



CANADA

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

FOLLOW UP TO THE CONCLUDING OBSERVATIONS OF CANADA'S SIXTH PERIODIC REPORT

AMNESTY
INTERNATIONAL



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1. INTRODUCTION

Amnesty International presents this submission to the United Nations (UN) Human Rights Committee (the Committee) to inform the follow-up procedure in relation to the concluding observations on the sixth periodic report of Canada.¹ As requested by the Committee, Amnesty International evaluates Canada's progress in implementing the Committee's recommendations on missing and murdered Indigenous women and girls (paragraph 9); immigration detention, asylum-seekers and non-refoulement (paragraph 12); and Indigenous lands and titles (paragraph 16). Although Canada has undertaken certain positive steps, including establishing a National Inquiry on Missing and Murdered Indigenous Women and Girls and beginning a review of the immigration detention regime, many crucial aspects of the Committee's recommendations remain unimplemented.

2. MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS

2.1 THE COMMITTEE'S CONCLUDING OBSERVATIONS

9. The Committee is concerned that indigenous women and girls are disproportionately affected by life-threatening forms of violence, homicides and disappearances. Notably, the Committee is concerned about the State party's reported failure to provide adequate and effective responses to this issue across the territory of the State party. While noting that the Government of British Columbia has published a report on the Missing Women Commission of Inquiry and adopted legislation related to missing persons, and that the Government of the State party is implementing the Action Plan to Address Family Violence and Violent Crimes Against Aboriginal Women and Girls, the Committee is concerned about the lack of information on measures taken to investigate, prosecute and punish those responsible (arts. 3 and 6).

The State party should, as a matter of priority, (a) address the issue of murdered and missing indigenous women and girls by conducting a national inquiry, as called for by the Committee on the Elimination of Discrimination Against Women, in consultation with indigenous women's organizations and families of the victims; (b) review its legislation at the federal, provincial and territorial levels, and coordinate police responses across the country, with a view to preventing the occurrence of such murders and disappearances; (c) investigate, prosecute and punish the perpetrators and provide reparation to victims; and (d) address the root causes of violence against indigenous women and girls.

2.2 AMNESTY INTERNATIONAL'S ASSESSMENT

Indigenous women and girls in Canada continue to face a significantly heightened risk of violence compared to other women and girls in the country, and many root problems remain unaddressed. On 1 September 2016, the National Inquiry into Missing and Murdered Indigenous Women and Girls commenced. The Inquiry's interim report is due in November 2017, and the Inquiry is set to conclude by the end of 2018. Amnesty International and other civil society partners have long called for such an inquiry and welcomed its announcement. However, Amnesty International is concerned that there is no independent mechanism in place to re-examine cases where there is evidence of inadequate or biased police investigations. Of further concern is the possibility that the Inquiry's schedule may not leave sufficient time, as hearings with

¹ Human Rights Committee, Concluding observations on the sixth periodic report of Canada (Index: CCPR/C/CAN/CO/6) 13 August 2015.

concerned families have been delayed.² Indigenous leaders and activists have written to the Inquiry's Chief Commissioner to signal alarm at the delays, organizational problems, and inadequate communication with families that in their opinion warrant an extension of the Inquiry's deadlines.³ The Commissioner has responded to concerns by noting that the Inquiry has hired a new communications director, is developing a new outreach approach, and is reevaluating funding and timing needs.⁴

Concrete actions to end violence against Indigenous women and girls in Canada must not be delayed until the conclusion of the Inquiry. Recommendations from an earlier British Columbia provincial inquiry, investigations by Committee on the Elimination of Discrimination against Women (CEDAW) and the Inter-American Commission on Human Rights, the federal government's own studies of the issue and numerous other reports⁵ have yet to be implemented and should form the basis for a plan of action to be implemented as the Inquiry proceeds. Although Canada's Indigenous Affairs Minister has repeatedly offered assurance that the government will not wait for the outcome of the Inquiry to take action to address known factors placing Indigenous women at risk or denying them access to justice, to date there is no public indication of what actions the government intends to take.⁶

