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Voices-Voix

Canada

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Defending civil society and the
right to advocate for the public
interest in Canada
www.voices-voix.ca

Executive summary

In this submission, Voices-Voix provides information with respect to Canada under sections B, C and D as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review:¹

- Under section B, Voices-Voix sets out the international law framework for freedom of peaceful assembly, association and freedom of expression and the recent impact of government activities on civil society. A campaign by the federal government of Canada to restrict the autonomy of civil society groups – charities, faith-based organizations, trade unions, development organizations, advocates and others – has taken the form of ideologically-motivated decisions to cut the funding of long-term partners, attempts to restrict NGOs from talking publicly about defunding, the public vilification of civil society leaders, and, more generally, restrictions on the space in which civil society operates.

In addition, the Government of Canada has eliminated key knowledge institutions and programs, reducing Canada's ability to provide reliable and robust disaggregated data about the progressive realization of rights, including women's rights. This has, in turn, disabled activists and civil society from obtaining information about public policy issues.

- Section C highlights and particularizes concerns about the human rights situation on the ground. Since 2010, defunding has targeted development organizations and community-based organizations, women's equality groups, and environmental organizations. There have also been efforts to politicize public interest and policy work as "political," thus resulting in the revocation of the charitable status of organizations under the *Income Tax Act* and crippling their fund development capacity. In addition, key environmental organizations, human rights defenders and NGO leaders have been publicly vilified, creating a chilling effect on civil and political rights. One leader of an Aboriginal First Nations organization that is challenging the government on human rights grounds has herself been placed under surveillance. NGOs and/or human rights defenders and advocates have been labelled by the federal government as being under the influence of foreign agents who are working against Canada's interests.
- In section D, Voices-Voix makes a number of recommendations for action by the Canadian government.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

About Voices-Voix

Voices-Voix is a non-partisan national coalition of respected Canadian civil society organizations. Voices-Voix was created in 2010 in response to a punitive campaign of funding cuts, disabling of research and public policy work and of reputational assaults against human rights defenders and activists that has been undertaken by the Government of Canada against civil society. Voices-Voix's primary activity has been to monitor the Canadian government's campaign against its critics and opponents and to document cases.

As of October 1, 2012, 216 Canadian organizations have publicly subscribed to Voices-Voix and are members of the Coalition. As well, 4,751 individuals have signed the Voices-Voix Declaration, which calls on the Government of Canada to:

1. Respect the right to freedom of opinion and expression
2. Act in accordance with Canada's democratic traditions
3. Commit to transparency in all its actions

The Voices-Voix website provides details on each member organizations, as well as individual signatories.

Voices-Voix is directed by a Strategy Committee that includes representatives from prominent human rights and social justice organizations in Canada, including Amnesty International, the Canadian Council for International Co-operation and Oxfam Canada, as well as prominent human rights lawyers and advocates, and members of the labour movement. Our research is published at the web site:

www.voices-voix.ca

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B. Normative and institutional framework of the State

i) International Human Rights Instruments

Canada has ratified UN human rights instruments calling on States to respect, protect and fulfil fundamental rights and freedoms such as the right to peaceful assembly, freedom of association, and free expression, as set out in, *inter alia*, Articles 19, 20 and 21 of the *International Covenant on Civil and Political Rights*, and in Article 7(c) of the *Convention on the Elimination of All Forms of Discrimination against Women* and Article 5 (d) of the *International Convention on the Elimination of All Forms of Racial Discrimination*. Canada has consistently reaffirmed the rights set out in the *Universal Declaration of Human Rights*, notably Articles 19 and 20.

Voices-Voix further notes the relevance to the present submission of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (“Declaration on Human Rights Defenders”). Finally, Voices-Voix notes the rights and norms with respect to the obligations of all governments to create an enabling environment for organizations, including:

- Freedom of association and assembly;
- Legal recognition facilitating the work of CSOs;
- The right to freedom of expression;
- Freedom of movement, mobility rights and the right to travel;
- The right to operate free of unwarranted state interference; and
- The legal space to seek and secure necessary resources in support of legitimate roles in development.
- Public authorities are required to provide protection when the integrity of a civil society organization or lives of its staff and members are threatened.

(See also: *Accra Agenda for Action*; *Istanbul Principles for CSO Development Effectiveness*, and the *Siem Reap CSO Consensus on the International Framework for CSO Development Effectiveness*.)

ii) Implementation of Canada’s international human rights obligations

Rights to freedom of expression, association and assembly have been recognized as constitutional rights since 1982 in the Canadian Charter of Rights and Freedoms and in certain provincial laws.

