

CANADA

**SUMMARY OF
RECOMMENDATIONS FROM
AMNESTY INTERNATIONAL
BRIEFING TO THE UN
COMMITTEE ON THE
ELIMINATION OF RACIAL
DISCRIMINATION**

80th session, February 2012

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

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

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

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1. INTRODUCTION

RECOMMENDATION:

Canada should make a declaration under Article 14 of the Convention, recognizing the jurisdiction of the Committee to receive individual petitions alleging breaches of the Convention.

2. INDIGENOUS PEOPLES

A. IMPLEMENTATION OF THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

RECOMMENDATION:

Canada should, in collaboration with Indigenous peoples' organizations, develop a plan of action for implementation of the Declaration, including the provisions on free, prior and informed consent. The government should report regularly to Parliament on the progress made in fulfilment of this plan of action.

B. FAILURE TO RESPECT AND PROTECT INDIGENOUS PEOPLES' LAND AND RESOURCE RIGHTS

RECOMMENDATIONS:

(1) Canada should publicly acknowledge its obligation to ensure fair and timely settlement of outstanding land and resource disputes in a manner consistent with international human rights norms and standards.

(2) Canada should take immediate action to remove barriers to the fair, adequate and timely resolution of outstanding land and resource disputes, including by reforming policies and practices that are inconsistent with international human rights standards, such as arbitrary limits on the negotiation of redress.

(3) Canada should enact laws and implement practices and policies that ensure that approval of resource extraction activities is contingent on formal, rigorous and meaningful consultation with Indigenous peoples and that development proceeds only with the free, prior and informed consent of those Indigenous peoples whose rights are affected. Consistent with international human rights standards, Indigenous peoples whose rights to lands and resources are the subject of as yet unresolved disputes should receive the same protections.

C. DISCRIMINATION IN THE DELIVERY OF SERVICES (ARTICLES 2(A), 5(A), (E)(IV))

I. CHILD PROTECTION

RECOMMENDATIONS:

(1) Canada should withdraw its objection to the claim of discrimination lodged by the First Nations Child and Family Caring Society and the Assembly of First Nations.

(2) Canada should ensure that funding and other support to First Nations' children's services is adequate to meet their needs.

(3) Canada should take immediate steps to ensure that in law and practice, there is no discrimination or inequality in the provision of public services between Indigenous peoples and the rest of the population.

II. SAFE DRINKING WATER

RECOMMENDATIONS:

(1) Canada should immediately adopt measures, especially the provision of adequate resources, to ensure water and sanitation in First Nations communities meets the standards enjoyed by other people in Canada, including urgent measures to address the needs of those First Nations communities that have no potable water or sewage systems.

(2) Canada should ensure that any measures related to First Nations water and sanitation are taken in collaboration with the affected peoples and are consistent with international human rights standards.

D. POLICING AND INDIGENOUS PROTESTS (ARTICLE 5(B)(C)(D)(VIII)AND (D)(XI))

RECOMMENDATIONS:

(1) Canada should ensure that all jurisdictions in the country adopt and implement binding policies publicly affirming that in responding to Indigenous occupations and protests, particularly within the context of land related resources disputes, security forces use force only as a last resort.

In addition, the police should not resort to lethal force, except when such force is strictly necessary to protect life or ensuring the safety of others."

(2) Canada should press the government of the Province of Ontario to implement fully the recommendations of the Ipperwash Inquiry, including an independent review of the Framework for Police Preparedness for Aboriginal Critical Incidents, and conduct a specific probe into the Ontario Provincial Police handling of incidents at Tyendinaga.

E. VIOLENCE AGAINST INDIGENOUS WOMEN AND GIRLS (GENERAL RECOMMENDATION 25; ARTICLES 2(A), 5(A), (B), (E)(IV) AND 6)

RECOMMENDATION:

Canada should publicly commit to, and should immediately develop, a coordinated, comprehensive, national plan of action to end violence against Indigenous women and girls. This should include information about a timeline and budget towards achieving the creation of a national plan of action and ensuring its effective implementation. It should also include a clear and transparent plan for comprehensive consultation and collaboration with Indigenous women and representative organizations.

F. CONCERNS ABROAD: INDIGENOUS PEOPLES, CORPORATE ACTIVITIES AND TRADE POLICY (ARTICLE 2)

RECOMMENDATIONS:

(1) Canada should, in consultation with Indigenous peoples organizations, establish and implement an effective regulatory framework for holding accountable companies registered, domiciled or operating in Canada for the human rights impact of their operations in Canada or abroad, including the impact on the rights of Indigenous peoples.

(2) Canada should ensure that victims of human rights violations associated with the activities of companies registered, domiciled or operating in Canada and/or abroad, have meaningful access to the regulatory mechanism and to effective remedies.

