The Universal Periodic Review of Canada: February 2009

An overview of a select number of
Canadian NGO concerns and recommendations

January 31, 2009

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1. The Nature of this Document

This document provides a summary of key human rights concerns raised by non-governmental organizations (NGOs) and Indigenous Peoples and representative organizations from across Canada in the lead up to the first Universal Periodic Review (UPR) of Canada. It was prepared by Canadian NGO representatives[1] drawing upon the 49 civil society and Indigenous[2] written submissions formally submitted under the UPR process and upon the outcomes of five meetings of NGOs/Indigenous Peoples and representative organizations and government representatives, held in five Canadian cities between 8 – 16 January, 2009. As such this document reflects a significant number of issues and concerns that are widely held across the country.

However, it does not in any way purport to be an exhaustive review of human rights concerns and recommendations within the NGO and Indigenous communities in Canada. Given the range of concerns and the late scheduling of the meetings between NGOs, Indigenous Peoples and representative organizations and government, it has only been possible to provide a broad overview in this document. The document should not be read as prioritizing some issues over others, except where that is explicitly stated.

The document refers to a number of concerns and recommendations with respect to the protection of the rights of Indigenous Peoples in Canada but it is not intended to speak authoritatively on behalf of Indigenous Peoples across the country. These reflect issues around which there was consensus among the Indigenous representatives who took part in the recent series of cross-country meetings. We are particularly cognizant, however, that a number of Indigenous leaders and representatives of Indigenous organizations have already and will continue to raise these and other concerns and recommendations on behalf of their communities by way of written submissions to the review process and through various meetings and approaches.

2. Why Reviewing Canada Matters

Canadian civil society takes the UPR of Canada very seriously and hopes that the review will lead to a number of concrete recommendations addressing critical human rights shortcomings in the country. The level of interest in the UPR among NGOs and

[1] Leilani Farha, The Centre for Equality Rights in Accommodation; Celeste McKay, Native Women's Association of Canada; Alex Neve, Secretary General, Amnesty International Canada; Bruce Porter, Director, Social Rights Advocacy Centre.

[2] In Canada, "Indigenous Peoples" refers to Aboriginal Peoples, which include First Nations/Indian, Inuit and Métis Peoples, who are recognized in section 35 of the *Constitution Act*, 1982. While the term "Indigenous Peoples and representative organizations" is referred to in addition to NGOs, many Indigenous representatives have NGO Consultative Status with ECOSOC. Therefore, references to "NGOs" in this text also include Indigenous Peoples and their representative organizations.

Indigenous representatives is reflected by the number of submissions that were made as part of this review and the fact that approximately 125 organizations participated in meetings about the UPR in mid-January. Though the consultations were held at a very late stage in the process and did not offer any formal opportunity to provide input into the development of the Canadian submission to the UPR, NGOs remain hopeful that the concerns that they have raised will be reflected in commitments made by Canada in the context of the UPR and in constructive responses to concerns and recommendations raised.

Many of the organizations following the review process have decades of front line experience working with and supporting individuals and groups across Canada who have suffered serious human rights violations across a wide array of topics. They have first hand knowledge of the need for human rights reforms and improvements across the country.

Some may question why time and resources should go into a UN level review of a country such as Canada with significant wealth and resources and an international reputation for commitment to human rights. NGOs and Indigenous Peoples in Canada emphasize, however, that there are very serious human rights issues to be addressed in Canada, particularly among the most vulnerable groups, and in light of the obligation to apply the "maximum of available resources" to the realization of economic, social and cultural rights. Widespread poverty and significant increases in hunger and homelessness during times of unprecedented economic growth and general prosperity in Canada are of particular concern, in part because these human rights violations could be eliminated in Canada if governments were to re-commit to fulfilling their human rights obligations. Recognizing the universal dimension to human rights protection, it is both fitting and necessary that the UN bring scrutiny to all countries' human rights records. It does not matter whether the situation is, on average, better or worse in Canada than it is in any other UN member state. What matters is that there are human rights issues in need of attention in Canada, many of which are serious and longstanding. The human rights of millions of people in Canada are at stake.

In many respects the review is of added importance because of Canada's traditional international reputation for human rights leadership. Canada has in many respects come to be seen as a leader in human rights. Leadership must, however, be earned on a continuing basis, including by modeling best practices. The UPR process offers an important opportunity for Canada to do just that.

It was also clear in the recent meetings between the Canadian government and NGO's and Indigenous Peoples and representative organizations that Canadian civil society believes this UPR is particularly timely and opportune because of mounting concerns that recent positions taken by Canada within the UN with regard to a number of crucial human rights concerns have undermined, rather than strengthened, protection. This includes Canada's adamant opposition to the *Declaration on the Rights of Indigenous*

Peoples, isolated votes against a range of resolutions addressing human rights in relation to Israel and Palestine, refusal to recognize the right to water, failure to champion the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and unwillingness to co-sponsor the groundbreaking 2007 and 2008 General Assembly resolutions calling for a moratorium on executions. These signs of a weakening commitment to international human rights are also evident in Canada's domestic record of implementation. At a time when Canada's hard-won reputation for human rights leadership has begun to erode, this UPR offers Canada a valuable opportunity to demonstrate a genuine commitment to the international human rights system. We will be pressing Canada to take prompt and substantive action to comply with the recommendations that emerge.

3. Implementation and Enforcement Deficit

The powerful and eloquent words of UN human rights treaties, declarations, resolutions and other instruments are only as meaningful as the extent to which governments actually live up to what they have promised. Universally, across the world, this is the most significant challenge to human rights protection: how to ensure compliance with and implementation of governments' human rights obligations.

Unfortunately, despite a longstanding reputation for human rights leadership, Canada has a lengthy record of failing to implement recommendations coming out of the international human rights system. UN level human rights bodies and experts have with increasing concern and frustration criticized Canada for this failure. Canadian NGO's have raised this issue with the government repeatedly over many years as has the Standing Committee on Human Rights of the Senate of Canada. Yet there has been no notable improvement. Concerns and recommendations of UN treaty monitoring bodies appear to be simply ignored by governments in Canada and the number of unimplemented recommendations, both with respect to general issues of concern and specific cases involving individuals or groups of individuals, continues to grow.

There are many reasons for Canada's shortcomings when it comes to implementation:

- There is no effective procedure for governments in Canada to review and implement UN recommendations. There is no transparency, no involvement of parliamentarians, no meaningful dialogue with NGO's, and no public reporting. A committee of federal, provincial and territorial officials meets twice a year to share information and discuss developments regarding Canada's international human rights obligations but it operates entirely behind closed doors and has no decision-making authority. This applies equally to decisions about ratifying international human rights treaties.

- In a federal state such as Canada, successful implementation requires effective coordination between the federal and provincial/territorial levels of government. Canada has traditionally put forward the complexities of a federal state to explain its implementation difficulties. Governments in Canada have not, however, taken steps to explore creative options for improved coordination and the Government of Canada has failed to take a leadership role in ensuring that human rights compliance is subject to effective and ongoing federal/provincial/territorial commitment and attention.

- Access to effective remedies through courts and tribunals for violations of international human rights has not been adequately addressed in Canada. Human rights treaty monitoring bodies have repeatedly made recommendations for the improvement of legal remedies, particularly in the area of economic, social and cultural rights, but these have not been acted upon.

Addressing these three critical areas of concern has been identified by NGOs as a priority area to be raised with Canada. It is hoped that a very concrete set of recommendations will be accepted and will lead to meaningful reform.[3] Whether organizations are concerned with Indigenous rights, the plight of migrants, women's equality, racial discrimination, the rights of persons with disabilities, housing concerns, the best interests of children, counter-terrorism, poverty-eradication or any number of other human rights concerns, the inadequate and secretive approach taken to implementing human rights obligations in Canada is one of the most significant obstacles to human rights protection in the country.

Recommendations

i. Responsible federal, provincial and territorial ministers in Canada should ensure that a new inter-governmental process for implementing international human rights obligations is established on an urgent basis. The new process should:

- be well coordinated within and between levels of government;

- include necessary decision-making authority;

- be transparent and publicly accessible and include public hearings before parliamentary and legislative committees;

[3] This is in keeping with the recommendations outlined in the NGO submission to Canada's UPR, *Promise and Reality: Canada's International Human Rights Implementation Gap*, endorsed by 24 organizations and supported by a further 24.

- include a meaningful role for Indigenous Peoples and representative organizations which recognizes the obligation to obtain their free, prior and informed consent with respect to matters impacting on their rights;

- institute a meaningful dialogue process with civil society; and

- provide an oversight role to parliamentarians.

ii. Canada should immediately develop a timeline and plan of action that will ensure that its approach to reviewing, adopting and implementing the recommendations coming from this UPR are dealt with under a system that meets the criteria outlined above.

iii. Canada should launch a comprehensive review to identify the obstacles and gaps in the enforcement of the country's international human rights obligations before national, provincial and territorial courts, administrative tribunals and human rights commissions and take corrective action to ensure that there are meaningful and accessible remedies available when those obligations are violated.

iv. Canada should move without any further delay to ratify the:

- Convention on the Rights of Persons with Disabilities and its Optional Protocol;

- Optional Protocol to the Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment;

- Convention on the Protection of all Persons from Enforced Disappearances;

- Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;

- Convention relating to the Status of Stateless Persons;

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

- International Labour Organization Convention 169.

v. Canada should recognize the right of individual petition under the Convention on the Elimination of Racial Discrimination.

vi. Canada should publicly recognize and acknowledge that the UN *Declaration on the Rights of Indigenous Peoples,* adopted by an overwhelming majority in 2007, does

apply to Canada and begins its implementation, in partnership with Indigenous Peoples.

4. Lack of Consultation with Civil Society in Preparation of the Report

The shortcomings in Canada's approach to implementation of its international obligations are well-illustrated with the serious problems that arose in launching a meaningful consultation process with NGO's in the lead up to this UPR. There was no consultation with civil society or Indigenous Peoples and representative organizations prior to the submission of Canada's Report on December 22nd, 2008.

