

**KAIROS: Canadian Ecumenical Justice Initiatives**  
**Universal Periodic Review Concerning Canada**  
**February 2009**

## **Indigenous People's Rights**

### Declaration on the Rights of Indigenous Peoples

One of Canada's first actions after being elected to the HRC was to oppose adoption of the UN *Declaration on the Rights of Indigenous Peoples (Declaration)*. The harm caused to the advancement of Indigenous peoples' human rights, both domestically and internationally, by Canada's active and vocal opposition to the *Declaration* is compounded by an extensive propaganda campaign that fuels discrimination against Indigenous peoples by presenting the protection and promotion of Indigenous peoples' rights as posing a threat to the rights of non-Indigenous peoples.

In September 2007 when the UN General Assembly voted on the *Declaration*, Canada argued that it was forced to oppose it because it did not balance individual and collective rights, and because its adoption would threaten that the rights of non-Indigenous people in Canada.<sup>1</sup> Both these statements are simply untrue and indicate either a profound lack of understanding of the *Declaration* or a deliberate attempt to mislead the public.

### Land Rights

Canada's arguments for opposing the *Declaration* are largely disingenuous and resemble Canada's arguments for adhering to its **Comprehensive Land Claims Policy** despite repeated recommendations from various UN treaty bodies to have it changed to comply with international human rights treaties.

In its periodic report to the UN CERD in 2006, Canada stated: "Certainty with respect to the content and scope of ownership of and land rights to use land and resources is one of the primary goals" of the Comprehensive Land Claims Policy.<sup>2</sup>

In advance of its review CERD asked Canada to comment on "the concern expressed by the Committee on Economic, Social and Cultural Rights (CESCR) in its concluding observations that the new approaches adopted by the State party to the issue of the Aboriginal rights on land and resource ownership do not differ much from the previously taken extinguishment and surrender approach."<sup>3</sup>

Similar concerns were raised by the Human Rights Committee (2005)<sup>4</sup>, the Committee on the Rights of the Child (2003), CERD (2002), the Human Rights Committee (1999), and CESCR (1998), which recommended that "policies which violate Aboriginal treaty obligations and the extinguishment, conversion or giving up of Aboriginal rights and title should on no account be pursued by the State Party."<sup>5</sup>

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<sup>1</sup> Minister of Indian Affairs and Northern Development, Chuck Strahl, quoted in S. Edwards, "Tories defend "no" in native rights vote", the *Montreal Gazette* (14 September 2007).

<sup>2</sup> 17<sup>th</sup> and 18<sup>th</sup> periodic reports to CERD, CERD/C/CAN/18, 5 April 2006, page 13, paragraph 38.

<sup>3</sup> CERD, Questions put by the Rapporteur in connection with the consideration of the 17<sup>th</sup> and 18<sup>th</sup> periodic reports of Canada (CERD/C/CAN/18), Seventieth session, 19 Feb-9 Mar 2007. Question 19, page 3.

<sup>4</sup> UN HRC, Concluding Observations, 2005. CCPR/C/CAN/CO/5, paragraph 8.

<sup>5</sup> *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN CESCR, 1998, UN Doc. E/C.12/1Add.31, paragraph 18.

In its report Canada stated it no longer requires the extinguishment of Indigenous rights in the negotiation and settlement of land treaties with Indigenous peoples. “The ‘cede, release and surrender’ approach, which requires Aboriginal groups to give up all undefined Aboriginal rights in exchange for a set of defined Aboriginal rights set out in a negotiated treaty, has not been a requirement for the Government of Canada in treaty negotiations since 1998.”<sup>6</sup>

Canada explained that it replaced the extinguishment approach with “alternative techniques” which achieve certainty while maintaining Indigenous rights. These include a ‘modified rights model’ and a ‘non-assertion model’ Under the ‘modified rights model’ “aboriginal rights are not released, but are modified into the rights articulated and defined in the treaty,” while under the ‘non-assertion model’ “aboriginal rights are not released; the Aboriginal group agrees to exercise only those rights articulated and defined in the treaty and to assert no other Aboriginal rights.”<sup>7</sup>

According to UN Special Rapporteur Rodolfo Stavenhagen in his Report on his Mission to Canada, some Indigenous peoples “consider releasing their constitutionally recognized and affirmed rights through a negotiated settlement as unacceptable.” In addition, and notwithstanding assurances from Canada, “a number of Aboriginal representatives ... consider that the modern treaties approach does in fact continue to lead to the ‘release’ or extinguishment of rights.”<sup>8</sup>

Canada has likewise failed to “take appropriate legislative or administrative measures,”<sup>9</sup> as recommended by CERD in 2007, to regulate Canadian corporate activity and its impact on the rights of Indigenous peoples internationally. Despite holding a series of national roundtables on corporate accountability in 2006, Canada has not adopted or implemented the roundtable recommendations or taken any action to hold Canadian companies accountable for human rights violations involving Indigenous peoples in other countries.

