Submission of the Commonwealth Human Rights Initiative (CHRI) for the Universal Periodic Review of
Canada
September 2008

CHRI’s work on Canada is limited. This submission is based on information gathered CHRI’s human rights
monitoring section and based on research undertaken for CHRI’s annual report on the Commonwealth members of
the UN Human Rights Council. Most of the information is from secondary sources.

A. Consultation process

1. CHRI has learnt from NGO sources that consultations have not commenced at this point.

B. The current normative and institutional framework of the country under review

- Counter-terror laws

2. CHRI has observed reports that suggest that normative frameworks used in Canada to counter terrorism are
not adequate enough to guarantee human rights.

3. Prior to March 2007, Canada had a system in place allowing the Government to issue security certificates
that enabled authorities to arrest and deport foreigners and permanent residents named in the certificate. A
Supreme Court Decision in March 2007 found that the system was in violation of due process and the
principles of natural justice and forced the Canadian government to allow that policy to expire. A new law
came into force in February 2008 and is viewed by human rights groups and a British expert on the issue as
a “missed opportunity” and not in line with the principle of due process held within the Canadian Charter of
Rights and Freedoms and International law.\(^1\) Human rights groups have criticised the government for not
consulting a large cross-section of the population in the drafting of the Bill.\(^\text{ii}\) Although the new law is an
improvement over the previous measures, as it gives the person subject to removal a measure of
representation by a special advocate, it is feared that the new law could be subject to another constitutional
challenge because it categorically denies them their right to a fair trial.\(^\text{iii}\) Canada was criticised in November
2007 by the UN Committee Against Torture (CAT) for its deportation of Bachan Singh Sogi to India where
he was allegedly beaten while in detention. The committee also demanded that Canadian law be amended to
comply with article 3 of the Convention against Torture and other Cruel, Inhumane or Degrading Treatment,
to prevent it from deporting individuals to countries where they face a serious risk of torture.\(^\text{iv}\)

4. Canada’s policy of transferring detainees from its armed forces in Afghanistan to Afghan security services
has come under increased scrutiny in the past year. In November 2007, the Canadian Federal Court denied a
bid by the Canadian government to dismiss a case brought by two human rights groups to challenge the
constitutionality of the Canada-Afghanistan Detainee Agreement. The groups have alleged that, despite the
existence of a Memorandum of Understanding (MoU) assuring that transferred detainees will not be ill
reated and monitoring visits of detention facilities by Canadian Forces, Canada cannot assure that detainees
handed over to local forces will not be tortured.\(^\text{v}\) In November 2007, Canadian diplomats found evidence
that at least one detainee had been abused after being transferred, confirming newspaper investigations which had alleged that torture was taking place.\textsuperscript{vi} After discovering a clear case of torture, the military suspended detainee transfer, but the Government reportedly kept the decision secret until January, when it was revealed during a Federal Court case challenging the transfer agreement. On 1 March 2008, just as human rights groups feared, it was reported that the Military has decided to resume transfers of detainees; just four months after the suspension took place due to clear evidence of torture.\textsuperscript{vii} In January 2008, a Department of Foreign Affairs training manual was “inadvertently” released to lawyers working on a case challenging the government’s policy of transferring Afghan detainees from Canadian forces to Afghan authorities.\textsuperscript{viii} The then Minister of Foreign Affairs, Maxime Bernier, later called the manual an “embarrassment”, ordered it rewritten and assured the United States and Israel that it did not reflect the government’s position.

5. Omar Khadr, a Canadian citizen, remains imprisoned in a US detention facility in Guantanamo Bay and continues to be treated as an adult despite the fact that he was 15-years-old when he was captured in Afghanistan in 2002. Many other countries who have their nationals detained in the facility have condemned it and have actively lobbied and secured the release of their citizens, but Canada has not made any move in this direction so far. This is surprising given the fact that Canada was the first country to ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in 2000 and was the a major factor in the negotiations of the treaty.\textsuperscript{ix} An access to information request made by journalists was granted in August revealed the government’s position in the case. Contrary to public claims of then-minister of Foreign Affairs, Peter McKay, stated that Mr. Khadr was being treated humanely, the report stated that “allegations that Khadr suffered abuse were ‘consistent with reports from other released detainees and the report by the UN Committee against Torture’”. A document intended to serve as a briefing for Mr. Mackay suggested that he tell the media that deference to the U.S. Military Court system was the policy being pursued by the Canadian government,\textsuperscript{x} despite opposition from politicians and activists on both sides of the border.

6. On 23 May 2008, the Supreme Court of Canada ruled that interrogation during Mr. Khadr’s detention was clearly in contravention with the Canadian Charter of Rights and Freedoms (section 7), and also that a few documents related to his interrogation be released to his defence attorneys.\textsuperscript{xii}

7. Human rights groups have noted that while the decision to compensate and apologize to Maher Arar, a Canadian Citizen who was subject to extraordinary rendition based on false evidence provided by Canadian authorities to the United States, is praiseworthy, there is concern that most of the systemic recommendations from the Arar Commission have yet to be implemented, including review mechanisms for Canadian security agencies.\textsuperscript{xii}