It was only after the submission of Canada's report that meetings were held with civil society and Indigenous representatives in Winnipeg, Vancouver, Ottawa, Toronto and Halifax. In some instances groups only had a few days notice of the meeting and therefore had very little time to prepare. A separate meeting with Indigenous representatives was tentatively scheduled for the second week of January but then cancelled. Indigenous representatives were invited with little advance notice to a more general meeting in Ottawa. While NGO's welcomed the opportunity to share experiences and to identify priority issues which should be addressed in the UPR, the nature of the exchanges with government representatives was limited and came too late in the process.

Recommendations

i. That Canada ensure that the priority concerns identified by NGOs and Indigenous representatives in meetings held in January, subsequent to the submission of Canada's UPR Report, be fully considered and addressed during the oral exchanges under the UPR and in Canada's response to questions and recommendations.

ii. That a thorough and timely process for consultation with civil society and Indigenous representatives be established to review recommendations made to Canada and to develop implementation plans to with respect to accepted recommendations.

iii. That an effective and transparent system of accountability and consultation with relevant civil society and Indigenous representatives be established to participate in the planning and oversight of implementation of recommendations accepted by Canada.

iv. That in Canada's next UPR, consultation processes with civil society and Indigenous representatives be carried out in a timely and effective manner, in advance of the preparation of Canada's Report and throughout the process.

5. Access to Effective Remedies

A key concern of NGO's across the country and of human rights treaty monitoring bodies has been the lack of access to effective remedies for violations of human rights in Canada, particularly in the area of economic, social and cultural rights. Rights in ratified human rights treaties are not directly enforceable before Canadian courts unless recognized as customary international law, or unless a treaty is explicitly incorporated by parliament or legislatures (which is rarely the case). Effective remedies for most human rights must therefore be provided through the Canadian Charter of Rights and Freedoms, through national, provincial or territorial human rights legislation, or through the interpretation and application of other laws consistent with Canada's human rights obligations.

Canadian courts recognize that all domestic law should be interpreted and applied, where possible, to ensure compliance with Canada's international human rights obligations. However, judges, tribunal members and administrative decision-makers often lack sufficient knowledgeable about international human rights. Governments in Canada have routinely argued in court against interpretations of the Canadian Charter of Rights and Freedoms which would provide for effective remedies to violations of economic, social and cultural rights, particularly the right to adequate food, housing and income. This has been raised as a concern on a number of occasions by the Committee on Economic, Social and Cultural Rights, but nothing has been done in response.

The Committee on Economic, Social and Cultural Rights has also recommended that federal and provincial/territorial human rights legislation be amended to provide effective remedies to violations of economic, social and cultural rights and to protect poor people from widespread discrimination. No action has been taken on these recommendations.

Recommendations

i. Governments should promote and advance interpretations of Canadian law which provide effective remedies for any violations of international human rights law, including economic, social and cultural rights, both in legal proceedings and through public education.

ii. The mandate of the federal and provincial/territorial human rights institutions should be extended to explicitly include economic, social and cultural rights.

iii. A thorough review and follow-up on all treaty body recommendations for enhanced domestic remedies for human rights should be implemented.

iv. Federal and provincial court judges should receive training on the application of international human rights in domestic adjudication, particularly with respect to economic, social and cultural rights claims, Indigenous Peoples' rights and refugee and immigration matters.

v. Canada should affirm the need for effective remedies to economic, social and cultural rights internationally and promote and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

6. Access to Courts

a. Court Challenges Program

A serious concern raised consistently by NGOs across the country was that vulnerable groups are often unable to access courts to enforce their rights.

The Court Challenges Program has been funded by the federal government since the advent of equality rights under the Canadian Charter of Rights and Freedoms in 1985 to provide financial support for individuals and groups challenging violations of language rights or equality rights under the Canadian Charter of Rights and Freedoms. Canada has pointed to this program in a number of reviews by UN treaty monitoring bodies as critical to ensuring access to courts to enforce fundamental human rights. Many of the most important equality rights cases under the Charter were made possible by Court Challenges Program funding. The CESCR has commended Canada for the Court Challenges Program and recommended that it be extended to cover challenges to provincial/territorial, as well as federal, laws and policies. In 2006, the federal government eliminated all funding for the Court Challenges Program – both minority language rights and equality rights sections of the program.

Funding for language rights challenges was reinstated in 2008 in settlement of a legal challenge launched by minority language rights organizations. However, there is still no funding provided for equality rights challenges by disadvantaged groups. The cutting of funding to the Court Challenges Program has particularly affected women, racialized groups, people with disabilities, Indigenous women and poor people.

b. Civil Legal Aid

Access to civil legal aid has been severely restricted in Canada. This means rights in relation to child custody, family law, social assistance, disability support services, housing and other areas have been difficult or impossible for the most disadvantaged groups and individuals to enforce because of lack of access to legal representation. Civil law legal aid is used disproportionately by women. In many jurisdictions, family and poverty law legal aid is unavailable. Elsewhere it has been significantly eroded by cuts of up to 40% (as in British Columbia). Poor people often cannot access legal services when denied benefits to which they are entitled by law, such as social assistance, employment insurance, disability benefits, and workers' compensation, or when they face eviction from their housing.

Recommendations

i. Funding for equality cases under the Court Challenges Program should be reinstated and the Court Challenges Program should be extended to include access to courts to protect fundamental human rights in provincial/territorial, as well as federal, jurisdiction.

ii. The federal government should provide cost-shared funding for civil legal aid as for criminal legal aid, and ensure the development and implementation of adequate civil legal aid programs in all provinces and territories consistent with national standards for access to justice.

7. Poverty

A critical issue identified by all vulnerable groups and NGOs across Canada and a central concern of human rights treaty monitoring bodies in reviews of Canada over the last 15 years has been the unreasonable extent and depth of poverty among the most vulnerable groups in Canada – women (particularly single mothers), Indigenous people, newcomers, racialized groups and people with disabilities.

Canada is one of the richest countries in the world and placed third on the UN Human Development Index in 2008. It has enjoyed 17 years of economic growth and has generally led G7 countries in economic growth over the last decade. It is unique among G7 countries for running an overall government surplus over the past decade. Yet the problem of poverty in Canada is among the worst among developed countries and has not been effectively addressed.

Canada's Report provides data based on Statistics Canada's Low Income Cut-Offs showing a reduction of poverty rates over the last decade from 15.7 per cent of the population in 1996 to 10.5 per cent in 2006. One in ten individuals living in poverty in one of the most affluent countries in the world is not acceptable. Furthermore, data comparing Canada's performance with that of other OECD countries, and poverty statistics recently released by the Statistics Canada, show a clear pattern of complacency in governments' responses to poverty in Canada.

A recent OECD study on poverty in OECD countries[4] found the following with respect to Canada:

- Inequality of household earnings has increased significantly.
- Canada spends less on unemployment benefits and family benefits than most OECD countries and taxes and transfers do not reduce inequality as much as in many other countries.
- Over the past 10 years poverty (according to the internationally applied measure of people who live on less than half median incomes) has increased for all age groups in Canada, by around 2 to 3 percentage points to an overall rate of 12%.
- 15% of children in Canada are living in poverty.

A recent Canadian study released by the Government of Canada (Human Resources and Social Development Canada), applying a new "market basket" measure of poverty documents only a modest decline in the incidence of poverty during the years of strongest economic growth, from 2000-2006, from 14.6% to 11.9%.

Other key findings from the report include:

- The depth of low income in Canada is virtually unchanged (on average 32% below the poverty line) since 2000.
- Groups at high risk of poverty are the disabled (32.8% live in poverty), lone parents (30.7% live in poverty), Indigenous people (28.6% of off-reserve Indigenous people live in poverty), and recent immigrants (24.2%).

One of the primary reasons for the continuation of poverty at deep levels in Canada is the increasingly inadequate social assistance (welfare) rates. The National Council of Welfare (NCW), the Government of Canada's advisory body on welfare policy, concluded in a recent report: "Rates this low cannot be described as anything other than punitive and cruel."[5] The NCW has found that between 1989 and 2005 the cost of living rose by 43%, but social assistance benefit rates declined in both absolute and relative terms in all provinces, except Quebec and Newfoundland & Labrador. Welfare

[4] Growing Unequal? : Income Distribution and Poverty in OECD Countries OECD (2008).

[5] National Council of W(elfare, Welfare Incomes 2003: www.ncwcnbes.net/htmdocument/reportWelfareIncomes2003/WI2003_e.pdf at 16.

incomes of single persons continue to hover around 40% of the poverty line. The gross inadequacy of welfare rates means that many who are recipients cannot pay for adequate housing, and still have enough money left to eat and pay for other essentials.

Recommendations

i. Canada should implement a national strategy to eliminate poverty with clear goals, timetables, indicators and reporting mechanisms, an oversight body and accountability to parliament and provincial/territorial legislatures.

ii. The Government of Canada in conjunction with all provincial, territorial, and Indigenous Peoples and representative organizations should initiate a thorough review of the extent of inadequacy of social assistance and in cooperation with provincial, territorial governments and Indigenous governments and representative organizations adopt a plan to set all social assistance rates at a level which ensures access to adequate food, clothing, housing and other necessities.

iii. A review of the adequacy of minimum wage protections should be conducted and adjustments should be made to both the minimum wage and tax measures to ensure that workers earning minimum wage are able to provide adequate food, clothing, housing and other necessities to themselves and their families.

8. Housing and Homelessness

Homelessness and inadequate housing in Canada were declared a "national emergency" by Mayors of 10 major cities across Canada (see: para. 62 of the Concluding Observations of the 2006 CESCR review of Canada), a finding confirmed by the United Nation's Special Rapporteur on the Right to Adequate Housing after his mission to Canada in 2007. The Government of Canada's housing agency (Canada Mortgage and Housing Corporation) estimates that there are at least 200,000 homeless people in Canada, and that 1.7 million households (an increase of 400,000 since 1990) are living in inadequate housing or paying an unreasonable amount for shelter. Federal housing investment as a percentage of the GDP is at its lowest level in two decades falling from .24% of the GDP in 1989 to an all-time low of .15% in 2006. Canada is one of the few countries that has no national housing strategy.