Despite government acknowledgement of high rates of violence against Indigenous women and girls, Canada has failed to institute adequate data collection procedures to create a better understanding of the violence experienced by Indigenous women and girls, help inform allocation of government funding, and measure the impact of government programs and policies. Until 2014 there were no official statistics on the number of missing and murdered Indigenous women and girls. There are still no national protocols and very little training to ensure police consistently and accurately record the Indigenous identity of victims of violent crime. Although the Royal Canadian Mounted Police issued reports in 2014 and 2015 on the numbers of murders and disappearances of Indigenous women and girls, this reporting was incomplete and has since been discontinued. Statistics Canada has begun including police data on murders of Indigenous women and girls in its annual homicide report, but this excludes data on Indigenous women and girls who are missing, or whose deaths are considered suspicious.⁷

The vast majority of First Nations reserves across Canada does not have shelters for women escaping violence. To serve the 53 Inuit communities across the arctic there are approximately 15 shelters and transitional shelters, many of which are only accessible by air.⁸ As of end May 2017, the federal government reported 41 federally funded shelters to serve the 634 recognized First Nations communities in Canada.⁹ Since some of the federally funded shelters serve multiple First Nations, the federal government asserts that 55% of First Nations are served by federally-funded shelters.¹⁰ This claim is contested by Indigenous women's organizations. While Inuit, Métis and First Nations women may have access to shelters funded by

² Andrea Woo, 'Commissioner defends missing, murdered inquiry, as criticism mounts', *Globe and Mail*, 19 May 2017, <https://www.theglobeandmail.com/news/national/missing-and-murdered-womens-inquiry-head-says-there-is-hope-for-the-commission-amid-delays/article35068891/> ('The inquiry has also been criticized for postponing hearings with families, which begin later this month and were expected to continue throughout the summer. Instead, only hearings scheduled in Whitehorse for the last week of May will proceed; expert panels will take place over the summer and the other family hearings will resume in the fall').

³ John Paul Tasker, 'Missing and murdered inquiry needs extension and new approach, families and activists say', *CBC*, 15 May 2017, <http://www.cbc.ca/news/politics/mmiwg-inquiry-letter-extension-1.4115681>.

⁴ Andrea Woo, 'Commissioner defends missing, murdered inquiry, as criticism mounts', *Globe and Mail*, 19 May 2017, <https://www.theglobeandmail.com/news/national/missing-and-murdered-womens-inquiry-head-says-there-is-hope-for-the-commission-amid-delays/article35068891/>.

⁵ See, for example, 'Invisible Women: A Call To Action: A Report on Missing and Murdered Indigenous Women' in *Canada Report of the Special Committee on Violence Against Indigenous Women*, March 2014.

⁶ See, for example, 'No one wants this report to be put on a shelf': Indigenous Affairs Minister responds to inquiry criticism, *CBC*, 4 April 2017, <http://www.cbc.ca/radio/thecurrent/the-current-for-april-4-mmiwg-ottawa-public-forum-1.4053431/no-one-wants-this-report-to-be-put-on-a-shelf-indigenous-affairs-minister-responds-to-inquiry-criticism-1.4053520>.

⁷ Amnesty International Canada, *New statistics on violence against Aboriginal people released*, 25 November 2015, available at www.amnesty.ca/blog/new-statistics-violence-against-aboriginal-people-released

⁸ Amnesty International Canada, 'Canada: Close the funding gap to ensure safety and support for Indigenous women and girls escaping violence', 1 December 2016, <http://www.amnesty.ca/get-involved/take-action-now/canada-close-funding-gap-ensure-safety-and-support-indigenous-women-and>.

⁹ Indigenous and Northern Affairs Canada, 'Family Violence Prevention Programme', 10 March 2017, <http://www.aadnc-aandc.gc.ca/eng/1100100035253/1100100035254>.

¹⁰ Indigenous and Northern Affairs Canada, 'Family Violence Prevention Programme', 10 March 2017, <http://www.aadnc-aandc.gc.ca/eng/1100100035253/1100100035254>.

the provincial and territorial governments, these shelters are often far from their home communities and many do not offer culturally-based programming.¹¹

Over many years, Amnesty International has called alongside the Native Women's Association of Canada, affected families and many other organizations and activists, for a comprehensive and coordinated national response that meets Canada's international human rights obligations through addressing all aspects of the prevention, investigation and prosecution of violence against women and girls. In June 2016, the federal government announced plans to create a federal strategy on gender-based violence.¹² Amnesty International welcomes this announcement. However, given that it only covers areas under federal jurisdiction, the organization is concerned that it falls short of Canada's commitment under the UN Secretary-General's UNiTE initiative to enact a truly national plan of action covering areas under federal, provincial and territorial jurisdictions and including special provisions addressing the disproportionate levels of violence experienced by First Nations, Inuit and Métis women and girls. As of end May 2017 the strategy had not been enacted.