## **Rights of Refugees and Migrants**

### Migrant Workers

The majority of migrant workers in Canada report that they continue to face unacceptable living and working conditions in Canada. Workplace health and safety standards are not properly monitored or enforced in violation of the spirit of the rights agreed to in Article 23 of UDHR if not the letter. In a recent study co-published by the Canadian Centre for Policy Alternatives – BC Office, Justicia for Migrant Workers -BC, Progressive Intercultural Community Services and the British Columbia Federation of Labour, migrant workers report that “employers are more concerned with the health and cleanliness of their plants than the effect of the workplace on workers”.<sup>10</sup>

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*Concluding Observations of the Committee the Elimination of Racial Discrimination*, UN CERD, 2002, A/57/18, paragraphs 330-331.

*Concluding Observations of the Committee on the Rights of the Child*, UN CRC, 2003, CRC/C/15/Add.215, paragraph 59.

<sup>6</sup> 17<sup>th</sup> and 18<sup>th</sup> periodic reports to CERD, CERD/C/CAN/18, 5 April 2006, page 13, paragraph 39.

<sup>7</sup> Idem.

<sup>8</sup> Rodolfo Stavenhagen, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN CHR, 61<sup>st</sup> Session, E/CN.4/2005/88/Add. 3 (2004), paragraphs 20 & 91 [*Mission to Canada*]

<sup>9</sup> CERD/C/CAN/CO/18/, paragraph 17.

<sup>10</sup> [http://www.policyalternatives.ca/documents/BC\\_Office\\_Pubs/bc\\_2008/bc\\_farmworkers\\_summary.pdf](http://www.policyalternatives.ca/documents/BC_Office_Pubs/bc_2008/bc_farmworkers_summary.pdf)

Migrant workers, specifically seasonal agricultural workers and live-in caregivers, are tied to a specific employer. This makes them highly vulnerable to abuse and exploitation. Workers are technically being forced to work 12-14 hours without over time paid. If workers complain, try to organize or unionize they are sent back. Repatriation is often used as a deterrent for workers' complains. .

### Family Reunification

Canada places several barriers to refugee and migrant family reunification. Refugee and immigrant families are separated for prolonged periods, due to policies and practices that block or delay reunification. These barriers include a narrow definition of family (excluding for example non-biological children), costly and time-consuming DNA testing and bars on sponsorship if the sponsor is receiving social assistance.

Refugees are among those hardest hit. They are sometimes forced to wait years to be reunited with their spouses and children overseas who often live in situations of danger and persecution. As a signatory of the Convention on the Rights of the Child, Canada has particular obligations to protect children, including by respecting their right to be with their family. Yet children of refugees in Canada often wait years to be allowed to travel to Canada, especially if they are in Africa or Asia. Even in cases where children are separated from both their parents, and by definition at risk, processing can take years.

### Refugee Appeal division

The Refugee Appeal Division (RAD) in Canada has been a long-standing issue of concern for KAIROS. The Canadian government has failed to implement the RAD as approved by Parliament in the 2001 Immigration and Refugee Protection Act. As a signatory to the 1951 Convention Relating to the Status of Refugees and the Convention Against Torture, Canada has an obligation not to return refugees to a country where they will face persecution or torture. Both the Inter-American Commission for Human Rights and the United Nations High Commissioner for Refugees have stated that a merit based appeals process is fundamental to a just refugee determination system. Failure to implement the Refugee Appeal Division denies refugees the right to a fair process and puts refugee lives in real danger.