Cutbacks to housing expenditure are having a disparate impact on the most vulnerable populations, particularly low income women and their children, Indigenous women, immigrant women, disabled women, single-mothers, older women and teenage girls. Homeless women in Canada are 10 times more likely to die than women in the general

population and are at extreme risk of violence. Moreover, the homeless population carries a disproportionate burden of many serious health conditions compared to the general population. They tend to have significantly higher rates of illnesses such as epilepsy, cancer, arthritis, and diabetes.

Since 1996, the Government has failed to develop a coherent policy of national standards to ensure that the right to adequate housing is enjoyed by all. Instead, it has implemented a patchwork of short-term initiatives that have not in any way substantially addressed the housing and homelessness crisis facing many in Canada.

Recommendations

i. The right to adequate housing should be enshrined in all relevant legislation across Canada, including human rights legislation and housing legislation.

ii. In keeping with the Special Rapporteur's 2007 recommendation, the Government of Canada, in collaboration with provinces, territories and Indigenous leadership, should implement a comprehensive national housing strategy, that particularly targets the most marginalized groups such as women, Indigenous Peoples, elders, youth, and racialized communities.

iii. In line with the CESCR's 2006 recommendations, the housing strategy should include measurable goals and timetables, a monitoring body and a complaints mechanism, encompassing social housing programmes for those in need, improved enforcement of anti-discrimination legislation in the field of housing, shelter allowances and social assistance rates set at realistic levels to cover the actual cost of housing, and adequate support services for persons with disabilities.

iv. Security of Tenure legislation throughout Canada should ensure that evictions are not carried out without ensuring that alternative housing options are available.

v. Access to health care and support for homeless people should be improved.

9. Food Security

An estimated 2.7 million people experience food insecurity at some point every year in Canada. Charitable centres for the distribution of food, known as "food banks" are now relied on by more than 700,000 individuals per month in Canada, 38% of them children. Despite recommendations from the Committee on Economic, Social and Cultural Rights that concerted efforts be made to address the problem of hunger in Canada and to eliminate the need for food banks, the need for emergency food has not been

decreased even in recent years of economic growth and prosperity. Families with children are most affected by food insecurity.

Recommendation

Canada should implement a national strategy to eliminate poverty with clear goals and timetables, as recommended above under "Poverty". Canada should support initiatives both internationally and domestically to recognize and implement the right to adequate food. Rent supplement programs and other assistance with housing and utilities costs needs to be included in a strategy to address hunger.

10. Health

i. The right to health and HIV/AIDS funding

In May 2004, the Canadian Government announced that annual federal funding for its domestic HIV/AIDS strategy would be doubled over a five-year period, to reach a level supported by all federal political parties following Parliamentary hearings in 2003. (1) However, in 2007, the Canadian Government cut funding for existing and planned programs and services by almost 15 percent, with further cuts in 2008. This is happening against a backdrop of an estimated 58,000 Canadians living with HIV, representing a 16 percent increase from 2002, and a reported 2,300 to 4,500 people newly infected with HIV in 2005 (the last year for which such national estimates are currently available).

Recommendation

Canada should increase funding for its domestic HIV/AIDS strategy to ensure adequate programs and services are available.

ii. Access to Sexual and Reproductive Healthcare

Since 1988 there have been no legal restrictions interfering with women's right to abortion services in Canada. However lack of accessibility continues to be an obstacle to adequate sexual and reproductive healthcare. Only one in every six hospitals in Canada offers abortion services, with most located in urban areas. No abortions are available in the Province of Prince Edward Island. This imposes unacceptable monetary costs and delays in accessing abortions.

Recommendation

Canada should ensure that abortion services are provided without fees and ensure that women do not have to face barriers, including out of province travel, or travel of long distances within provinces or territories, in order to obtain abortion services.

iii. Canada's commitment to increase global access to medicines

Canada's Access to Medicines Regime (CAMR) was created by legislation passed in Canada's Parliament in May 2004. It is intended to allow compulsory licensing of patented medicines, so that generic drug companies in Canada can legally produce and export lower-cost versions of patented, brand-name medicines to developing countries. The Government claimed at the time that CAMR would "go a long way toward improving global health". However, the actual effect of the law has been lacklustre. CAMR does not work as intended because it is unnecessarily complex and cumbersome.

Recommendation

To meet its obligations of international assistance, Canada needs to simplify its Access to Medicines Regime to allow developing countries quicker access to treatment for HIV/AIDS and other health needs.

iv. The Right to Health of Persons Who Use Drugs

The Government of Canada launched a new National Anti-Drug Strategy in October 2007. In contrast with previous national strategies, the new document funds law enforcement, prevention and treatment programs — three of the four so-called "pillars" common in many drug strategies — and eliminates the long-standing fourth pillar, harm reduction, which includes needle exchanges, methadone clinics and supervised injection facilities, services of particular importance in protecting the health of people who use illegal drugs. Harm reduction programs are proven to lessen the harms associated with illicit drug use, including by reducing transmission of HIV and hepatitis C (HCV); they are, therefore, essential for the protection of the right to health of people who use drugs.

Recommendation

Law enforcement and health policy branches of government should ensure that the enforcement of drug laws does not interfere with the delivery of, and access to, health services.

v. The Right to Health of Prisoners

In Canada, estimates of HIV prevalence in prisons are at least ten times the reported prevalence in the population as a whole and estimates of hepatitis C virus (HCV) prevalence in Canadian prisons are at least 20 times the estimated HCV prevalence in the population as a whole (12). A survey by Correctional Service Canada (CSC) of the federal prison system (comprising 52 institutions), revealed that 11 percent of federal prisoners reported having injected an illegal drug since arriving at their current institution (13). The scarcity of sterile syringes and the punitive consequences of being caught using drugs in prisons leads prisoners to use non-sterile injecting equipment. An even greater percentage of prisoners (approximately 45%) have reported receiving a tattoo in prison; however, there is little in the way of access to sterile equipment. However, in December 2006, the Government of Canada cancelled a ground-breaking "safer tattooing" pilot project developed by CSC, despite the preliminary positive evaluation of the program. Providing sterile syringes to prisoners as a means to prevent the spread of blood-borne viruses has been supported by the Canadian Medical Association and the Correctional Investigator of Canada, as well as international organisations as a matter of sound public health policy and human rights. Yet the Canadian Government has flatly refused to implement such health services in federal prisons, and no provincial or territorial government has yet taken steps to implement such health programs either.

Recommendation

Canada should respect prisoners' right to health and implement needle and syringe programs in prisons under its jurisdiction, as well as reinstating safer tattooing measures.

vi. The Right to Health and Treaty Rights of Indigenous Peoples

The Special Rapporteur on the Right to Health, Paul Hunt, in his report to the General Assembly of the UN, referred to the Treaty right to health of Indigenous Peoples in some regions, including Canada, that must be recognized.

Recommendation

Canada should honour and respect Indigenous Peoples' Treaty right to health and implement it according to the original spirit and intent.

11. Right to Water

Canada is the only member of the Human Rights Council to have gone on record as opposing recognition of water as a human right. This position is also evidenced in domestic policy. In a country with an abundance of fresh water, many Indigenous communities have no access to safe drinking water. Contaminated drinking water is a growing problem throughout Canada. Canada has no Canada-wide freshwater strategy to preserve water basins, respect Indigenous water rights and manage ecosystems. Trade and investment agreements such as the North American Free Trade Agreement have failed to ensure that governments can protect water resources as a public trust and ensure water as a human right.

Recommendation

Canada should recognize the human right to water both internationally and domestically, ensure that trade and investment agreements do not undermine governments' abilities to protect this right, and implement a Canada-wide freshwater strategy recognizing Indigenous water rights, including the Treaty right to water.

12. Human Rights of Indigenous Peoples

The following issues and recommendations come from discussions with Indigenous Peoples from across Canada.

i. Overview

There were a number of critical human rights concerned voiced by Indigenous representatives including those related to violations of the right to self-determination and the continued opposition by the Government of Canada to the United Nations *Declaration on the Rights of Indigenous Peoples* as well as fundamental violations to Indigenous Peoples' rights to lands, resources and territories. Related to this, it was noted that the right to free, prior and informed consent is not being respected. Violence against Indigenous women and girls must be addressed in a systemic manner, including the establishment of a comprehensive national action plan. Indigenous Peoples attested to the alarmingly high rates of lack of access to basic needs, including clean water, adequate social assistance, adequate, affordable child care, education, employment, adequate housing, health and food. Indigenous people with disabilities faced even greater barriers to an adequate standard of living and basic services.

Equality rights, including the particular rights of First Nations women, are violated by colonial legislation, such as the *Indian Act.*

ii. Pre-UPR Meetings with Indigenous Peoples

The government of Canada initially committed to holding a meeting with National Aboriginal Organizations prior to its UPR. At a very late date, the GOC cancelled this meeting. Indigenous representatives made it very clear that the NGO meetings that the GOC did convene in no way constituted "consultation" or even meaningful "engagement" especially in light of the timing of the meetings which took place after Canada's submission of its report under the UPR, the lack of notice for participation (invitations were not issued until after January 5th for sessions that began on January 8th), and the inadequate number and location of meetings (including no session held in northern Canada) and the inadequate outreach to all provinces and territories. This type of disregard for establishing a respectful process perpetuates the negative experiences of relationship-building between Canada and Indigenous Peoples. It is recommended that in the future, engagement by Canada be completed in such a way that meaningful input can be received and the full and effective participation of all Indigenous people, including those with disabilities, can be achieved.

iii. United Nations *Declaration on the Rights of Indigenous Peoples*

All levels of government in Canada should endorse and fully implement the United Nations *Declaration on the Rights of Indigenous Peoples* (the *Declaration*), especially in light of the Parliamentary motion passed to this effect. Canada has repeatedly taken the position in regional and international fora (eg: at the Convention of Biological Diversity and the Convention on Climate Change meetings and the Organization of American States Working Group on the Draft American Declaration on the Rights of Indigenous Peoples) that the *Declaration* does not apply to Canada because Canada voted against its adoption at the UN General Assembly. This position is purely ideological in nature with no substantive rationale and represents the fact that all declarations adopted by the United Nations are universal human rights instruments applicable without exception to all countries including, of course, Canada. Furthermore, this position ignores the fact that many of the provisions in the *Declaration* mirror existing state obligations in other international instruments, many of which are legally binding upon Canada. The Government of Canada's position on the *Declaration* is reprehensible and puts Canada in breach of its obligations as a member of the Human Rights Council to uphold all human rights standards.

