

## **SUBMISSIONS**

### **INDIGENOUS PEOPLES' RIGHTS; CRIMINAL JUSTICE AND DISCRIMINATION; ECONOMIC, SOCIAL AND CULTURAL RIGHTS; REFUGEES AND RESETTLEMENT; TORTURE AND EXTRADITION**

**Joint Submission to the Office of the High Commissioner for Human Rights, in relation to the Universal Periodic Review of Canada, third cycle, 30<sup>th</sup> session of the UN Human Rights Council (April-May 2018)**

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## **SUBMISSIONS OVERVIEW:**

The submissions below are provided with respect to the third Universal Periodic Review of Canada, to be conducted in 2018. The submissions are provided by a small group of faculty and visiting scholars who are working, independently and jointly, on ensuring Canada complies with its binding obligations in international law. We provide these brief, general, and targeted submissions on the following five areas:

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(A) **INDIGENOUS PEOPLES' RIGHTS**

1. **Children and Equitable Access to Public Services:** The Canadian federal government must take concrete, measurable steps to ensure equitable access of First Nations and Inuit children to public services – such as education, health, housing, food security, and access to clean water among others – without delay. We are concerned about the layered impacts of these failures upon Indigenous children with special needs including physical and developmental disabilities, addictions, and mental health concerns.

We note the decision of January 26, 2016 of the Canadian Human Rights Tribunal (“Tribunal”) ordering Canada to provide these services, and that the UN Committee on the Elimination of Racial Discrimination also recommended that Canada comply with the Tribunal’s decision. We further note that Canada has indicated it will appeal the Tribunal’s decision.

Apart from the outcome of any appeal, it is our view that Canada is duty-bound to provide these public services to Indigenous children. Canada’s duties to First Nations and Inuit children exist (independently of the Tribunal order) as duties found in Canada’s legal constitutional obligations, in Canada’s legal international obligations, and incontrovertibly as a moral duty.

2. **Inquiry into Missing and Murdered Indigenous Women and Girls:** The repeated concerns of the affected indigenous families, and delays and staff resignations from the Inquiry into Missing and Murdered Indigenous Women and Girls, must be addressed by the Canadian federal government. To allow the Inquiry to continue in such circumstances is not benign, but allows continuation of an ineffectual process, ignores the input of families, and importantly, prevents the realization of justice for this multi-generational, criminal, and national tragedy.
3. **Indigenous People and the Criminal Justice System:** Canada must address the disproportionate numbers of Indigenous women and men present in the criminal justice system and in prisons (i.e. in federal and provincial and territorial prisons – including disproportionate segregation of indigenous peoples in prisons); and the numbers of Indigenous persons who are adversely affected by systemic flaws in Canada’s bail and remand system including unjustifiable delay and unnecessary bail conditions that perpetuate interaction with the criminal justice system.
4. **Surveillance of Indigenous Peoples:** We are seriously concerned by reports of government surveillance of Indigenous peoples throughout Canada, particularly in the context of Indigenous peoples’ efforts to protect their lands and resources, the

violation of privacy rights of Indigenous peoples, and of their rights to self-determination and self-governance.

We are also concerned by Canada's constraint of the right of Indigenous peoples to freedom of association, freedom of expression, and freedom of speech, for example when protests around environmental and resource issues are disrupted by the state, and also any ensuing use of disproportionate force by state actors against Indigenous protestors.

5. **Free and Informed Consent of Indigenous Peoples:** We are concerned that Government or private sector activity affecting the land and resources of Indigenous peoples must be carried out with effective, meaningful consent of Indigenous peoples, and that such consent must be fully informed and free.
6. **Ongoing Systemic Discrimination against Indigenous Peoples:** Unfortunately, the issues we have noted above are not the only issues of concern for us, regarding systemic discrimination.

We are concerned about the ongoing, multi-generational impacts suffered by Indigenous people due to systemic inequities – some of which are noted in the above five points – and the aggravated harms caused by the lack of proper resources directed to Indigenous people in the wider context of inequitable laws and policies that detrimentally impact the day-to-day life and futures of Canada's Indigenous peoples.

## (B) **CRIMINAL JUSTICE AND DISCRIMINATION**

7. **Carding:** We are seriously concerned by the police practice of "street checks", referred to also as "carding". In major urban areas in Canada including Toronto, Montreal and Vancouver, our independent research has confirmed that police forces engage in randomly stopping individuals – predominantly black males and youths, Indigenous people, and other persons of colour– and asking them for personal identifying information which is collected and stored by police forces. In addition to this unjustifiable and discriminatory treatment, we are also concerned about the unknown and varying practices of collection, retention, access, dissemination, and destruction of such information.

It is our view that such police practices are racially-motivated, discriminatory, and unjustified, and contravene constitutional and international law protections to equality rights, due process rights, and privacy rights. It is our view that there are no demonstrable, evidentiary gains to public safety, and notwithstanding any counter-

arguments of law enforcement, it is our view that such practices are unjustifiable, and non-compliant with the *Canadian Charter of Rights and Freedoms* and Canada's obligations in international human rights law.