In the past, prominent Canadian NGOs, international development and social justice groups have been able to undertake policy research and advocacy work as part of their normal activities, as well as receiving financial support from the federal government of Canada. This was part of the Government’s commitment to enable a vibrant civil society and to recognize its role in the protection and promotion of human rights. As in many other countries, civil society organizations undertake important functions and services in Canadian society. The nonprofit sector in Canada is also a major driver of economic well-

being.

Since about 2010, that financial support is being withdrawn by the Government of Canada in several key sectors. Affected organizations include immigrant and refugee settlement services, shelters, pay equity advocates, equality rights groups and international development organizations, as well as policy research and environmental groups.

Voices-Voix recognizes that governments are not required to fund organizations with which they disagree or whose views do not accord with the mandate they have been elected to carry out. However, the current campaign goes much further by redrawing the lines of what constitutes acceptable activities. Activities such as advocacy, public policy work and public interest activism are being disallowed. Canadian charitable law permits NGOs to raise funds and receive important tax advantages. These laws have operated historically to permit civil society groups to develop public policy in the public interest in order to position and contextualize their work, as well as to provide the empirical footing for advocacy, policy change and the promotion of rights and freedoms. Recent cases and statements from the government suggest that government will act on “complaints” from organizations with close ties to the Conservative Party to strip charitable organizations of their status and thus further cripple their financial health.

All these developments have an impact on free expression, peaceful assembly and freedom of association, and threaten the role of progressive civil society as a vibrant social actor.

Voices-Voix has been systematically documenting tactics such as defunding, silencing, intimidation and public vilification of civil society actors, human rights defenders, and others who do not agree with the government's ideological position.

iii) National human rights institutions

Voices-Voix applauds and supports the role of the United Nations in underscoring the significance of national human rights institutions and their role in upholding international human rights instruments, interacting with international mechanisms, and in the protection and promotion of human rights at the national level. While NHRIs are not part of civil society, they play an essential role in fostering relationships between civil society and government, and in strengthening the work of civil society.

As part of its documentation work, Voices-Voix has documented the trend of eroding human rights protections offered by Canadian human rights institutions. The Canadian Human Rights Commission has been chronically underfunded. The quasi-judicial decision-maker, the Canadian Human Rights Tribunal, has been subject to inappropriate appointments to its senior position, namely the Tribunal Chair, thus throwing the organization into disarray. There has been no permanent appointed Chief Commissioner of the CHRC for more than a year (a selection process is “underway”).

Critics with close ties to the Government of Canada have questioned the role or even the

need for the human rights architecture that has been built up across Canada over many decades. In 2012, the Government of Canada passed legislation to repeal Canada's legislative human rights protection against hate speech (Section 13 of the *Canadian Human Rights Act*), thus eliminating an administrative and regulatory response to hate speech and leaving only a criminal remedy. It should be noted that this has occurred despite court decisions upholding the constitutionality of such provisions and their conformity with, and importance to, Articles 19 and 20 of the ICCPR. (Notably *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892).

Key human rights and development programs and agencies, including Rights & Democracy, the Court Challenges Program and the Law Commission of Canada have been shut down by the Government of Canada.

iv) Providing adequate statistical information

UN treaty bodies have criticized Canada for failing to provide adequate data on differences in enjoyment of rights by gender, Aboriginal identity, ethnicity, age, citizenship and disability.² This failure to systematically provide disaggregated data can obscure critical human rights concerns for vulnerable populations. Gaps in the collection of data are particularly acute in respect to Indigenous peoples. Several other organizations, including Amnesty International, have documented this trend in Canada.

Voices-Voix has documented the Government of Canada's recent actions that have worsened the trend: its decision in June 2010 to abolish the mandatory long-form census, against the advice of experts, has resulted in the loss of policy-relevant, objective, reliable and robust data about the state of Canadian society. This has direct implications for equality rights, and the rights of vulnerable groups and communities in Canada. It is now more difficult to meet international requirements to provide evidence of progressive realization of economic and social rights. Accompanying this, has been the elimination of strategic knowledge organizations that analyze national data, undertake knowledge management, propose law reform, advocate for equality at the legal level, and publish policy research on a wide range of human rights and social justice topics. Details are provided in the following section.

C. Promotion and protection of human rights on the ground

i) Civil Society

Since 2010, Voices-Voix has documented approximately 35 cases of government efforts to defund and silence elements of civil society that are critical of the government and that seek to protect and promote rights. All the cases are available online at www.voices-voix.ca

² Committee on the Elimination of Racial Discrimination, 2007; Committee on Economic, Social and Cultural Rights, 2006; Human Rights Committee, 2005; Committee on the Rights of the Child, 2003; Committee on the Elimination of Discrimination against Women, 2002.