Recommendations

i. Canada is urged to immediately and openly endorse the UN *Declaration on the Rights of Indigenous Peoples* at the HRC or the GA, and work with Indigenous Peoples to establish timelines and adequate resources to ensure the full implementation of the norms and standards contained therein. Furthermore, Canada should apply the provisions of the UN DRIP as minimum norms and standards to guide the application of all laws and policies affecting its relations with Indigenous Peoples in Canada and in territories outside Canada.

ii. The Government of Canada should establish a Joint House of Commons/Senate Committee in the Parliament of Canada on the International Affairs of Indigenous Peoples. The mandate of the Committee will be to provide monitoring and evaluation of Canada's progress on implementation of their human rights obligations as well as to provide an educational function about the most recent human rights developments.

iv. Right to Self-Determination

Control over and effective participation in all aspects of governance and decision-making and in the design and delivery of programs and services is essential to the fulfillment of Indigenous Peoples' rights. Indigenous Peoples themselves have substantive action plans to address their own needs. However, all levels of government in Canada have consistently sought to minimize and constrain Indigenous Peoples' right of self-determination. The federal self-government policies make realization of the right of self-government contingent on negotiation with the federal government. Laws and policies continue to be arbitrarily imposed on Indigenous Peoples without regard for the priorities, knowledge and expertise of Indigenous Peoples. Specialized Indigenous agencies and organizations such as the National Aboriginal Housing Association are often forced to engage with the federal government through processes and structures designed for non-Indigenous interests.

Recommendation

Canada should recognize the right of self-determination as the foundation of its relationship with Indigenous Peoples and work collaboratively with Indigenous Peoples to ensure the free, prior and informed consent and full and meaningful participation of Indigenous Peoples in all decision-making related to Indigenous Peoples and their rights and in the design and delivery of all programs and services to Indigenous Peoples.

v. Narrow and Adversarial Interpretation of Treaty and Aboriginal Rights

Canada has yet to fulfill the spirit and intent of historic and modern treaties, including the broad socio-economic objectives as demonstrated by the continued impoverishment of Indigenous Peoples. Governments in Canada continue to take an adversarial approach to the interpretation and application of these rights, asserting that rights do not exist until proven in court and then intervening in court to press for narrow and restrictive interpretations of their own obligations. Community members routinely face prosecution for exercise of their Aboriginal and Treaty rights such as hunting and fishing rights even when these rights have been established in court. Although no longer using the terms "surrender" and "extinguishment" which have been criticized by UN human rights bodies, Canada's policies for the negotiation of new treaties continue to require Indigenous Peoples to agree not to assert or exercise inherent Aboriginal rights as a condition of entering into a treaty. Because of this adversarial approach, Indigenous Peoples seeking to exercise their rights may face protracted legal struggles that create enormous financial debts. UN Treaty Bodies have repeatedly chastised Canada for this. Inadequate attention has been paid to the unique priorities of Inuit, Métis and First Nations Peoples.

Recommendation

Canada should apply the provisions of the UN *Declaration on the Rights of Indigenous Peoples* as minimum norms and standards to be protected and fulfilled through the interpretation, negotiation and implementation of Treaty and Aboriginal rights for Inuit, Métis and First Nations Peoples.

vi. Free, Prior and Informed Consent

International human rights standard recognize free, prior and informed consent (FPIC) as a right of Indigenous Peoples, as a Treaty principle and as a necessary measure to ensure that all rights of Indigenous Peoples are protected in the decision-making process. FPIC is not being reflected in the way governments in Canada relate to Indigenous Peoples. Of particular concern is the impact of mining and other highly destructive natural resource extraction activities. The last year has seen growing conflicts around mineral exploration activities which federal, province and territorial laws allow to be licensed on traditional lands of Indigenous Peoples or lands subject to current Aboriginal and Treaty Rights disputes, without any acknowledgement or protection of the rights of the affected peoples.

Recommendations

i. The Government of Canada should recognize FPIC as an established right of Indigenous Peoples under international law and work collaboratively with Indigenous Peoples to ensure its fair and effective interpretation and application, particularly in respect to natural resource development.

ii. The federal, provincial and territorial governments reform mining legislation and policies that provide un-fettered access to traditional territories of Indigenous Peoples for mineral exploration, and ensure that respect for the right of free, prior and informed consent is included in reformed legislation and policies.

vii. Duty to Consult and Accommodate

Canadian law establishes a clear legal duty for governments to accommodate the distinct rights and interests of Indigenous Peoples and toward this end to, as a minimum legal obligations in every instance that they contemplate decisions with the potential to affect Indigenous Peoples, carry out meaningful good faith consultations to identify these rights and interests and the accommodation required. Governments in Canada routinely fail to live up to these legal obligations. Development on Indigenous lands goes ahead with only token consultations with no real intent to accommodate Indigenous rights and interests. Two pieces of federal legislation, on the Canadian Human Rights Act and Matrimonial Real Property, were brought forward without meeting the requirement of meaningful, good faith community consultations. Where meetings were held (that did not constitute "consultation") the concerns and alternatives proposed by Indigenous Peoples were disregarded. No meaningful consultation was carried out in respect to Canada's submission to the UPR.

Recommendation

All levels of government in Canada should work with Indigenous Peoples to establish clear, binding requirements for consultation and accommodation that fully respect the rights of Indigenous Peoples under international and national law and to bring all other laws, policies and procedures into line with these requirements.

viii. Violations of Rights Related To Land, Resources and Territories

Canada continues to violate Indigenous Peoples' rights related to lands, resources and territories. This has had dramatic consequences for the enjoyment of other rights under international and national law including the right of self-determination, the right of culture, the right to health, the right to livelihood, the right to shelter and the right to equality before the law. For example, the federal Comprehensive Land Claims policy is archaic and requires Indigenous Peoples to prove occupation since time immemorial. Further, there is no opportunity for appeal if a land claim is rejected. The federal government has used section 35 of the *Canadian Constitution* to engage in protracted litigation with Indigenous Peoples, rather than being used as a way to recognize Aboriginal and Treaty rights.

Recommendation

Canada should engage in good faith negotiations based on the principles of reconciliation and full recognition of Indigenous Peoples' rights under international and national law, including the right of free, prior and informed consent. Canada should examine ways and means to facilitate the establishment of proof of Aboriginal title over land in procedures before the courts, as recommended by the CERD in its March 2007 Concluding Observations on Canada.

ix. Violence Against Indigenous Women

It is well established that Indigenous women in Canada face much higher rates of violence than non-Indigenous women. More than 10 years ago, a government survey found that women with First Nations status were three to five times more likely to die a violent death than other women in Canada.[6] In a 2004 survey, women who self-identified as Indigenous reported rates of violence, including domestic violence and sexual assault, 3.5 times higher than non-Indigenous women.[7] These figures, however, are only estimates as the Indigenous identity of victims of crime is often not recorded.[8] The threats to Indigenous women's lives and safety have been acknowledged by the Canadian Association of Chiefs of Police which called for action on the issue.[9] In

[6] *Aboriginal Women: A Demographic, Social and Economic Profile*, Indian and Northern Affairs Canada, Summer 1996.
[7] Canadian Centre for Justice Statistics. 2001. Aboriginal Peoples in Canada.
[8] UN human rights treaty monitoring bodies have repeatedly called on Canada to provide data about human rights protection in Canada that is disaggregated by gender, Indigenous identity, ethnicity, age, citizenship and disability. For example, *Report of the Committee on the Elimination of Discrimination against Women*, Twenty-eight session (13-31 January 2003), General Assembly Official Records, A/58/38, para. 348.
[9] A resolution passed at the 2006 annual meeting of the Canadian Association of Chiefs of Police acknowledged the high levels of violence experienced by Indigenous women and called on all police services across Canada to adopt

November 2004, Canada's Deputy Representative to the United Nations, speaking before the General Assembly's Social, Humanitarian and Cultural Committee, acknowledged the severity of the violence faced by Indigenous women in Canada.

As referred to in Canada's report, funding to groups like the Native Women's Association of Canada for research and public education is important and welcome. In addition, civil society input to the UPR process suggests that critical reforms to state institutions are still needed.[10] For example, there is a need for police to consistently record the Indigenous identity of victims of crime. There is also need for a national protocol to guide police in an appropriate and effective response to the threats faced by Indigenous women. Indigenous leaders and community members at each session urged Canada to take immediate, concrete action to remedy the alarmingly high rates of violence against Indigenous women in Canada.

Recommendation

There is a strong identified need for a comprehensive national action plan to stop all forms of violence against Indigenous women and girls, regardless of where they live. Such a plan of action must include provisions to ensure collection and dissemination of information on the Indigenous identity of victims of crime, clear protocols and guidelines to ensure effective and appropriate response by police and the justice system as a whole, and measures to would address the underlying systemic conditions that perpetuate this problem, including discrimination and low socio-economic status.

x. Gender Based Analysis Framework Insufficient

Canada's current gender-based analysis framework is not sufficient. First, this policy does not take into account the particular needs of Indigenous women in Canada. Furthermore, it is not applied in a systemic way. Rather, Canada has recently taken regressive measures towards women's equality in general.