A provincial level inquiry has also been established by the government of the province of Quebec, looking into various aspects of the relationship between Indigenous Peoples and a variety of public services in the province of Quebec, with a broad mandate to "investigate, address facts and conduct analyses in order to make recommendations concerning concrete, effective, lasting remedial measures to be implemented by the Government of Québec and indigenous officials to prevent or eliminate, regardless of their origin or cause, all forms of violence, discriminatory practices and differential treatment in the delivery of the following public services to Québec's indigenous people: police, correctional, legal, health and social services, as well as youth protection services." It is to provide its report by November 30, 2018.¹³

The federal government has still not ended the discriminatory underfunding of on-reserve child welfare as required by the Canadian Human Rights Tribunal's ruling in *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada*.¹⁴ In outlining steps taken to address underlying causes of violence against Indigenous women and girls, Canada has noted in its interim report that "[c]hanges at the federal level are also underway in response to the recent Canadian Human Rights Tribunal ("Tribunal") decision in *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada*."¹⁵ However, the federal government has still not ended the discriminatory underfunding of on-reserve child welfare despite the tribunal's ruling issuing three compliance orders.¹⁶ Notably a recent Canadian Human Rights Tribunal ruling has also concluded that the federal government has failed to comply with a January 2016 Tribunal decision that found discrimination in the failure to comply with what is known as "Jordan's Principle", requiring the federal government to ensure that jurisdictional disputes between different levels of government do not interfere with provision of health care to First Nations children.¹⁷

Amnesty International is further concerned that not enough is being done to address violence against Indigenous women and girls in the context of intensive and large-scale development of oil, gas and other resources across Canada. A growing number of studies has linked the presence of large-scale development projects and associated labour camps, and associated strains on social services and infrastructure in host communities, with increased rates of violence against women, and violence against Indigenous women in particular.¹⁸ After being approached by Indigenous leaders and community members concerned about the

¹¹ Sara Beattie and Hope Hutchins, *Shelters for abused women in Canada, 2014*, Statistics Canada, 2015.

¹² Status of Women Canada, 'Federal Strategy on Gender-Based Violence,' www.swc-cfc.gc.ca/violence/strategy-strategie/index-en.html.

¹³ Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress, <https://www.cerp.gouv.qc.ca/index.php?id=2&L=1>.

¹⁴ 2016 CHRT 2.

¹⁵ Interim Report of Canada on the International Covenant on Civil and Political Rights, p. 8.

¹⁶ Tim Fontaine, 'Advocates once again push federal government to comply with First Nations child welfare ruling', CBC News, 23 March 2017, <http://www.cbc.ca/news/indigenous/blackstock-human-rights-tribunal-2017-1.4038595>.

¹⁷ Gloria Galloway, 'Indigenous Children's Health Care Still Lacking, Human Rights Tribunal Finds', The Globe And Mail, 26 May 2017, <https://www.theglobeandmail.com/news/politics/indigenous-childrens-health-care-still-lacking-human-rights-tribunal-finds/article35137055/>.

¹⁸ See, for example, First Nations Women Advocating Responsible Mining, *Submission to Committee on the Elimination of Racial Discrimination, 80th Session*, January 2012; Conseil du statut de la femme Québec, *Opinion - Women and Plan Nord: for Equality in Northern Development*, October 2012; Janis Shandro et al., *Ten Steps Ahead: Community Health and Safety in the Nak'at'la/Stuart Lake Region During the Construction Phase of the Mount Milligan Mine*, December 2014; Pauktuutit, *The impact of resource extraction on Inuit women and families in Qamani'tuaq, Nunuvut Territory: a qualitative assessment*, January 2014; Northern Health, *Understanding the State of Industrial Camps in Northern BC: A*

impacts of resource development on their communities, Amnesty International conducted field research in northeast British Columbia in 2015 and 2016. The resulting report analyzes the rights impacts of large scale resource development and underscores that:

- The influx of workers into the region due to resource development has driven up prices and thereby exacerbated economic inequalities associated with increased risks of violence to Indigenous women and girls;
- The presence of transient workers, who are overwhelmingly young and male and represent a substantial part of the total local population, has increased overall levels of violent crime and the risk of violence against women in general and Indigenous women and girls in particular; and
- Indigenous women and girls do not have access to adequate government supports and services to mitigate the risk of violence, and law enforcement resources are insufficient to meet urgent needs.¹⁹

Amnesty International's research comes after decades of studies by government and civil society that have repeatedly raised concerns over impacts of resource development projects on women and girls.²⁰ Yet, while the project assessment and approval process in Canada is intended to weigh potential harm against the social benefits of a proposed project, the key tool in this process—the impact assessments carried out under federal, provincial and territorial environmental legislation—largely ignores the specific pattern of impacts that development projects have on women and girls, in particular Indigenous women and girls.²¹ Analysis of the distinct impacts on people of all genders, especially women and girls—which is a requirement of Canadian government-supported overseas development assistance—is not required as part of the decision-making process domestically and has rarely been part of the environmental impact assessment process.²² In 2017, reports from the expert panels reviewing Canada's National Energy Board's mandate and the environmental impact assessment regime alluded to the importance of taking into account the impacts of development projects on women.²³ However, these reports have not explicitly called for a gender-based assessment as a prerequisite for project approval.

Background Paper, Version 1, 17 October 2012; and Clarice Eckford and Jillian Wagg, *The Peace Project: Gender Based Analysis of Violence against Women and Girls in Fort St. John – revised*, The Fort St. John Women's Resource Society, February 2014.

¹⁹ Amnesty International, *Out Of Sight, Out Of Mind: Gender, Indigenous Rights, And Energy Development In Northeast British Columbia, Canada* (Index: AMR 20/4872/2016).

²⁰ See, for example, Northern Health, *Population Health and Oil and Gas Activities: A Preliminary Assessment of the Situation in North Eastern BC*, 10 January 2008, available at prrd.bc.ca/board/meetings/agenda/documents/rd/cfour011008.pdf; and BC Ministry of Health, *Identifying Health Concerns relating to oil and gas development in northeastern BC: human health risk assessment - phase 1 compendium of submissions*, Fraser Basin Council, 30 March 2012, available at www.health.gov.bc.ca/library/publications/year/2012/Identifying-health-concerns-HHRA-Phase1-Compendium.pdf

²¹ See Amnesty International, *Open Letter to Justin Trudeau and Christy Clark: Site C Dam and the Human Rights of Indigenous Peoples in the Peace Valley* (Index: TG AMR 20/2902/2015), 18 November 2015.

²² Linda Archibald and Mary Crnkovich, *If Gender Mattered: A Case Study of Inuit Women, Land Claims and the Voisey's Bay Nickel Project*, November 1999.

²³ Expert Panel on the Modernization of the National Energy Board, *Forward Together: Enabling Canada's Clean, Safe, and Secure Energy Future* (Index: M4-149/2017E-PDF), pp 73-74 (advocating for 'Regional Multi-Stakeholder Committees' convened by that could consider the impacts of projects on 'Indigenous communities, and in particular Indigenous women'; Expert Panel for the Review of Environmental Assessment Processes, *Building Common Ground: A New Vision for Impact Assessment in Canada* (Index: En106-158/2017E-PDF), p. 42 (concluding that 'Budgets must recognize the critical need for capacity, expertise and data collection to support the incorporation of rigorous scientific evidence in IA processes' and observing that participants in consultations had highlighted gaps in gender-based analysis).

3. IMMIGRATION DETENTION, ASYLUM-SEEKERS AND NON-REFOULEMENT

3.1 THE COMMITTEE'S CONCLUDING OBSERVATIONS

12. The Committee is concerned that individuals who enter onto the territory of the State party irregularly may be detained for an unlimited period of time and that, under section 20.1 (1) of the Immigration and Refugee Protection Act, any migrant and asylum-seeker designated as an "irregular arrival" would be subject to mandatory detention until the asylum-seeker's status is established, and would not enjoy the same rights as those who arrive "regularly". The Committee is also concerned that individuals who are nationals of Designated Countries of Origin are denied an appeal hearing against a rejected refugee claim before the Refugee Appeal Division and are only allowed judicial review before the Federal Court, thus increasing the risk that those individuals may be subjected to refoulement. The Committee is further concerned about the 2012 cuts to the Interim Federal Health Program, which has resulted in many irregular migrants losing access to essential health-care services (arts. 2, 7, 9 and 13).