Environmental activist groups, including those opposed to Canada's plans to develop a pipeline project in northern Canada have been labelled as "terrorists," money launderers and agents for foreign interests. Federal government Ministers have made such accusations publicly in the context of environmental organizations. Several civil society organizations and activists have found themselves attacked, libelled and slandered (see, e.g. the cases of Steven Schnoor, Tides Canada, and Franke James at www.voices-voix.ca)

A more recent development is the use of Canadian income tax law by the Canada Revenue Agency as a tool against charitable organizations with which the government disagrees. Tides Canada, an innovative and award-winning charitable organization, is under audit and its charitable status threatened as a result of accusations about improper interference in political activities and being "foreign agents." Canada has a long tradition of civil society organizations working on public interest issues, both at the policy level and through legal channels. Internationally, it is well established that these types of activities are part of the role of civil society organizations. However, the Government of Canada has politicized these activities and/or characterized them as advocacy such that they are likely to be disallowed under the *Income Tax Act*. As such, a new policy approach appears to be emerging that would effectively disable such civil society from engaging in such work. Voices-Voix further notes that the activities of the Government of Canada set out in this document are in violation of the Accord signed between the Government of Canada and the voluntary sector which, *inter alia*, provides as follows: "Advocacy is inherent to debate and change in a democratic society and, subject to the above principle [including accountability], it should not affect any funding relationship that might exist." (Voluntary Sector Taskforce, *An Accord Between the Government of Canada and the Voluntary Sector*, December 2001. http://www.vsi-isbc.org/eng/relationship/order_tools.cfm).

The Accord has never been repudiated by the Government of Canada.

ii) Human rights defenders

The Canadian government has strenuously opposed legal proceedings by a leading Canadian Aboriginal community service group advocating for equal funding for family services aimed at aboriginal children on First Nations reserves.³ The Government of Canada is alleged to have retaliated against the group's leader, Ms. Cindy Blackstock, by placing her under personal and professional surveillance. This has resulted in a retaliation complaint by Ms. Blackstock, which is currently before the Canadian Human Rights Commission.

Voices-Voix has also documented personal attacks on leading human rights defenders such as the late Mr. Rémy Beaugard, President of Rights & Democracy. A faction of Government-appointed members of R&D mounted a concerted attack on Mr. Beaugard's professional reputation in the months leading to his death, accusing him of

³ The government has acknowledged that Indigenous children are four to six times more likely than non-Indigenous children to be removed from their families. Funding for Indigenous child and family services is 22% lower than for non-Indigenous children.

mismanagement, consorting with “terrorists” and of making improper grants to Israeli and Palestinian human rights organizations. Independent audits of the organization subsequently discredited these allegations. According to the uncontradicted testimony of his widow, Mrs. Suzanne Beauregard, these events contributed directly to Beauregard’s untimely death in 2010. Following an internal governance crisis and the erosion of R&D’s international reputation, the Government of Canada shut down Rights & Democracy in 2012.

D. Recommendations for action by the State under review

Normative and Institutional Framework

- Support domestic and international application of the Declaration on Human rights Defenders.
- Reaffirm Canada’s commitment to and compliance with the 2001 *Accord Between the Government of Canada and the Voluntary Sector*, December 2001.
- Develop a transparent and accountable process for making fair funding decisions about civil society organizations.
- Reinstate the long-form mandatory census.
- Reinstate adequate government support for the Canadian Human Rights Commission and protect legislative prohibitions in the *Canadian Human Rights Act* against extreme forms of hate speech.
- Modernize the *Income Tax Act* to enable charitable organizations to engage in public policy and related research and public interest issues without being labelled “political” or threatened with losing charitable status.

Promotion and Protection of Human Rights on the Ground

(i) Civil society organizations

- Ensure equitable treatment of and government funding for human rights, women's equality, and social justice organizations.
- Ensure equitable government funding for Indigenous child and family services agencies.
- Amend Canada’s legislative and policy framework for charitable status to permit nonprofit organizations to undertake public interest, policy and advocacy work.
- The government of Canada should work with civil society to create a policy to ensure an enabling environment for civil society.

(ii) Human rights defenders

- The federal government should cease to make any public statements that vilify or intimidate human rights defenders and social justice activists in Canada, including by labelling them “terrorists” or similar derogatory terms unless there is reasonable cause to believe that such criminal activity is underway, in which case the matter should be dealt with by the appropriate authorities.

Appendix

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