Recommendation

Canada must ensure the application of a Culturally Relevant Gender Based Analysis to all laws and policies to ensure the particular needs of all Indigenous women and girls are met.

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missing persons policies that include specific measures to address the circumstances and needs of Indigenous people. Canadian Association of Chiefs of Police, Resolution #07-2006: Missing Persons Investigations Policies.

[10] Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15 © of the Annex to Human Rights Council Resolution 5/1.), General Assembly Official Records A/HRC/WG.6/4/CAN/3 para 22.

xi. Housing

Numerous studies, including the Royal Commission on Aboriginal Peoples, reveal that Indigenous Peoples occupy the worst housing in Canada and that Indigenous people, particularly those with disabilities, suffer disproportionately from homelessness.

Recommendation

Canada must adopt a national Indigenous housing strategy that revives and revitalizes Indigenous specific housing programmes at a national level and that is based on the recognition of the Aboriginal right to govern their own affairs and to ensure administration of programs intended to serve Indigenous people are directed and operated by Indigenous persons and personnel. It must also take into account the needs of Indigenous people with disabilities, Indigenous women and the Treaty right to shelter.

xii. Indigenous Children in State Care

There are more Indigenous children in state care today than at the height of the residential school era. The central issue in removal of these children from their families and communities is discriminatory underfunding of Indigenous child welfare. Although the Government of Canada acknowledges the underfunding of the First Nations Child and Family Services Program in its National Report, it fails to mention that in May of 2008, the Auditor General of Canada found that the current measures Canada is taking to redress the inequality are inadequate. Moreover, Canada has not mentioned that the Assembly of First Nations and the First Nations Child and Family Caring Society of Canada filed a complaint with the Canadian Human Rights Commission regarding the Government of Canada's longstanding under funding of First Nations child welfare in February of 2007. Since the complaint has been filed the federal government has refused mediation twice. In the fall of 2008, the Canadian Human Rights Commission found that there sufficient evidence of discrimination to warrant a full inquiry. The federal government has appealed this decision to federal court asking that the matter be dismissed.

Recommendations

i. Canada shall, in consultation with First Nations, immediately provide equitable child welfare funding for First Nations children on reserves taking into full account the

recommendations of the Auditor General of Canada (May 2008) and the Wen:de series of reports.

ii. Canada shall cooperate fully with the Canadian Human Rights Commission in its review of the complaint regarding First Nations child and family service funding taking reasonable measures to ensure the matter is heard on its merits as soon as possible.

xiii. Denial or Delay in Government Services to Indigenous Children Because of Jurisdictional Dispute

Jordan's Principle is a child first principle to resolving jurisdictional disputes within, or between, federal and provincial governments which delay or deny First Nations children on reserve from receiving government services available to other Canadian children. It is named in memory of Jordan River Anderson, a child from Norway House Cree Nation, who passed away at age five after spending two years unnecessarily in hospital while the federal government and Province of Manitoba argued over who should pay for his at home care. The House of Commons passed Private Members Motion 296 on December 12, 2007. To date, however, the federal government has not engaged with Indigenous Peoples' organizations, including Indigenous disability organizations, to ensure its implementation. Furthermore, this principle should be expanded to include all First Nations people at each stage of life and also be considered in the area of education. Many Indigenous people with disabilities face the same jurisdictional barriers to receiving adequate medical attention.

Recommendation

Canada shall, in consultation with Indigenous Peoples (including Indigenous disability organizations), immediately and fully implement Jordan's Principle across all federal government services provided to children, youth, adults, the elderly and families.

xiv. Discrimination in Allocation of Resources and Provision of Other Essential Services

Overall, Indigenous Peoples face discriminatory under-funding of service delivery based on status and where they live. Health services, particularly for Indigenous people with disabilities, are too often insufficient to provide for the basic health needs. Funding for services such as education are lower on reserve and in the north. The result is a lower quality of services and diminished access to services. There are more than 100 First Nations without safe drinking water. Basic rights pertaining to health and quality of life are affected. The budget for Indian and Northern Affairs has been capped at two percent for more than 12 years which mean that the inequalities have deepened as

costs for water, housing and other infrastructure have climbed. Over 10 years ago, Attawapiskat school in northern Ontario became contaminated by diesel fuel which made the teachers and children sick. Temporary portable classrooms were then set up by the Government of Canada's Department of Indian Affairs with the promise that a new school would be constructed. Three different Ministers of Indian Affairs promised the children of Attawapiskat a new school but none have delivered and the condition of the temporary portables has deteriorated to the point where children and their teachers have to wear heavy coats inside during the winter because heating is so inadequate. In June of 2008, the Minister of Indian and Northern Affairs told children from Attawapiskat his government had no funds for a new school, despite a federal budget surplus in the billions of dollars. The Kelowna Accord which provided a framework for increased federal, provincial and territorial funding for services to Indigenous Peoples was arbitrarily and unilaterally broached by the Federal government. The Government of Canada has ignored the will of Parliament by disregarding an Act passed by Parliament calling for implementation of the Accord.

Recommendations

i. Canada should work collaboratively with Indigenous Peoples and representative organizations to establish a timetable and mechanisms to eliminate discrimination in funding and ensure that services to Indigenous people at least meets the levels and standards available to other people in Canada.

ii. Canada should ensure implementation of the Kelowna Accord.

xv. Languages

The Residential School System had a severe impact on the numbers of Indigenous people able to pass on their own language to their descendents. The Residential School apology issued last June was welcome but the test of its sincerity will be the actions that flow from it. Support for the recovery and continuation of Indigenous languages should be a critical priority. It has been estimated that all but three Indigenous languages are in danger of disappearing, yet Canada provides very little support for Indigenous languages, especially in comparison for support for the French languages. Early Childcare Education Centres can play a positive role in improving Indigenous language retention.

On September 18, 2008, the Nunavut Legislative Assembly enacted the *Inuit Language Protection Act.* The people of Nunavut need financial support from the Federal Government to fully implement this Act.

Recommendations

i. In collaboration with Indigenous Peoples, governments in Canada should develop programs to provide urgent support for the survival of Indigenous languages.

ii. Adequate, sustained and reliable funding should be provided for Early Childcare Education Centre (ECEC) programs that are culturally, linguistically and developmentally appropriate. This requires measures aimed at retention of qualified Indigenous ECEC professionals which requires higher pay scales and greater involvement of Indigenous institutions in the planning, delivery and assessment of quality ECEC programs, social needs and health care.

iii. The Government of Canada should support the Government of Nunavut by taking the steps necessary to make the *Inuit Language Protection Act* effective. This includes the provision of the necessary resources for implementation, and ensuring that federal government services provide in Nunavut are available in the Inuit Language.

xvi. Access To Justice And The Criminal Justice System

There is a disproportionate number of Indigenous people in the criminal justice system (CJS). In addition, Indigenous people and especially Indigenous women in the federal correctional system are much more likely than non-Indigenous people to be classified as a high security risk and therefore be denied access to services essential for their rehabilitation. There have been numerous inquiries into the racism and discrimination faced by Indigenous people in the CJS but little progress toward implementation of the recommendations of these inquiries. There are over 3000 recommendations made from over 30 justice commissions and inquiries on Indigenous Peoples and the CJS, most of which have not been implemented in a meaningful way.

Recommendations

i. The Government of Canada should work with Indigenous Peoples and representative organizations to ensure that personnel in all aspects of the justice system have the necessary cultural competency to meet the needs of Indigenous peoples.

ii. The Government of Canada should set goals and timetables for the reduction in numbers of Indigenous people in the Canadian prison system.

iii. The Government of Canada should work with Indigenous Peoples and representative organizations to ensure consideration of and implementation of recommendations by relevant justice commissions and inquires.

xvii. Climate Change

Climate changes is already having an impact on Indigenous Peoples' basic rights including the right to a healthy environment, rights to land and resources, the right to access sacred sites, and the right to water. There needs to be more research and consideration of the effects of Climate Change will be on Indigenous land and culture and ensuring implementation of the solutions that have been identified so far.

Recommendation

Canada should establish mechanisms to ensure full and effective participation of Indigenous Peoples in the development and implementation of climate change policies.

xviii. Biotechnology

Indigenous Peoples are concerned by an increase in invasive research into and theft of traditional knowledge and the genetic resources of their peoples, lands and territories. The existing intellectual property regime has failed to respect Indigenous Peoples' rights and has facilitated biopiracy.

Recommendation

Canada should work with Indigenous Peoples to develop a coherent and comprehensive Indigenous policy on access to and benefit sharing of genetic resources with the free, prior and informed consent of Indigenous Peoples.

xix. Racism And Discrimination

Media accounts and statements by government continue to perpetuate racist stereotypes and inaccurate understanding of history and the special relationship between the Crown and Indigenous Peoples.

Recommendation

To promote human rights education, Canada, in conjunction with Indigenous Peoples, should introduce an educational curriculum that focuses on Indigenous Treaties and

Agreements, based on Indigenous oral traditions and perspectives in all schools across Canada.

13. Rights of Persons with Disabilities

Canada has a history of leadership in the area of disability rights. Canada was one of the first countries to provide constitutional protection of equality for people with disabilities and Canada played a positive role in supporting the negotiation of the Convention on the Rights of Persons with Disabilities. However, there are a number of increasingly serious issues facing people with disabilities which demand urgent attention.

i. Ratification of CRPD and Optional Protocol

The Government of Canada as well as Canadian disability rights organizations played an important leadership role in the drafting and negotiation of the Convention on the Rights of Persons with Disabilities (CRPD). Almost 50 states have ratified the CRPD since it was opened for signature in March 2007. Canada has signed but has not yet ratified the CRPD and has neither signed nor ratified the Optional Protocol to the CRPD. The UPR provides an important opportunity to move the ratification process to its completion.