### Canadian Experience Class

The Canadian Experience Class program (CEC) discriminates against so-called “unskilled or low skilled” migrant workers by denying access to applying for permanent residence. The new CEC “aims to facilitate the transition from temporary to permanent residence for certain temporary foreign workers and foreign students... “ The CEC will be limited to Skill Type 0 Management Occupations, Skill Level A (professional occupations), or Skill Level B (technical occupations and skilled trades) of the *National Occupation Classifications* (NOC). Lower-skilled occupations (NOC skill levels C and D) will not be eligible...”<sup>11</sup>

## **Rights of Low-Income Canadians**

### Social Services

In spite of legal guarantees, access to public services is inconsistent across jurisdictions in Canada. For low-income people, many public services have become prohibitively expensive and waiting lists for

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<sup>11</sup> <http://gazetteducanada.gc.ca/partI/2008/20080809/html/regle1-e.html>

vital social services ranging from shelter to childcare and mental healthcare are growing due to cutbacks in funding. Rising costs of transportation, especially in isolated areas, but also public transit in major cities, to access basic services such as children's primary education, and rising costs of other needs such as heat, access to potable water, and de-listed health services creates unequal access to public services.

Social security is not consistently available in violation of Article 22 of UDHR. Income security programs such as 'Workfare' use inflexible and invasive procedures of eligibility that determine the needs of people seeking assistance. These methods often lead to complex and tedious administrative procedures which most people find difficult to negotiate.

The Canadian Government has failed to uphold the 'right to security in the event of unemployment' by reducing access to employment insurance (EI) and failing to ensure adequate income security benefits *interalia*. Meeting basic needs in Canada has become increasingly precarious and access to the Federal EI system paid for by all workers, is as low as 20% in some areas, as high as 45% in others and in most jurisdictions there is a wait time period of two or more weeks, too long for low wage workers to maintain basic needs.

#### Employment and Unionization

Policies in Canada often penalize workers wishing to leave jobs to pursue better opportunities by denying them access to both employment insurance and welfare. Thus many workers endure substandard working and safety conditions and various abuses by employers rather than risk suffering long periods of no income and potentially losing their homes.

The right to unionize and the ability of unions to protect workers interests has been undermined by a variety of measures introduced since 1995, many of which can be linked to the effect of NAFTA provisions which allow employers to relocate jobs and abandon workers more easily. This development makes it much more difficult for unions to negotiate agreements that can improve working conditions and leaves unions struggling to mitigate the negative impacts of an increasingly insecure labour market.

With the exception of two provinces, provincial, territorial and federal human rights codes do not include protections on the basis of economic status or social condition. In most of Canada, there is no remedy or mechanism to address discrimination based on poverty. This is a grave concern as the reality of poverty facing people vulnerable to discrimination based on grounds such as race, gender or disability, leaves these groups with very limited legal remedies based on existing protected grounds. Even where certain provisions of the charter of rights and freedoms appear to offer potential remedies, access to justice has been further limited by the recent cancellation of the court challenges program, which was established to provide vulnerable groups access to charter challenges to redress systemic inequality.

#### Housing and Health

Rising costs of food, housing, energy and transportation in an environment where wages and income security have been reduced, are contributing to a crisis of growing hunger and homelessness. Increasing numbers of low-income people are unable to afford electricity for heating and cooking. Families unable to properly provide these basic needs face the risk of intervention by children's aids

societies to remove the children into wardship by the state on the basis of ‘failing to provide necessities’.

A social determinants health framework that reflects economic, social and cultural rights has been developed to guide health and social policy, however it is not applied to funding structures, delivery systems or evaluations of most social programs. Many human rights violations arise from neglect caused by severely reduced delivery systems leading for example, to unavailability of vital services such as childcare, water treatment, or family doctors in many rural areas and reserves. It has been stated many times by civil society that Canada needs a national housing strategy, national energy policy and poverty reduction/eradication strategy.

A review of civil and political rights in 1999 observed that failure to provide adequate shelter during the winter in Canada, resulting in numerous deaths among people who have died of exposure violates the basic right to life. In spite of surplus budgets in recent years, little effort has been made by the federal government to provide resources for either the construction of new social housing or the maintenance and upkeep of existing housing, in spite of prior agreements with provinces, territories, band councils and municipalities.

#### Education

The costs of post secondary education have been steadily rising for over a decade, leading to the exclusion of many low-income youth. Increasing debt loads on students as well reduced access exacerbate poverty and limit career choices. Primary and secondary education curriculums still fail to include education on international human rights laws and principles, reducing students’ competence to participate in the political life of Canada and to protect themselves. Curriculum related to arts and culture and physical education has been severely reduced especially for schools serving low-income populations.

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