



**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.<sup>i</sup> Human rights groups have criticised the government for not consulting a large cross-section of the population in the drafting of the Bill.<sup>ii</sup> 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.<sup>iii</sup> 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.<sup>iv</sup>
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 treated and monitoring visits of detention facilities by Canadian Forces, Canada cannot assure that detainees handed over to local forces will not be tortured.<sup>v</sup> 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.<sup>vi</sup> 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.<sup>vii</sup> 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.<sup>viii</sup> 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.<sup>ix</sup> 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,<sup>x</sup> 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.<sup>xi</sup>
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.<sup>xii</sup>

- **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.<sup>xiii</sup> 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.<sup>xiv xv</sup> 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.<sup>xvi</sup>

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,"<sup>xxvii</sup> 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.<sup>xxviii</sup> 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.<sup>xxix</sup> On 9 November 2008, after intense pressure, the charges against the aid worker were dropped.<sup>xxx</sup>

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<sup>xxxi</sup> 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.<sup>xxxii</sup>

- *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.<sup>xxxiii</sup> 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.<sup>xxxiv</sup> 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<sup>xxxv</sup> 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<sup>xxxvi</sup> and the Grassy Narrows in Ontario,<sup>xxxvii</sup> 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.<sup>xxxviii</sup>

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.<sup>xxix</sup>

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.<sup>xxx</sup>

#### 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.<sup>xxxi</sup> 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.

<sup>i</sup> <http://hrw.org/english/docs/2007/11/28/canada17435.htm> - Parliament should amend bill on special advocates – Nov 19 2007– Human rights Watch letter

<sup>ii</sup> <http://www.thestar.com/comment/columnists/article/300118> - Security law still flawed, lawyer says – Feb 4 2008– Toronto Star

<sup>iii</sup> <http://hrw.org/english/docs/2007/11/28/canada17436.htm> - Human Rights Watch and Amnesty International Letter on C-3 Bill Hearings – November 28 2007

<sup>iii</sup> : 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>

<sup>iv</sup> Canada and International Protection of Human Rights: An Erosion of Leadership – December 2007 – Amnesty International Canada – Page 17

<sup>v</sup> <http://www.thestar.com/News/article/273833> - Rights groups win round in Afghan detainee case – November 6 2007– Toronto Star

<sup>vi</sup> [http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20080131/mackay\\_kandahar\\_080130/20080131/](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20080131/mackay_kandahar_080130/20080131/) - MacKay raised prisoner abuse claims in Kandahar – Jan 29 2008 (updated 31 January 2008)– CTV News

<sup>vii</sup> <http://www.thestar.com/comment/columnists/article/article/308391> - Canadian troops resume handover of detainees- Mar 1 2008– The Toronto Star

<sup>viii</sup> 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> - Envoys given manual on 'torture awareness' - Guantanamo, China, Iran, Israel listed as possible sites for abuse – Jan 17 – Toronto Star

<sup>ix</sup> <http://hrw.org/english/docs/2008/02/01/canada17958.htm> - Letter to Canadian Prime Minister Stephen Harper on Omar Khadr – Feb 1 2008 Human Rights Watch Letter

<sup>x</sup> <http://www.thestar.com/News/article/250015> - MacKay briefed on what not to say about Khadr – August 26 2007– Toronto Star

<sup>xi</sup> : [http://canadianpress.google.com/article/ALeqM5gxvjz67MqoE3WW4ITkQT8\\_uW\\_7zw](http://canadianpress.google.com/article/ALeqM5gxvjz67MqoE3WW4ITkQT8_uW_7zw) - Terror suspect Khadr wins partial access to federal papers for defense/ <http://www.thestar.com/News/Canada/article/429524> 'Khadr wins bid to obtain interrogation documents' 24 May 2008 Toronto Star