Recommendation

Canada should ratify both the CRPD and at the same time, its Optional Protocol.

ii. Poverty and Disability

A person with a disability is twice as likely to be poor than the rest of the population. Poverty remains the most critical issue of inequality and lack of security and dignity for people with disabilities in Canada. Indigenous persons with disabilities make up approximately a third of the Indigenous population, and face unique problems of poverty and exclusion.

Recommendation

Canada should adopt a national strategy to ensure an adequate income for all persons with disabilities, with particular attention to Indigenous persons with disabilities. The strategy should be national in scope, with measurable goals and timetables and

ongoing accountability to persons with disabilities. The rights to an adequate income should be made a legal right that is subject to effective remedies.

iii. Adequate, Accessible and Appropriate Housing

Because there is a lack of community based housing options for persons with disabilities, many are forced to live within institutions, hospitals and retirement homes, dislocated from their families, their homes and communities. Many disabled persons are at risk of becoming homeless due to a lack of access to affordable, supported housing options. The Human Rights Committee has raised concern that people with mental disabilities have been kept in detention because of lack of community supportive housing.

Recommendation

Canada should adopt a specific national housing strategy for persons with disabilities, and work collaboratively with provincial and territorial governments to ensure adequate resources and supports are made available to communities so that persons with disabilities are provided with housing options that meet their needs.

iv. Disability Related Supports

Over two million adults with disabilities lack necessary supports for access to work, housing or services, and over half of children with disabilities lack needed aids and devices. The Committee on Economic, Social and Cultural Rights has raised concerns about cuts to home care and attendant care denying people with disabilities services they need for a life of dignity, and the adverse effects of inadequate community based services for persons discharged from psychiatric institutions.

Recommendation

Canada should conduct a thorough review of needed support services for people with disabilities and design and implement an inter-governmental strategy for meeting these needs.

v. Supported Rather Than Substitute Decision-Making

In many jurisdictions in Canada, substitute decision-making, rather than support to exercise legal capacity, is the norm. Legislation and services to support individuals with disabilities to exercise appropriate choice and independent decision-making is lacking.

Recommendation

Supported Decision-Making legislation (and regulations) should be implemented throughout Canada, ensuring that adult guardianship will be used only as a last resort.

vi. Access to Work

Over 55% of working aged adults with disabilities, and 75% of women in this group, are unemployed or out of the work force. While legislative protection from discrimination in employment had been implemented across Canada, there is no protection of the right to work, and there is no coherent strategy to achieve labour market integration of people with disabilities.

Recommendation

Canada should adopt a National Action Plan on Disability which includes recognition of the right of people with disabilities to work and to have their contributions to society valued. Fiscal stimulus measures should include targeted funding to develop work opportunities for persons with disabilities.

vii. Accessibility in Transportation and Other Areas

Voluntary codes of conduct for the provision of accessibility in federally regulated transportation systems have proven ineffective. Recently, people with disabilities had to litigate in order to win accessibility requirements in Canada's passenger rail service.

Recommendation

Canada should implement enforceable regulations for accessibility of all federally regulated modes of transportation.

viii. Voting Rights

The needs of persons with disabilities have not been accommodated in Canada's electoral process. It is often impossible for voters with disabilities to participate in campaigns or to vote without relinquishing the right to voter confidentiality.

Recommendation

Canada should implement electoral reform to ensure that people with disabilities are included in all aspects of the electoral process in an independent manner respecting the right to confidentiality.

14. Children's Rights

i. Implementation

Canada signed and ratified the Convention on the Rights of the Child in 1991, but successive governments have failed to put into place the necessary mechanisms to effectively implement the convention in Canada. As a result, many Canadian children miss out on essential benefits and protections of their rights as Canadian citizens and residents. At the conclusion of a three year study of children's rights in Canada in 2007, the Chair of the Senate Human Rights Committee summarized the current situation in Canada in this way: "children's rights are being pushed to the side and even violated in a variety of situations ...The Convention has been effectively marginalized when it comes to its direct impact on children's lives."

Recommendation

Canada should establish a national Children's Commissioner, with statutory authority and adequate resources, to monitor implementation of all aspects of the CRC, investigate complaints, and facilitate participation of children.

ii. Lack of Gender Analysis in Laws, Policies, etc.

Canada is failing to protect the rights of the girl child with respect to Article 2 of the Convention on the Rights of the Child. For marginalized young women, the lack of gender analysis in law, policy, and programs for children-child protection, homelessness/housing and criminal justice further marginalizes and sometimes endangers young women and girls.

Recommendation

The government must bring gender perspective to all law policies, and programs-- federal and provincial-- to ensure government programs meet the specific needs of girls and are free from discrimination.

iii. Indigenous Children

A 2007 Senate report on children's rights provided 11 specific recommendations to address identified gaps in services and violations of the rights of Indigenous children. The government response to this report addressed only one recommendation specifically, for the rest, it catalogued existing programs, which the Senate report found inadequate, and id not propose any new actions. While Canada has apologized for the historic injustice of residential schools, there is evidence from government, academic, and NGO reports about the urgent situation of Indigenous Children in Canada. In 2008, Canada's Auditor General confirmed research studies showing that funding for Indigenous child and family services is inequitable compared to funding of non-Indigenous children.

Recommendation

Canada must immediately implement the recommendations from the Senate report and provide equitable funding to Indigenous child welfare organizations.

iv. Corporal Punishment of Children

On January 30, 2004, the Supreme Court of Canada released its decision in the case of *Canadian Foundation for Children, Youth and the Law v. The Attorney General in Right of Canada*. The issue in the case was whether s.43 of the Criminal Code of Canada is unconstitutional. Section 43 provides that a parent, teacher or person acting in the place of a parent is justified in using force to correct a child that is under his or her care provided that the force used is reasonable in all of the circumstances. The Supreme Court of Canada decided that section 43 of the Criminal Code is constitutional, reasoning that that section 43 permits the application of criminal law to any use of force that harms a child, but does not apply where the use of force is part of a genuine effort to educate the child, poses no reasonable risk of harm that is more than transitory and trifling, and is reasonable under the circumstances. The Committee on the Rights of the Child has recommended repeal of section 43 of the Criminal Code, consistent with its General Comment No. 8. Canada has not implemented this recommendation.

Recommendations

Canada should encourage its courts to interpret the Canadian Charter of Rights and Freedoms, and in particular the rights to equality and to security of the person, consistently with international human rights obligations and with General Comment No. 8 of the Committee on the Rights of the Child.

Section 43 of the Criminal Code should be repealed and the use of violence on children within the family, in schools or in public institutions should be prohibited.

15. Race

i. Employment

Minority groups, in particular, African Canadians and Indigenous Peoples, continue to face discrimination in recruitment, remuneration, access to benefits, job security, qualification recognition and in the workplace, and are significantly under-represented in public offices and government positions. For example, African Canadians are twice as likely to be unemployed than white Canadians, and even with comparable levels of education, studies have shown that African Canadians are less likely to be employed than non-Blacks.

Recommendation

Canada should ensure the full implementation in practice of legislation prohibiting discrimination in employment and all discriminatory practices in the labour market and that further measures be taken to reduce unemployment among minority groups, particularly among African Canadians and Indigenous Peoples. Canada should also strengthen or adopt, as necessary, specific programmes to ensure appropriate representation of ethnic communities in government and public administration, at federal and provincial/territorial levels.

ii. Race Based Policing and Incarceration

Canada should be commended for the introduction of the initiative entitled Addressing Race-Based issues" in the Justice system, as part of the *Action Plan Against Racism*. At the same time, there is disparate treatment, over-policing and overrepresentation of African Canadians in the criminal justice system and a disproportionately high rate of incarceration of Indigenous people compared with the general population. Racial profiling plays a pivotal role in the overrepresentation of African Canadians in prisons. The federal incarceration rate for African Canadians (146 per 100,000) is over 3 times higher than for whites (42 per 100,000), and over 9 times higher than for Asians (16 per 100,000). African Canadians represent over 6 percent of the federal prison population even though they comprise approximately 2% of Canadian population.

Recommendation

Canada should adopt broad and effective national measures to end discriminatory approaches to law enforcement and provide victims with effective recourse and remedies. Wherever possible, Indigenous people should be provided with alternatives to imprisonment.

iii. Offence for Acts of Racial Violence

While the *Canadian Criminal Code* sets out hate related offences such as hate propaganda and defacing religious property, it does not contain a specific offence for acts of violence against racialized or ethnic individuals. Under current law a hate crime motivated by race is dealt with by the sentencing provisions of the *Criminal Code*. It is not an offence in and of itself. In this way, the absence of a federal offence for race based assaults creates a problem with transparency and accountability. Because the *Code* makes no distinction between an assault and an assault motivated by racism (the sentence may differ, but the conviction is the same), it is practically impossible to track and measure the efficacy of hate crime prosecutions and convictions. The need for a specific racially motivated offence is heightened by national statistics revealing the extent of hate crimes, especially for African Canadians.

Recommendation:
Canada should enact legislation creating an offence for racial violence and design and implement training for judges and prosecutors on the nature of hate crimes on the basis of race.

16. Refugees and Migrants

In December 2004 a 'safe third country' agreement was concluded between the Canadian and US governments under which most refugee claimants who travel through the United States on their way to making refugee claims at the Canada/US border are denied entry into Canada and required instead to make asylum claims in the United States. In the United States asylum applicants face a range of serious violations of human rights and refugee legal standards, including harsh and arbitrary detention, failure to fully recognize claims based on gender persecution, and broad categories of exclusion. In late 2007 a Federal Court judge ruled that the agreement contravened the Canadian Charter of Rights and Freedoms, because of numerous, serious human rights concerns. That ruling was reversed in June 2008 by the Federal Court of Appeal on

procedural grounds that did not overturn any of the findings with respect to the human rights shortcomings of the agreement. The groups that brought the case to court are now waiting to hear if the Supreme Court of Canada will hear a further appeal. Meanwhile the agreement remains in force, denying thousands of individuals access to the Canadian refugee determination system annually.