The State party should refrain from detaining irregular migrants for an indefinite period of time and should ensure that detention is used as a measure of last resort, that a reasonable time limit for detention is set, and that non-custodial measures and alternatives to detention are made available to persons in immigration detention. The State party should review the Immigration and Refugee Protection Act in order to provide refugee claimants from "safe countries" with access to an appeal hearing before the Refugee Appeal Division. The State party should ensure that all refugee claimants and irregular migrants have access to essential health-care services, irrespective of their status.

3.2 AMNESTY INTERNATIONAL'S ASSESSMENT

Federal Court decisions have found Canada's restrictions on access to the Refugee Appeal Division based upon nationality, and cuts to refugee health care benefits to be unconstitutional.²⁴ Following the October 2015 federal election, the new government accepted those rulings. Health coverage for refugee claimants was restored in 2016. However, access to health care has not been extended to irregular migrants irrespective of status, as recommended by this Committee.

Canada has not yet taken adequate measures to reform the immigration detention regime, which still contains insufficient safeguards against arbitrary detention. There remains no upper time limit for immigration detention²⁵ and individuals are sometimes held in detention for years. Despite the UN Working Group on Arbitrary Detention's finding in 2014 that subjecting Mr. Michael Mvogo to over seven years of immigration detention constituted arbitrary detention,²⁶ federal authorities have continued to defend similar practices in other instances, as in the case of Mr. Kashif Mohammed Ali, a man held for more than seven years because of the difficulties deporting him to either Ghana or Nigeria due to his inability to prove citizenship of either state. Mr. Ali was released from detention in April, 2017 following a decision by the Ontario Superior Court of Justice in a *habeas corpus* review wherein the judge rejected the Attorney General

²⁴ *Y.Z. v. Canada (Citizenship and Immigration)*, 2015 FC 892; *Canadian Doctors for Refugee Care v. Canada (Attorney general)*, 2014 FC 651.

²⁵ Stephanie Silverman and Petra Molnar, 'Everyday Injustices: Barriers to Access to Justice for Immigration Detainees in Canada,' *Refugee Survey Quarterly* (Index: 35:1), 2016, p. 116.

²⁶ Working Group on Arbitrary Detention, *Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session (22 April–1 May 2014)* (Index: A/HRC/WGAD/2014/15), UN Human Rights Council, 2014, para. 25.

of Canada's submission that the length of the detention was not "exceptional."²⁷ In his oral reasons for the decision, the judge observed that "[i]f it is typical for Canada to detain persons for seven or more years for immigration purposes, then this country has a much more serious problem with its immigration process than is currently understood."²⁸ On 15 May 2017, the Federal Court of Canada heard a constitutional challenge to legislative provisions allowing for indefinite immigration detention, and as of writing, the decision was pending.²⁹

Canada continues to house children in immigration detention facilities, although numbers have recently declined.³⁰ Although the Immigration and Refugee Protection Act provides that "a minor child shall be detained only as a measure of last resort"³¹, many children in immigration detention facilities are not *de jure* detained, but are nonetheless housed in detention facilities because of their parents' detention. Previously the Immigration and Refugee Board considered that the best interests of these children were not a relevant factor in detention reviews of adults. This narrow interpretation of Canadian regulations was invalidated after a 2016 legal settlement.³² However, it remains to be seen whether this legal development will effectively curb Canada's practice of routinely detaining women with their children in the absence of legislative amendments explicitly prioritizing the best interests of the child in decisions to detain parents.