8. **Disproportionate Numbers of African-Canadian and Indigenous People in the Criminal Justice System:** African-Canadian and Indigenous People are disproportionately represented in police interactions (i.e. street checks above), and in the criminal justice system, including in prisons. We are also concerned by reports of disproportionate uses of administrative segregation in prisons particularly against black Canadians and against Indigenous people.
  
9. **Police Interactions and Individuals with Disabilities:** We are concerned by the reports of disproportionate force, including lethal or non-lethal weapons such as tasers, used by police or law enforcement against individuals with disabilities. We are further concerned that the trainings provided to police forces on de-escalation, mental health and disability, and use of force guidelines, are varied across the country and are insufficient. We urge the federal and provincial governments to address this serious issue by studying and incorporating international best practices on use of force by police, and consulting meaningfully with mental health, addiction, developmental and physical disability experts including those with lived experience.

### (C) ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

10. **National Housing and Poverty Strategies:** We commend Canada on its commitment to a national housing strategy (expected Fall 2017), and to a national poverty reduction strategy (expected Spring 2018).

We call upon Canada to ensure that the rights protected in international law, and particularly in the *UN Covenant on Economic, Social and Cultural Rights (ICESCR)*, are embedded into these national strategies. We also call upon these strategies to include solutions for the disproportionate impact of homelessness, housing insecurity, and poverty upon Indigenous people, African Canadians and people of colour, people with disabilities, and people with addictions.

11. **Justiciability:** Further, we call upon Canada to take steps to ensure the justiciability of economic, social, and cultural rights protected in the *ICESCR*, as a means of ensuring legal remedies for violations of these rights, and as a means of combatting the disproportionate harms experienced by disadvantaged groups including visible

minorities, Indigenous peoples, homeless persons, indigent persons, and persons with physical and/or mental disabilities and/or addictions. We note the recommendations of the UN Committee on Economic, Social and Cultural Rights in this regard in its 2016 Concluding Observations of Canada's state report on its implementation of the covenant.

#### (D) REFUGEES AND RESETTLEMENT

12. We commend Canada on its public position in this past year affirming its commitment to fulfil its international humanitarian obligations to refugees, and to comply with its legal obligations pursuant to the *1951 UN Convention Relating to the Status of Refugees*.

However, we raise here the following concerns:

- a. Canada must reaffirm its commitment to the principle of *non-refoulement* which includes reassessment of 'safe third country' and any removals to any jurisdiction in which asylum seekers, permanent residents, or migrants may face risk of torture or persecution;
- b. Canada must end any immigration detention of children. Further Canada must consider all of its obligations to children under both the *1951 Convention* and under the *UN Convention on the Rights of the Child (CRC)*, as well as other international laws, and the *Canadian Charter of Rights and Freedoms*;
- c. Canada must increase federal funding for the processing of asylum claims, particularly as applicants have had to wait years for a decision;
- d. Canada must increase the number of resettlement spaces for 2018. Further, Canada must increase resource allocation to Immigration, Refugees and Citizenship Canada (IRCC) to allow processing of private sponsorship claims in a timely and transparent manner, rather than the years it can currently take for processing of an application; and
- e. Canada must increase the age of dependent children of refugees to 21 years of age, as promised in the last federal general election, and must take other steps consistent with the *1951 Convention* and the *CRC*, to encourage family unity and family reunification for refugees. This may include expanding the definition of family member who may be sponsored under family reunification classes.

## (E) RIGHT TO BE FREE FROM TORTURE

13. **Counter-terrorism Laws, Security Certificates, and Ability of Special Advocates to Function:** Canada must ensure that in the use of Security Certificates under the *Immigration and Refugee Protection Act*, whereby non-citizens are administratively detained and subject to deportation proceedings for national security reasons, comply with principles of fundamental justice, security of person, and due process rights under the *Charter*, as well as with due process rights under the *ICCPR* and the *UN CAT*. We are particularly concerned that new national security laws in Canada have given the government discretion to withhold relevant information from Special Advocates in Security Certificates, which in our view can violate due process rights, rights to liberty and security of person, and principles of fundamental justice and *non-refoulement*.
14. **Civil Redress and State Immunity:** We remain concerned by the lack of effective measures for victims of torture to seek civil redress in Canadian courts. We call upon Canada to comply with Article 14 of the *UN Convention Against Torture*, and to amend the *State Immunity Act* to enable redress for all victims of torture.
15. **Extradition:** We call upon Canada to reaffirm its commitment to the principle of *non-refoulement* in the context of extradition requests from countries known to rely upon information procured by torture. In this regard, we call upon Canada to commit to extradition only upon the basis of admissible, reliable evidence where the alleged crime would also be a crime in Canada, in keeping with the principles of fundamental justice and Canada's international legal obligations.