- xii Canada and International Protection of Human Rights: An Erosion of Leadership – December 2007 – Amnesty International Canada – Page 14
- xiii [http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20071011/canada\\_refugees\\_071011/20071011?hub=Canada](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20071011/canada_refugees_071011/20071011?hub=Canada) - UN concerned about Canada turning away refugees – Oct 11 2007 – CTV News
- xiv <http://www.nationalpost.com/news/story.html?id=132814> - Federal court strikes down third-country refugee agreement – November 29 2007– National Post/ <http://www.canada.com/montrealgazette/news/story.html?id=d6fd9f6e-2045-43bf-b1f6-32f8d90ccc87> “Court strikes down 'safe third country' pact”-30 November 2007 The Gazette
- xv : Ibid.
- xvi [http://www.embassymag.ca/html/index.php?display=story&full\\_path=/2008/february/6/safethird/](http://www.embassymag.ca/html/index.php?display=story&full_path=/2008/february/6/safethird/) - Safe Third Country Stays—For Now – Feb 6 2006– Embassy, Canada’s Foreign Policy Review
- xvii [http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20070928/windsor\\_refugees\\_070928/20070928?hub=TopStories](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20070928/windsor_refugees_070928/20070928?hub=TopStories) - Day promises 'consequences' for illegal refugees – September 28 2007
- xviii <http://www.nytimes.com/2007/09/29/us/29immig.html> - Canada arrests worker aiding refugees - New York Times, 29<sup>th</sup> November 2007.
- xix <http://www.thestar.com/News/article/272535> - Legal group calls arrest 'indefensible' – Nov 1 Toronto Star  
<http://www.thestar.com/comment/article/275242> - Border arrest crossed line – November 12 – Toronto Star
- xx <http://www.thestar.com/printArticle/275074> - Refugee smuggling charges dropped – November 9 – Toronto Star -
- xxi : <http://daccessdds.un.org/doc/UNDOC/LTD/N07/577/06/PDF/N0757706.pdf?OpenElement> - A/C.3/62/L.29 – UN GA Resolution, Global Moratorium on Death Penalty.
- xxii <http://hrw.org/english/docs/2007/11/07/canada17275.htm> - Canada: Protect Citizens Facing Death Penalty in US – November 7 – Human Rights Watch Letter  
<http://www.canada.com/topics/news/national/story.html?id=8a552f80-f2ca-47a6-a297-1e9c58f07349&k=98360> - Group denounces Canada over death penalty- Canada.com – November 7 2007
- xxiii <http://news.bbc.co.uk/2/hi/americas/6747071.stm> - Canada PM in land claims pledge – 12<sup>th</sup> June 2007 – *BBC News*  
<http://www.afn.ca/misc/SC-NR.pdf> - THE GOVERNMENT OF CANADA ANNOUNCES NEW KEY STEP TO RESOLVE SPECIFIC CLAIMS IN CANADA – Nov 27 2007– Assembly of First Nations News Release.  
<http://www.parl.gc.ca/legisinfo/index.asp?Language=E&Chamber=N&StartList=A&EndList=Z&Session=15&Type=0&Scope=I&query=5340&List=stat/>  
Status of Bill C-30
- xxiv : “Canadian Government apologises for abuse of indigenous people”, *The Washington Post*, 12<sup>th</sup> June 2008, URL: <http://www.washingtonpost.com/wp-dyn/content/article/2008/06/11/AR2008061100419.html?hpid=sec-world>
- xxv Canada and International Protection of Human Rights: An Erosion of Leadership – December 2007 – Amnesty International Canada – Page 16  
<http://www.ens-newswire.com/ens/sep2007/2007-09-25-02.asp> - Amnesty International Canada Urges Halt to Logging Indigenous Land – Sept 25 2007– Environment News Service
- xxvi <http://www.amnesty.ca/canada/AMR200103.php> - *Amnesty International Canada* – ““Time is wasting”: Respect for the land rights of the Lubicon Cree long overdue”.
- xxvii [http://www.amnesty.ca/themes/indigenous\\_grassy\\_narrows.php](http://www.amnesty.ca/themes/indigenous_grassy_narrows.php) - *Amnesty International Canada*, “Grassy Narrows- An Overview”  
<http://www.amnesty.ca/amnestynews/upload/grassynarrows0907.pdf> - *Amnesty International Canada*, “The law of the land: Amnesty International Canada’s position on the conflict over logging at Grassy Narrows”, 20<sup>th</sup> November 2007.
- xxviii “Ipperwash enquiry spread blame for George’s Death”, *CBC News*, 31<sup>st</sup> May 2007, URL: <http://www.cbc.ca/canada/story/2007/05/31/ipperwash-main.html>
- xxix : “Upholding Indigenous Land Rights in Ontario: Amnesty International’s Urgent Call for Action on Implementation of Key Recommendations from the Ipperwash Inquiry”, *Amnesty International Canada*, 10<sup>th</sup> June, 2008. URL: [http://www.amnesty.ca/amnestynews/upload/Brief\\_Ipperwash\\_Inquiry\\_Implementation\\_June\\_2008.pdf](http://www.amnesty.ca/amnestynews/upload/Brief_Ipperwash_Inquiry_Implementation_June_2008.pdf)
- xxx “Appeal court dismisses company’s request to reduce penalty in discrimination case”, *Chronicle Herald*, 26<sup>th</sup> April 2008. URL: <http://www.business-humanrights.org/Links/Repository/233651/jump;> [http://www.business-humanrights.org/Links/Repository/233651/link\\_page\\_view](http://www.business-humanrights.org/Links/Repository/233651/link_page_view) (last accessed on 1 September 2008).
- xxxi <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm> and “Backpedaling on native rights”, *The Toronto Star*, 22<sup>nd</sup> August 2007, URL: <http://www.thestar.com/comment/article/248543>

**\*All links have been last accessed on 1 September 2008**