Canada's immigration detention regime continues to have significant accountability gaps, which often have deadly consequences.³³ Since March 2016 alone, three people have died in immigration detention, in circumstances that have raised concerns as to the adequacy of measures to ensure the health and safety of detainees, including mental health care.³⁴ This crisis has led to calls by human rights groups for increased oversight for Canada's immigration detention regime³⁵ and has provoked hunger strikes by detainees.³⁶ The Canada Border Services Agency is not subject to independent oversight, and although Canada's Minister of Public Safety and Emergency Preparedness has indicated in interviews a willingness to consider civil society proposals for a standalone accountability mechanism,³⁷ the federal government not yet made any firm commitments in this regard.

In a positive development, in 2016 Canada's Minister of Public Safety and Emergency Preparedness announced a C\$138 million overhaul of the immigration detention regime.³⁸ As part of this review of Canada's immigration detention, Canada has committed to reviewing detention policies and standards, focusing on:

- reducing the detention of minors³⁹ and separation of families to the 'greatest extent possible';

²⁷ *Ali v Canada (Attorney General)*, 2017 ONSC 2660 at paras 18 & 19.

²⁸ *Ali v Canada (Attorney General)*, 2017 ONSC 2660 at para 19.

²⁹ Jackie Dunham, "Court hearing landmark challenge to indefinite immigration detention", CTV News, 15 May 2017, <http://www.ctvnews.ca/canada/court-hearing-landmark-challenge-to-indefinite-immigration-detention-1.3414185>.

³⁰ University of Toronto Human Rights Clinic, *Invisible Citizens: Canadian Children in Immigration Detention*, 2017, http://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf.

³¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 60.

³² Following this settlement, a 24 August 2016 order on consent by the Federal Court confirmed that the best interest of children were a relevant factor in detention reviews of adults. See *B.B. and Justice for Children and Youth v. the Minister of Citizenship and Immigration*, 24 August 2016, Federal Court Docket IMM-5754-15, available at: <http://ccrweb.ca/sites/ccrweb.ca/files/bbjfcymci-order-justice-hughes-august-2016.pdf>. As part of the settlement, the CBSA has issued instructions to its hearing officers to bring this order on consent to the attention of Immigration and Refugee Board members during detention reviews. See "Instructions from CBSA to its Hearing Officers, Distributed by CBSA on 29 August 2016", available at: <http://ccrweb.ca/sites/ccrweb.ca/files/bb-cbsa-instructions-aug-2016.pdf>

³³ Faculty of Law, International Human Rights Program, *We Have No Rights: Arbitrary imprisonment and cruel treatment of migrants with mental health issues in Canada*, University of Toronto, 2015, pp. 79-81.

³⁴ Nicholas Keung, 'Healthcare providers urge Ontario to end immigration detention,' *The Toronto Star*, 17 May 2016; and End Immigration Detention Network, *No justice for Abdurrahman, who died mysteriously in immigration detention*, 15 July 2016.

³⁵ British Columbia Civil Liberties Association, et al. 'Human rights groups react to news of another death in immigration detention', News Release, 8 March 2016.

³⁶ Colin Perkel, 'Ralph Goodale Shows No Signs of Meeting Immigration Detainees on Hunger Strike', *The Canadian Press*, 21 July 2016.

³⁷ CBC, *The Current*, Transcript for September 29, 2016, <http://www.cbc.ca/radio/thecurrent/the-current-for-september-29-2016-1.3783556/september-29-2016-full-episode-transcript-1.3784874#segment3>.

³⁸ Jim Bronskill, 'Government to rebuild immigration detention facilities in Vancouver, Laval', *The Globe and Mail*, 15 August 2016.

³⁹ Amnesty International calls on governments never to detain minors solely for immigration purposes.

- providing consistent and increased access to health services to detainees in immigration holding centres;
- ‘exploring potential policy changes together with the use of ATDs [alternatives to detention] to reduce the length of detention for individuals that do not pose a danger to Canadian society and who collaborate with the government in completing their immigration processes’; and
- revising the National Detention Standards for immigration holding centres.⁴⁰

Public consultations associated with this review have recently concluded. Although Amnesty International welcomes the federal government’s plans to reform immigration detention, it remains to be seen if these changes will fully address the problems associated with Canada’s use of immigration detention and bring Canada’s practices into conformity with obligations under the International Covenant on Civil and Political Rights.