- **Refugee policy**

8. Canada’s Safe Third Country Agreement with the US continues to garner criticism for turning away refugee claimants who pass through the US on their way into Canada. Human rights groups have expressed concern that this makes Canada complicit in any abuse of refugees that takes place in the US, including their deportation back to their own country where they face a risk of being tortured or otherwise abused, possibilities of which have been noted.\textsuperscript{xiii} On 29 November 2007, a Federal Court Judge ruled that the Safe Third Country Agreement was unconstitutional because the United States did not meet international refugee conventions, or the Convention against Torture and on 17 January the Court issued a final order nullifying the agreement as of 1 February 2008.\textsuperscript{xiv} \textsuperscript{xv} However, despite pleas by refugee rights organisations, the government has appealed the decision and the Agreement remains in place while the appeal is being reviewed.\textsuperscript{xvi}
9. Canada’s Public Safety Minister, Stockwell Day, was quoted in late September 2007 as saying: “People cannot come into this country without proper documentation and consequences will follow if they do,” suggesting that Canada is becoming increasingly resistant to harbouring refugees, who often flee without being able to collect proper documents. On 28 September 2007, an American refugee aid worker was arrested at the Canadian border for aiding some Haitian refugees claim refugee status at a Canada-US border station in Quebec. She was the first aid worker to be arrested under a 2002 immigration law which was intended to target human traffickers. Former cabinet members, including some former Conservative Members of Parliament, church groups and the Canadian Bar Association have accused the current Conservative government of rescinding on its 2002 promise not to use the law against those doing humanitarian work. On 9 November 2008, after intense pressure, the charges against the aid worker were dropped.

10. C. The implementation and efficiency of the normative and institutional framework for the promotion and protection of human right

- **Death penalty**

11. Canada has a strong record of opposition to the death penalty at home and abroad. However, in November, Prime Minister Stephen Harper announced that Canada would no longer seek clemency for Canadian citizens on death row abroad as long as they were convicted after a fair trial in a democratic country. His announcement came in relation to his government’s decision not to seek clemency for Canadian, Ronald Smith, who is on death row in the United States for a murder he committed in 1982. Prime Minister Harper was quoted as saying, "The reality of this particular case is that were we to intervene it would very quickly become a question of whether we are prepared to repatriate a double-murderer to Canada. In light of this government's strong initiatives on tackling violent crime I think that would send the wrong signal to the Canadian population." The decision has been condemned by all three opposition parties and human rights groups. Canada’s decision not to co-sponsor the recent UN resolution on the abolishment of the death penalty was also noted by human rights groups as being inconsistent with Canada’s past commitment to oppose capital punishment.

- **Minorities**

12. CHRI has observed reports that indicate that indigenous people continue to exist as Canada’s most marginalized population. In a positive development, however, the government has introduced a new Bill intended to reduce the time it takes to process land claims made by indigenous groups from the current average of 13 years to three years. As of June 2007 there was a backlog of 800 claims waiting to be processed. The Bill has been applauded by indigenous groups and was passed on 18 June 2008. A week before this Bill was formally passed, the Prime Minister also apologised to the First Nations (an umbrella organisation representing indigenous people) for the atrocities committed in the past, and the disadvantaged state of the current indigenous population. While this apology was historic in nature it remains to be seen how far the government will go to translate the spirit of the apology into reality.

13. Human rights groups have documented two ongoing cases in which the government has granted licenses to corporations, which are extracting resources from land claimed by two indigenous groups, the Lubicon Cree from Alberta and the Grassy Narrows in Ontario, without consent or adequate remuneration. Also relevant is the findings of the Ipperwash Inquiry and the recommendations made, which highlight cultural and racial discrimination inherent within the provincial government and the police force.
Recently, human rights groups have alleged that most of the important recommendations of the inquiry, especially those of Indigenous land rights and resource use have not been implemented.xxx

14. In the case of Canada, the issue of corporate social responsibility is very closely connected to Indigenous land rights and resource use. On 6 June 2008, it was reported that one of the world’s largest forestry companies, AbitibiBowater Inc. will withdraw operations from the Whiskey Jack forest, which is traditional Grassy Narrows territory in Ontario. However, corporate social responsibility goes much further than protecting Indigenous rights. On a smaller scale, a company called Falkenham Backhoe Services tried in vain to appeal a decision in the Nova Scotia Court of Appeal to reduce the compensation paid to a black employee who alleged racial discrimination in the workplace. The Nova Scotia Court of Appeal dismissed the application, which had been made to reduce the damages awarded to a black worker, who a human rights board of inquiry found had been the victim of discrimination on the job. The board of inquiry ordered the company to pay $15,300 to Mr. Gough for 20 weeks of lost wages and $8,000 for racial slurs he faced on the job. The company was also ordered to supply sensitivity training for all employees and to draw up a harassment policy for the commission to view.xxx

D. Cooperation of the country under review with human rights mechanisms

15. Canada was one of seven countries that blocked the creation of a universal declaration of human rights for indigenous people in August 2007. The charter was under discussion for approximately 20 years and was approved last summer by the UN General Assembly despite Canada’s objections with an overwhelming majority of 143 in favour to 4 against with 11 abstentions.xxxi This was the first time Canada, alongside the United States, Australia and New Zealand, demanded that a UN General Assembly resolution should not apply to those states that have not signed it.

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iii : The new law (Bill C-3) contains the possibility for ‘secret evidence’ to be used against the person subject to removal; it does not provide for disclosure rights to special advocates nor any disclosure obligation to government regarding exculpatory evidence; it contains provisions where the subject could be detained indefinitely without charge or trial; and it lacks express prohibition of evidence gathered through torture. For more information, see, “Parliament should amend bill on special advocates”, Human Rights Watch, Nov 19 2007, URL: http://hrw.org/english/docs/2007/11/28/canada17435.htm


viii The manual had been used since 2004 to train consular officials on how to detect signs of abuse in Canadians detained abroad. Under the heading, ‘Possible Torture/Abuse Cases,’ the manual lists Afghanistan, China, Egypt, Guantanamo Bay, Iran, Israel, Mexico, Saudi Arabia, Syria and United States as potential countries that have engaged in torture. See http://www.thestar.com/News/article/294899 - Envoy gives manual on ‘torture awareness’ - Guantanamo, China, Iran, Israel listed as possible sites for abuse – Jan 17 – Toronto Star


