitutional in the *Bedford* ruling. These involve criminalizing the purchase of sexual services, preventing sex workers from communicating with clients to screen them, and preventing sex workers from organizing their own security.<sup>120</sup> Since the PCEPA’s enactment, sex workers have faced increased levels of targeted violence, stigmatization, and discrimination.<sup>121</sup> Migrant sex workers are also threatened with arrest, detention, and deportation for engaging in sex work.<sup>122</sup>

In March 2021, the Canadian Alliance for Sex Work Law Reform along with several individual applicants filed a notice of application seeking to strike down Canada’s criminal laws criminalizing sex work on the grounds that they violate sex workers’ constitutional rights to security, personal autonomy, life, liberty, free expression, free association, and equality.<sup>123</sup>

---

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> Amnesty International uses the term “sex work” to mean the exchange of sexual services (involving sexual acts) between consenting adults for some form of remuneration, with the terms agreed between the seller and the buyer. Where consent is absent for reasons including threat or use of force, deception, fraud, and abuse of power or involvement of a child, such activity would constitute a human rights abuse, to be treated as a criminal offence.

<sup>115</sup> Amnesty International, “Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers,” 26 May 2016, POL 30/4062/2016, p. 2.

<sup>116</sup> *Ibid.*

<sup>117</sup> Amnesty International, “Canada’s exclusion of sex workers from COVID-19 emergency income supports is shameful and violates human rights,” 25 June 2020; and Amnesty International, “Canada must protect the rights of sex workers during COVID-19 by ensuring access to emergency income supports,” 4 June 2020.

<sup>118</sup> *Canada (Attorney General) v Bedford*, 2013 SCC 72.

<sup>119</sup> *Bedford*, para 60.

<sup>120</sup> *Protection of Communities and Exploited Persons Act*, S.C. 2014, c. 25.

<sup>121</sup> Final Written Submission to the National Inquiry, *supra* note 5.

<sup>122</sup> Butterfly et al, “Immigration Law and Sex Workers’ Rights,” in Upholding & promoting human rights, justice & access for migrant sex workers: series of legal information and resources for service providers, 2017.

<sup>123</sup> Canadian Alliance for Sex Work Law Reform, “Sex worker human rights groups launch constitutional challenge,” 30 March 2021.

**AMNESTY INTERNATIONAL  
IS A GLOBAL MOVEMENT  
FOR HUMAN RIGHTS.  
WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

**CONTACT US**

 info@amnesty.org

 +44 (0)20 7413 5500

**JOIN THE CONVERSATION**

 www.facebook.com/AmnestyGlobal

 @Amnesty

# **CANADA**

## **SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE**

### **132<sup>ND</sup> SESSION, 27 JUNE-23 JULY 2021, LIST OF ISSUES PRIOR TO REPORTING**

Amnesty International submits this briefing to the United Nations (UN) Human Rights Committee, in advance of the adoption of the List of Issues Prior to Reporting for Canada's 7<sup>th</sup> periodic report under the International Covenant on Civil and Political Rights, in June-July 2021. This submission is not an exhaustive account of Amnesty International's concerns but highlights several of the organization's key concerns in relation to implementation of the Covenant in Canada.