Recommendation

Canada should suspend the Canada/US 'safe third country' refugee agreement unless and until it can be applied in a manner that fully respects international human rights and refugee law standards.

In 2001, the new Immigration and Refugee Protection Act established an appeal procedure for refugee claimants whose claims are turned down by the Immigration and Refugee Board. However, the government has consistently refused to establish the new Refugee Appeal Division of the Immigration and Refugee Board, to conduct those appeals.

Recommendation

The federal government should implement the provisions in the Immigration and Refugee Protection Act establishing the Refugee Appeal Division to the Immigration and Refugee Board.

Over the past several years there have been a number of refugee claims made by members of the US military based on their asserted conscientious objection to serving in Iraq. To date all of those claims have been rejected by the Immigration and Refugee Board and the Minister of Citizenship and Immigration has refused to intervene and allow any of these individuals to remain in Canada. The government takes the position that conscientious objection to serving in Iraq is not a valid basis for a grant of refugee status. International refugee law standards do, however, recognize that being prosecuted or otherwise penalized for conscientious objection, including objection to participating in a particular conflict, can constitute a valid basis for refugee status.

Recommendation

The Canadian government should ensure that individuals whose refugee claims based on conscientious objection to serving with US military forces in Iraq are found to be credible are provided with immigration status that protects them from being deported to the United States.

Many refugees face serious obstacles to obtaining permanent resident status in Canada for a variety of reasons. These individuals are often said to be living "in limbo". Their applications for permanent status may be delayed for indeterminate periods because applicants lack proper identity documents or because of unspecified security concerns. There are also thousands of refugee claimants whose claims have been turned down but who come from countries of such serious human rights violations that they are not deported. These individuals are not, however, able to make applications for permanent resident status. Without permanent resident status individuals are unable to apply to have their immediate family reunited with them in Canada, meaning that spouses, or parents and children, may be separated from each year for several or even many years. Lack of permanent resident status also impacts access to some employment and higher education.

Recommendation

The Canadian government should launch a comprehensive review of the many obstacles to obtaining permanent resident status in Canada, leading to legal and policy reforms which protect the rights of refugees and migrants, including rights to family reunification.

Migrant workers come to Canada through a variety of immigration programs, some with temporary status and others as permanent residents. Additionally, there are an unknown number of foreign nationals living in Canada without any immigration status, who are employed in a number of different sectors. A program under which live-in caregivers gain status in Canada requires individuals (overwhelmingly women) to spend two of their first three years in Canada living with their employer. This requirement exposes many women to risk of violence and exploitation. Another program brings seasonal agricultural workers to Canada for short periods of time. Those workers are denied many of the employment and labor protections available to other workers.

Recommendation

The live-in caregiver program should be discontinued and the immigration applications of caregivers should instead be processed through the regular immigration process. At a minimum the live-in requirement of the program should be abolished. More widely, the Canadian government should conduct a wide review of the various ways by which foreign nationals are employed in Canada, including individuals who have no immigration status in the country, with an eye to enacting reforms needed to ensure full protection of their human rights, including all labour rights.

There continues to be concern that victims of trafficking in Canada are very often fearful to assist in the criminal prosecution of traffickers because they are fearful of being

deported from Canada. Recent reforms, including the possibility that victims of trafficking who cooperate in criminal cases may be eligible for temporary permits allowing them to remain in Canada for a period of time. Front line organizations have, however, noted that victims of trafficking continue to fear coming forward and assisting with the prosecution of traffickers.

Recommendation

The Canadian government should conduct a comprehensive review of its criminal and immigration laws dealing with trafficking and implement reforms which fully protect the rights of victims of trafficking.

17. Women's Human Rights

i. Limits on Activities of Women's Human Rights Defenders

The only federal office focused on women is Status of Women Canada (SWC). Canada does not have a Ministry for Women. For 30 years SWC has provided funds to women's organizations to advance women's equality**.** In 2006, the federal government revised the terms for grants such that organizations receiving funds from SWC can no longer undertake domestic advocacy activities, including human rights advocacy with governments at any level. Even research related to these activities is excluded from any funding. This means that an organization could receive funds to provide services to help single mothers find housing but would be prohibited, under the terms of the funding, from applying the funds to do any follow up work to address violations of human rights of women in housing or to advocate for changes to housing policy consistent with Canada's human rights obligations. Some women's advocacy organizations have had to shut down because of these new restrictions. Others have had to cut advocacy activities, lay off staff, and limit or eliminate research activities related to the defence of women's human rights. The negative impact on the presence in Canadian public life of women's issues, women's equality rights and women's voices is dramatic.

Recommendation

The Government of Canada should immediately amend the guidelines for the Status of Women Canada Program, to include domestic advocacy, lobbying and research as fundable activities for women's organizations. Furthermore, Canada should immediately re-instate the independent SWC Policy Research Fund.

ii. Women's Poverty

Women in Canada are disproportionately poor. Poverty rates are particularly high for disadvantaged groups of women: single mothers are the poorest family type in Canada. 38% of single mothers are poor (below Statistics Canada's low income cut-offs), compared to 12% for single fathers; 17% of senior (older) women are poor compared to 8% of senior men; 36% of Indigenous women are poor; 29% of women of colour are poor; 26% of women with disabilities fall below the poverty line; 35% of newcomer women are poor (all Stats according to Statistics Canada).

Recommendation

A Poverty Elimination Strategy should specifically address women's poverty and include consultation and ongoing input from women's organizations.

iii. Unequal Wages

In 2005, women working full-time for the full year earned an average of 70.5% as much as men. The pay gap is even greater for university-educated women, who earned just 68% as much as men in 2005, down from 75% a decade ago. The gender pay gap in Canada is the fifth worst among 22 OECD countries. It is even bigger than the wage gap in the United States.

Recommendation

Canada should implement the recommendations from the 2004 Federal Pay Equity Task Force; Canada should adopt a national child care program and a national home care program to decrease barriers to women's employment. (See below for more on national child care).

iv. Women's Protection from Unemployment

Employment Insurance (EI) is a federal program that is meant to ensure that workers who are temporarily laid-off or unable to work or who are on maternity or parental leave have an income to see them through this period. However, EI has been restrictions introduced in the 1990s mean that many part-time and/or temporary workers do not EI benefits even though they have paid into the EI fund. These restrictions disproportionately affect women. Only about half of part-time workers who lose their jobs actually qualify for unemployment benefits. Only 32% of unemployed women (compared to 40% of men) qualify for regular EI benefits, compared to 70% of women who qualified for benefits before major cuts were imposed in the 1990s.

Recommendations

i. Canada should ensure its Employment Insurance scheme benefits women employees equally so that more women qualify under this scheme and receive better benefits;

ii. Canada should target women for special measures to address economic needs arising during the current economic crisis.

v. Child Care

In a December 2008 UNICEF report on child care, Canada ranks last among 25 developed nations. Federal investment in childcare to create affordable childcare spaces has been grossly inadequate to meet the needs of Canadian families. Dedicated federal childcare transfers peaked in 2006 at $950 million yet the estimated annual cost of quality, affordable child care services for all children in Canada from under 5 years would cost approximately $15 billion. Most childcare dollars go directly to parents via taxable allowances, tax credits and tax deductions. These do not come close to covering the actual costs of child care for Canadian families. Most importantly, women and children and families also need publicly-funded, subsidized services.

Recommendation

Canada should introduce a national, publicly-funded not-for-profit child care program that includes the transfer of adequate and sustained resources to the provinces and territories to create quality, affordable childcare spaces and services. Accountability mechanisms must also be adopted to guarantee that affordable spaces are being created and allocated in a non-discriminatory manner to those in need.

vi. Violence Against Women and Girls

Violence against women in Canada remains a key problem. Women who are poor, young women and girls, and women with disabilities are particularly vulnerable to violence, and have difficulty escaping it (See: Feminist Alliance for International Action, Submission to OHCHR). Indigenous women are more likely to experience violence than non-Indigenous women in Canada and are currently experiencing grave and systematic forms of violence, deserving of international attention and prompt action. The Native Women's Association of Canada and Amnesty International estimate that over the past 20 years, 500 Indigenous women in Canada may have been murdered or have gone missing in circumstances suggesting violence. Recent government funding cuts for

shelters, inadequate social assistance benefits and cuts to housing subsidies mean that women who are trying to flee violence have nowhere to go. Canada's 550 shelters are full and many have waiting lists. This is particularly extreme in rural and northern Canada and for women with disabilities. Teenage girls are more likely to report being sexually assaulted than women in any other age category. Indigenous girls face disproportionately high levels of male violence, including high levels of domestic sexual abuse, sexual abuse through prostitution, rape, and murder. The criminal justice response to sexual abuse of teenage girls is grossly inadequate, and virtually non-existent in cases of violence against Indigenous girls**.**

Recommendation

Canada must ensure that low-income women and women trying to leave abusive relationships can access housing options and appropriate support services in keeping with the right to an adequate standard of living.

vii. Criminalized and Imprisoned Women and Girls

Indigenous women and racialized women are disproportionately represented among federally sentenced women. Although women pose little risk to the community and have a much lower recidivism rate, Correctional Service of Canada continues to use the same risk and needs assessment tools for both women and men. Women as a group are also subject to more disadvantaged treatment and more restrictive conditions of confinement than men. Approximately 20 reports, investigations, and commissions of inquiry have chronicled the urgent need for oversight and accountability mechanisms to address the violations of the rights of women prisoners in Canada. Teenage girls in Canada are imprisoned largely for administrative and poverty related offences and Indigenous girls are disproportionately represented. Girls are imprisoned in mixed-gender youth prisons where, as a minority within the prison (20%), they are exposed to sexual harassment and violence by male prisoners and guards.