(3) Canada should also ensure access to domestic courts in such cases. Legal and administrative sanctioning provisions should be explored for Canadian companies that are found to have caused or contributed to human rights abuses abroad.

(4) Canada should implement binding laws and policies requiring companies registered, domiciled or operating in Canada and engaged in resource extraction in Canada or abroad to carry out and report periodically on human rights due-diligence throughout their global operations.

(5) Canada should ensure that free, prior and informed consent of Indigenous peoples forms the cornerstone of all negotiations over and/or use of land by provincial governments and the private sector. Canada should also monitor compliance with such policies before providing aid and support. Government agencies which provide funding and/or support to Canadian companies overseas should have human rights commitment policies in place, which are vigorously enforced, and should ensure robust human rights due diligence processes are carried out by potential clients before providing such support to companies.

(6) Canada should ensure meaningful participation of Indigenous peoples' organizations in Colombia and Canada in the review of the human rights impacts of the Canada-Colombia Free Trade Agreement and ensure that compliance with the UN Declaration on the Rights of Indigenous Peoples is one of the standards used in this review.

3. REFUGEES AND MIGRANTS

A. HUMAN SMUGGLING (ARTICLES 2(1)(C), 5(B) AND (D)(I))

RECOMMENDATION:

The Canadian government should withdraw Bill C-4, which provides for mandatory detention for some asylum seekers, among other human rights concerns, and should only proceed with law reform dealing with human smuggling in a manner that conforms fully to Canada's international human rights obligations.

B. *NON REFOULEMENT* TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ARTICLE 5(B) AND GENERAL RECOMMENDATION XXX, PARA. 27)

RECOMMENDATION:

Canada should amend the Immigration and Refugee Protection Act to implement the absolute ban on deporting, extraditing or in any way returning or transferring an individual to face a risk of torture or other cruel, inhuman or degrading treatment in another country.

C. MIGRANT AND TEMPORARY WORKERS (GENERAL RECOMMENDATION NO XXX, PARA. 35; ARTICLE 5 (E)(I))

RECOMMENDATIONS:

- (1) Canada should ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.*
- (2) Canada should ensure that migrant workers enjoy the right to join a union of their choice without discrimination.*
- (3) Canada should review foreign worker programs that include a live-in or other place of residence requirement, such as the domestic caregivers and seasonal agricultural workers programs, and remove the restrictions with respect to place of residence.*
- (4) Canada should review all foreign worker programs and ensure that there is no discrimination with respect to labour standards protections or access to programs such as employment insurance.*
- (5) Canada should work with provincial and territorial governments to ensure that any bilateral agreements with source countries of temporary foreign workers include human rights protections.*

(6) Canada should work with provincial and territorial governments to accredit, monitor and, if necessary, discipline both domestic and offshore recruiters of foreign workers.

D. ACCESS TO HEALTH CARE FOR UNDOCUMENTED MIGRANTS (ARTICLE 5(E)(IV))

RECOMMENDATIONS:

(1) Canada should ensure that all individuals present in Canada have access to adequate and appropriate health care, regardless of their immigration status.

(2) Canada should revise its laws and policies to ensure that all persons present in Canada enjoy at all times, in principle and in practice, the right to health and the right not to face unlawful discrimination in accessing, among other public services, health care.

4. RACISM AND NATIONAL SECURITY

A. IMMIGRATION SECURITY CERTIFICATES (ARTICLE 5(A))

RECOMMENDATION:

To guarantee fair trials, Canada should amend the Immigration and Refugee Protection Act to allow legal counsel for individuals subject to immigration security certificates to have full access to all evidence in government files, subject to any necessary undertakings to protect national security or other considerations.

B. PROFILING (ARTICLES 2(1)(C), 5(A) AND (B))

RECOMMENDATION:

Canada should work with affected communities to develop a Plan of Action, complete with necessary legislative reform, policy development or changes in practices, to ensure that there is no racial, ethnic or religious profiling involved in Canadian national security activities and to counter any perception of profiling.

C. ACCESS TO REMEDIES (ARTICLE 5(A))

RECOMMENDATION:

Canada should appoint an Independent Commissioner to review claims for redress brought by individuals who allege that they have experienced human rights violations associated with national security investigations or activities for which Canadian officials are alleged to have

been partially or wholly responsible. The Independent Commissioner should be empowered to make recommendations for appropriate compensation.

D. REVIEW AND OVERSIGHT (ARTICLE 5(A))

RECOMMENDATION:

Canada should implement the recommended model for a comprehensive and integrated review of agencies and departments involved in national security activities proposed in 2006 as part of the Commission of Inquiry into the case of Maher Arar. Maher Arar was a Canadian citizen subject to extraordinary rendition to Syria by US authorities in 2002, where he was imprisoned for one year and tortured. The Inquiry documented numerous ways that the actions of Canadian officials in a number of different agencies and departments contributed to the grave human rights violations he experienced.

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