Amnesty International remains concerned at the Designated Foreign National regime, which grants the Minister of Public Safety the discretion to “designate” groups of individuals based upon their mode of arrival in Canada. Designation under the regime incurs significant consequences including mandatory detention with limited review rights, barred access to the Refugee Appeal Division, and no access to permanent residence for at least five years even in cases where refugee claims have been accepted.⁴¹ Amnesty International considers that the indiscriminate and mandatory nature of detention under this regime runs contrary to the protections under Article 9 of the International Covenant on Civil and Political Rights.⁴²

4. INDIGENOUS LANDS AND TITLES

4.1 THE COMMITTEE’S CONCLUDING OBSERVATIONS

16. While noting explanations provided by the State party, the Committee is concerned about reports of the potential extinguishment of indigenous land rights and titles. It is concerned that land disputes between indigenous peoples and the State party which have gone on for years impose a heavy financial burden in litigation on the former. The Committee is also concerned about information that indigenous peoples are not always consulted, to ensure that they may exercise their right to free, prior and informed consent to projects and initiatives concerning them, including legislation, despite favourable rulings of the Supreme Court (arts. 2 and 27).

The State party should consult indigenous people to (a) seek their free, prior and informed consent whenever legislation and actions impact on their lands and rights; and (b) resolve land and resources disputes with indigenous peoples and find ways and means to establish their titles over their lands with respect to their treaty rights.

⁴⁰ CBSA’s New National Immigration Detention Framework: A Summary Report of the Framework and Stakeholder Roundtable Discussions (August – December 2016), January 2017, <http://www.cbsa-asfc.gc.ca/agency-agence/consult/consultations/nidf-cnmdi/menu-eng.html>.

⁴¹ Canadian Association of Refugee Lawyers, *Reform Proposals for Canada’s Inland Refugee Determination System and Other Aspects of the Immigration System*, July 2016, pp. 5-6, http://www.carl-acaadr.ca/sites/default/files/CARL%20brief%20FINAL_July2016.pdf.

⁴² Amnesty International Canada and Amnistie internationale Canada francophone, Brief to the House of Commons Standing Committee on Citizenship and Immigration, “Unbalanced Reforms: Recommendations with respect to Bill C-31”, p.2, https://www.amnesty.ca/sites/amnesty/files/ai_brief_bill_c_31_to_parliamentary_committee_0.pdf (Amnesty International also considers that denial of appeal rights amounts to an imposition of penalties based upon the manner of arrival, contrary to Art. 31(1) of the Refugee Convention).

4.2 AMNESTY INTERNATIONAL'S ASSESSMENT

Despite Canada's important formal commitment to implementing the UN Declaration on the Rights of Indigenous Peoples in 2016⁴³ and Supreme Court of Canada rulings affirming the need for the consent of the affected Indigenous peoples for certain decisions,⁴⁴ Canada has continued to issue permits for resource development projects over the opposition of Indigenous peoples, even where these projects would clearly have a significant negative impact on the ability of Indigenous peoples to exercise such rights. The government has pointed to environmental impact assessments as a key means for Indigenous peoples' voices to be heard when projects are considered, but most projects are not subject to such reviews,⁴⁵ and where reviews take place critical issues of the legal status of Indigenous rights and title are routinely excluded from consideration. Furthermore, the federal government has argued in court that the failure to consider and address potential treaty rights violations prior to project oversight should not be subject to judicial review as these matter exceed the terms of the legislation under which environmental assessments take place.⁴⁶

The government has yet to develop or adopt legislation, a policy framework, plan of action or other measures to ensure full implementation of the UN Declaration on the Rights of Indigenous Peoples in collaboration with Indigenous peoples, including that instrument's provisions dealing with land and resource rights and the right of free, prior and informed consent.⁴⁷

The federal government and British Columbia's provincial government have not revoked permits granted for the Site C Dam project, which will flood more than 80 kilometers of the Peace River Valley in Northern British Columbia. As indicated in the environmental assessment of the dam, the project would 'severely undermine' First Nations, Métis, and non-Aboriginal use of the area for hunting, trapping, and gathering plant medicines, would make fishing unsafe for at least a generation and would submerge burial grounds and other crucial cultural and historical sites.⁴⁸ First Nations urged the assessment of the Site C dam to incorporate consideration of whether the plans comported with the government's obligations under Treaty 8 and with other constitutionally-protected Indigenous rights. However, the federal and provincial governments refused and explicitly excluded such legal analysis from the terms of reference for the environmental assessment.⁴⁹ First Nations efforts to overturn the project approval through a judicial review have so far proven unsuccessful, with the courts accepting the federal government argument that a much longer and more

⁴³ Indigenous and Northern Affairs Canada, 'Canada Becomes a Full Supporter of the United Nations Declaration on the Rights of Indigenous Peoples' (10 May 2016),: <http://news.gc.ca/web/article-en.do?nid=1063339>.