Recommendation

Canada must implement the recommendations of the Canadian Human Rights Commission report, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. **Consistent with the approach to adult women prisoners, Canada must ensure that teenage girls are neither imprisoned with male prisoners nor supervised by male guards.**

18. Human Rights and Counter-Terrorism

The immigration security certificate process, under which non-citizens who are alleged to pose a security risk can be detained pending deportation continues to be unfair and denies individuals an ability to mount an effective defence to the accusations they face. The introduction of a "special advocate" into the process, following a 2007 Supreme Court of Canada ruling that the process was unfair, has not addressed these concerns as the Special Advocate is not able to have contact with the individual concerned after he or she has reviewed secret evidence in government files.

Recommendation

The immigration security certificate process should be abolished. Allegations that non-citizens pose a threat to Canada's national security should be dealt with in a process that fully conforms to Canada's international human rights obligations.

Canadian law allows for the possibility that in "exceptional circumstances" individuals can be removed from Canada to countries where they face a serious risk of torture. This fails to conform to Canada's international obligation, which provides absolute protection against the possibility of such removals. UN treaty bodies and experts have repeatedly called on Canada to address this concern.

Recommendation

Canadian law should be reformed to ensure there is no exception to the prohibition on *refoulement* to a risk of torture.

Two federal government Commissions of Inquiry, known as the Arar Inquiry and the Iacobucci Inquiry, have documented the ways that actions taken by Canadian officials contributed to serious human rights violations, including torture, experienced by four Canadian citizens in Syria and Egypt. Two reports from the first inquiry, looking into the case of Maher Arar were released in September and December, 2006. The report from the Iacobucci Inquiry, looking into the cases of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, was released in October 2008. NGO's very much welcomed the government's decisions to convene these inquiries. There has, however, been very little public reporting as to the action the government has taken in response to the reports from these two inquiries, including the recommendation from the Arar Inquiry for a comprehensive new approach to reviewing the national security activities of the RCMP and several other agencies and departments.

Recommendation

The government should issue a clear Plan of Action and timeline for implementing all of the recommendations from the Arar Inquiry and addressing the concerns documented in the Iacobucci Inquiry.

Canadian forces in Afghanistan regularly transfer to Afghan authorities prisoners apprehended in the course of military of military operations, despite well-documented concerns that prisoners would face a serious risk of torture while in Afghan custody. Agreements between Canada and Afghanistan allowing Canadian officials to have access to prisoners after they are transferred does not sufficiently reduce the risk of torture.

Recommendation

The government should cease the practice of transferring into Afghan custody prisoners apprehended during military operations in Afghanistan. Transfers should only resume if it is demonstrated that prisoners will no longer face a serious risk of torture in Afghan custody.

At the time of writing, military commission proceedings were still underway against Omar Khadr, a Canadian citizen held at Guantanamo Bay for more than six years. Omar Khadr was only fifteen years of age when he was apprehended by US forces in Afghanistan in July 2002, but he has never been treated as a juvenile or as a child soldier. The Canadian government has consistently refused to intervene on his behalf, arguing that the military commission proceedings (which have been widely condemned to be unfair) should go ahead. It is not yet known what action the new US administration will take with respect to Omar Khadr's case.

Recommendation

If Omar Khadr remains in detention at Guantanamo Bay and/or continues to face trial before a US military commission, the government of Canada should intervene immediately and insist that he be repatriated to face justice in Canada.

In June 2007 the government instituted a "no fly" list under the *Public Safety Act*. Individuals listed are prevented from boarding flights in Canada. However individuals receive no advance notification that they have been listed before they attempt to board a flight. Once he or she learns of the listing it is possible to apply to have his or her name removed from the list, but without being given access to the information forming the basis for the listing. More than 100 individuals have been wrongly listed to date and have experienced humiliation and inconvenience as a result.

Recommendation

Canada's "no fly list" should be reformed to address concerns about unfairness. Individuals should be allowed to challenge their inclusion on the list before it is finalized through a process that is fair and provides them with sufficient disclosure as to the nature of the allegations against them.

In late 2001 the government enacted a new Anti-Terrorism Act which defined terrorist activities as being motivated by political, religious or ideological purposes. Many NGO's were concerned that the motivation clause essentially required police to carry out religious, racial and political profiling in their national security investigations. That motivation element of the definition was struck down by an Ontario Court judge in the *Khawaja* case, as violating sections of the Canadian Charter of Rights and Freedoms guaranteeing freedom of religion, thought, opinion and expression but that decision is not binding outside the province of Ontario and the government has not reformed the Act in response to the court ruling.

Recommendation

Canada should remove the motivation clause from the definition of terrorist activity in the Anti-Terrorism Act.

In June 2006 a group of 18 individuals, including minors, were arrested in Toronto, charged with offences under the Anti-Terrorism Act. They have come to be known as the "Toronto 18". Since that time charges have been dropped or stayed against 7 of those individuals. One unnamed individual, who was 17 years of age at the time he was arrested, has been convicted. All eighteen individuals were initially held in solitary confinement. Eleven of the individuals were held in solitary confinement for fourteen months. Three individuals remain in solitary confinement at this time, nineteen months after they were arrested.

Recommendation

There should be an immediate psychiatric assessment of the three members of the "Toronto 18" who continue to be held in solitary confinement. Steps should be taken to ensure that the conditions of their imprisonment meet international standards for humane detention.

The government has failed to demonstrate the gaps in Canadian criminal law that necessitated the extraordinary and rushed passage of the Anti-Terrorism Act in 2001. Courts have struck down some aspects of the legislation and parliament itself later refused to renew provisions dealing with investigative hearings and preventative arrest. There is wide concern, particularly in the Canadian Arab, South Asian and Muslim

communities, that the Act has been a source of unwarranted suspicions and irresponsible labeling and profiling.

Recommendation

Canada should repeal the Anti-Terrorism Act and launch a comprehensive process of national security law reform in Canada that takes full account of Canada's international human rights obligations.

19. Policing and Administration of Justice

The use of Taser guns by police forces and prison guards throughout Canada has grown exponentially over the past nine years. So too, the number of deaths of individuals after they have been subdued by a taser has grown to 25 deaths since April 2003. There has yet to be a comprehensive and independent study of Tasers conducted so that police and government officials can make proper, well-informed decisions about whether and how to make use of tasers in law enforcement. There are many instances where tasers appear to have been used when the danger or threat posed by the individual did not warrant use of such a potentially dangerous weapon.

Recommendation

Governments across Canada should ensure that police and corrections officers only use tasers in situations where an individual poses a sufficiently serious threat that the only other option left open to the officer would be to use his or her firearm.

While Canada has fully abolished the death penalty in law and practice, a policy change in 2007 means that the Canadian government will no longer seek clemency on behalf of Canadian citizens sentenced to death in countries which the government considers to be democratic adherents to the rule of law. This reverses a longstanding policy of always seeking clemency on behalf of Canadian citizens facing the death penalty abroad.

Recommendation

The Canadian government should restore in full its policy of seeking clemency on behalf of all Canadian citizens sentenced to death in any country.

There are longstanding concerns that Canadian law, policy and practice does not adequately protect the rights of women prisoners held in federal prisons. These concerns have been highlighted through a 1996 judicial inquiry overseen by former UN High Commissioner for Human Rights Louise Arbour, a report by the Canadian Human Rights Commission and various recommendations from UN human rights bodies.

Recommendation

The Canadian government should establish an independent oversight body for federally-sentenced women prisoners, including a process for independent adjudication of decisions related to involuntary segregation.

Individuals, including Canadian citizens, are unable to launch lawsuits in Canadian courts against foreign government officials for compensation for serious human rights violations, including torture, suffered in those other countries. Foreign officials are protected from lawsuits in Canadian courts by Canada's *State Immunity Act*.

Recommendation

The Canadian government should amend the *State Immunity Act*, allowing lawsuits to be brought against foreign officials for war crimes, crimes against humanity, genocide, torture and other crimes recognized to be subject to universal jurisdiction under international law.

20. Extraterritorial Nature of Canada's International Human Rights Obligations

Canadian corporations, particularly those involved in the oil and gas, mining sectors, operate and have invested in all regions of the world, including countries embroiled in conflict or suffering from widespread human rights violations. Companies are left to adopt their own approach to establishing and complying with a human rights policy to guide their operations. This voluntary approach to corporate social responsibility is weak and inconsistent. A recent extensive series of government sponsored roundtables brought together representatives from industry, civil society, academics and government. At the conclusion of the roundtables an Advisory Group to that process presented the government with a consensus recommendation for a new Canadian framework for corporate social responsibility. Two years later the government has not acted on that recommendation.

Recommendation

The government should adopt the recommendations of the Advisory Group to the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry Operating in Developing Countries.

In the context of a recent court case challenging the approach that the Canadian military takes to the handling of prisoners apprehended in the course of fighting in Afghanistan, there has been debate about the extraterritorial reach of Canada's constitutional human rights document, the Charter of Rights and Freedoms. Human rights groups have sought to use the Charter, and through the Charter Canada's international human rights obligations, as a means of stopping the practice of transferring prisoners into the custody of Afghan forces because of a serious risk they will be tortured. The Canadian government has argued that the Charter of Rights does not apply to the action of Canadian soldiers outside Canada. That position has been upheld by the Federal Court and Federal Court of Appeal. A request to appeal the case further, to the Supreme Court of Canada, is pending.

Recommendation

Canada should recognize that the Canadian Charter of Rights and Freedoms and through the Charter Canada's international human rights obligations, do extend to the actions of Canadian soldiers, police and other authorities acting outside Canada in an official capacity.

Canada's low levels of international aid and development assistance are of serious concern. The Canadian Parliament passed a resolution in 2005 calling on the government to increase Canada's international aid to .7% of gross national income by the year 2015, including a first step of reaching .5% by 2010. However, Canada's aid budget, as a percentage of gross national income has actually dropped over the past three years from .34% in 2005 to a current figure of .28%. Canada's level of aid ranks 16th among a group of 22 donors.

Recommendation

The government must take immediate action to ensure that levels of international aid and development assistance reach .5% of gross national income by the year 2010. Additionally the government should, in consultation with civil society, develop a plan for reaching aid and development levels of .7% of gross national income by the year 2015.