⁴⁴ *Delgamuukw v British Columbia*, [1997] 3 SCR 1010; *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73; *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44.

⁴⁵ Provincial and federal legislation passed in recent years reduced the need for environmental impact assessments in many instances. Bill C-38 and Bill C-45, omnibus bills adopted by the federal Parliament in 2012, included a new *Canadian Environmental Assessment Act* and amended dozens of additional federal laws. Changes included greater government discretion over which projects would be subject to independent environmental assessment and elimination of federal assessments altogether for many types of projects. In April 2014, the British Columbia government quietly passed two Orders in Council to amend the *Reviewable Projects Regulation*, BC Reg 370/2002 that removed the requirement of conducting an environmental assessment of new and modified natural gas processing plants and ski and all-season resorts. These amendments were enacted without any consultation with affected Indigenous peoples. As a result of subsequent protests from First Nations, the day after the amendments were passed, British Columbia Environment Minister Mary Polak acknowledged that First Nations had not been consulted, apologized, and announced that the amendments would be rescinded: see 'B.C. rescinds environmental assessment exemption' *CBC News*, 16 April 2014, <http://www.cbc.ca/news/canada/british-columbia/b-c-rescinds-environmental-assessment-exemption-1.2613053>.

⁴⁶ *Prophet River First Nation And West Moberly First Nations v. Attorney General of Canada, Minister of the Environment, Minister of Fisheries and Oceans, Minister of Transport, and British Columbia Hydro and Power Authority*, 2016 FCA 15.

⁴⁷ Joanne Laucius, 'Walkers End 600-Kilometre Pilgrimage For Indigenous Rights' In Ottawa', *Ottawa Citizen*, 14 May 2017, <http://ottawacitizen.com/news/local-news/walkers-end-600-kilometre-pilgrimage-for-indigenous-rights-in-ottawa>.

⁴⁸ Government of British Columbia, 'Site C to provide more than 100 years of affordable, reliable clean power' (16 December 2014), <http://www.newsroom.gov.bc.ca/2014/12/site-c-to-provide-more-than-100-years-of-affordable-reliable-clean-power.html>; See also 'Site C dam approved by B.C. government' *CBC News*, 16 December 2014, <http://www.cbc.ca/news/canada/british-columbia/site-c-dam-approved-by-b-c-government-1.2874433>.

⁴⁹ Amnesty International, *The point of no return: The human rights of Indigenous peoples in Canada threatened by the Site C Dam* (Index: AMR 20/4281/2016), p. 10.

onerous process would be needed to resolve the question of construction of the dam is compatible with the state's treaty obligations.⁵⁰

An incoming government in BC has promised to refer the economic rationale for the dam for review by an independent utilities commission but has said that construction will continue pending such a review.⁵¹

⁵⁰ *Prophet River First Nation And West Moberly First Nations v. Attorney General of Canada, Minister of the Environment, Minister of Fisheries and Oceans, Minister of Transport, and British Columbia Hydro and Power Authority*, 2016 FCA 15.

⁵¹ Wendy Stueck, *B.C.'s NDP, Greens plan to initiate new Site C megaproject review*, *The Globe and Mail*, 30 May 2017.

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CANADA

SUBMISSION FOR THE UN HUMAN RIGHTS COMMITTEE'S FOLLOW UP PROCEDURE FOR THE CONCLUDING OBSERVATIONS OF CANADA'S SIXTH PERIODIC REPORT

Amnesty International Canada presents this submission to the UN Human Rights Committee to inform the Committee's follow up procedure in relation to the concluding observations on the sixth periodic report of Canada.

Amnesty International evaluates Canada's progress in implementing the Committee's recommendations on murdered and missing Indigenous women and girls, immigration detention, asylum-seekers and non-refoulement, and Indigenous lands and titles.

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