THE SHRINKING SPACE FOR DISSENT IN CANADA

Interactive Dialogue Agenda Item 3 – Freedom of Expression

Written Statement by Lawyers Rights Watch Canada\textsuperscript{1} to the 26\textsuperscript{th} Session of the United Nations Human Rights Council

I. Recommendations

Lawyers Rights Watch Canada calls on the Human Rights Council to promote and protect the rule of law and fundamental rights and freedoms in Canada by monitoring and recommending:

1. An immediate cessation of the surveillance of human rights defenders, Indigenous groups, and environmental organizations in Canada.
2. An immediate end to discriminatory inquiries and audits by the Canada Revenue Agency of Canadian charitable organizations.
3. The creation of an enabling environment for civil society organizations (CSOs) and human rights defenders, including,
   a. An immediate cessation of public rhetoric by the Government of Canada calling environmental protection and other groups “radicalized” and suggesting that their receipt of international funding makes them foreign agents working against Canadian interests.
   b. Amendments to the \textit{Income Tax Act}\textsuperscript{2} and/or the regulatory and policy framework, which unduly limit charitable activities by restricting policy and advocacy work.

II. Background

The capacity of CSOs to engage in advocacy and dissent depends on a complex interplay between regulatory, political and social factors. The concept of an “enabling environment” has emerged to define the scope of these factors and goes beyond identifying the restrictions

\textsuperscript{1} Lawyers’ Rights Watch Canada (LRWC) is a committee of Canadian lawyers who promote human rights and the rule of law by advocating internationally for human rights defenders in danger and by promoting implementation and enforcement of international standards protecting independence and security of human rights defenders. LRWC was granted Special Consultative Status by the Economic and Social Council of the United Nations on 21 July 2005. This statement is endorsed by the International Civil Liberties Monitoring Group, a national coalition of Canadian civil society organizations mandated to defend civil liberties and human rights in the context of national security.

\textsuperscript{2} RSC, 1985, c. 1 (5th Supp.).
that prevent groups from existing, functioning and growing and extends to include conditions that actively help civil society to function and thrive. Not only has the present federal government not created an enabling environment, but its policies and practices have created a harsh and punitive environment for dissent and dissenters.

LRWC notes with growing concern the constricting space for dissent in Canada for CSOs and human rights defenders. Several sources have undertaken research and documentation of this trend, including Amnesty International, the British Columbia Civil Liberties Association (BCCLA), CIVICUS, Human Rights Watch and Voices-Voix, a Canadian coalition of more than 200 CSOs.3

In October 2013, Mr. Maina Kiai, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, expressed concern about reports from CSOs in Canada regarding increasing legal, political, economic and regulatory restrictions.4 Particularly since 2010, Canada has deployed an unprecedented range of restrictive measures to reduce the legal, financial and political space available to CSOs and human rights defenders.5 Areas targeted and social programs dismantled include international development, women’s equality, and immigrant and refugee support organizations. Also targeted are academics, Indigenous individuals, organizations and communities who exercise their right to dissent and who seek to protect and promote human rights.6

The documented tactics and measures used by the federal Government of Canada include:

- The monitoring and surveillance of Indigenous organizations, environmental groups and human rights defenders engaged in lawful activities.7 As well, there is evidence that

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4 Interview with Maina Kiai, Special Rapporteur on freedom of peaceful assembly and of association (McGill University, October 23, 2013), Online: YouTube: <http://www.youtube.com/watch?v=FpoaQI5U9Gs>


7 See notes 3 and 6, and accompanying text. The alleged surveillance of human rights defender Cindy Blackstock, see the findings of the Office of the Privacy Commissioner of Canada, Aboriginal Affairs and Northern Development Canada wrongly collects information from First Nations activist’s personal Facebook page Findings Under the Privacy Act (2012—2013): Online: <http://www.priv.gc.ca/cf-dc/pa/2012-13/pa_201213_01_e.asp>. For a judicial analysis of allegations of reprisal and surveillance of Dr. Blackstock and the First Naions Child and Family Caring Society for their work advocating for Indigenous children on reserves in Canada, see First Nations Child and Family
Canadian security authorities have shared sensitive investigative information with private sector interests and with other government agencies.8

- The targeted defunding of leading international development organizations,9 Indigenous groups,10 women’s equality and pay equity groups,11 and social justice groups.12

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8 See Complaint re Surveillance of Canadian Citizens and Information Sharing with the National Energy Board to the Commission for Public Complaints against the RCMP (filed by the BCCLA, February 6, 2014); Complaint re Surveillance of Canadian Citizens and Information Sharing with the National Energy Board (filed by the BCCLA, February 6, 2014). Both are available online: BCCLA <http://bccla.org/dont-spy-on-me/>.


10 Documents obtained from Canadian authorities indicate that since 2006 Canada’s federal government has closely monitored indigenous communities across Canada that engage in direct action for protection of their territories, including the Tobique First Nation, Tsartlip First Nation, Algonquins of Barriere Lake, Tzestan Biny (Fish Lake) First Nation, Six Nations, Grassly Narrows, Stz’uminous First Nation, the Likhts’amisyu Clan of the Wet’suwet’en First Nation, Gitxalaa First Nation, Wagmatcook First Nation, Innu of Labrador, Pikangikum First Nation. See Russell Diabo and Shiri Pasternak, “First Nations under Surveillance: Harper Government Prepares for First Nations ‘Unrest.” Media Co-op (June 7, 2011); <http://www.mediacoop.ca/story/story-first-nations-under-surveillance/7434>; Martin Lukacs and Tim Groves, “RCMP spied on B.C. natives protesting pipeline plan, documents show” Toronto Star (May 9, 2012). See also the BCCLA complaints, see note 8, above.


• Public vilification and smear campaigns against environmental groups and human rights defenders,\textsuperscript{13} as well as the orchestration of such campaigns with groups having close ties to government.\textsuperscript{14}

• Increasingly restrictive interpretations of tax law by federal revenue authorities to strip established environmental and human rights organizations of their charitable status or to impose significant regulatory burdens, thereby limiting their effective operation and capacity to raise funds.\textsuperscript{15}

• Reprisals against government whistleblowers, including a government lawyer who has challenged the federal Government’s failure to advise Parliament of new legislation that is likely to violate the Canadian Charter of Rights and Freedoms (which implements many of Canada’s international human rights obligations) and well as international human rights law itself.\textsuperscript{16}

Every elected government has the right to pursue its policies and agenda: LRWC submits, however, that attacks go further and inhibit legitimate work of CSOs and human rights defenders.

III. International Standards

Monitoring, surveillance, and information sharing with other government agencies and with private sector interests create a chilling effect for groups and individuals who wish to participate peacefully in public processes. Such activities also interfere with privacy. The rights to privacy, freedom of expression, opinion, association, and peaceful assembly are protected by the \textit{International Covenant on Civil and Political Rights}, notably Articles 17, 18, 19, 21, and 22. In May 2012, Mr. Maina Kiai outlined best practices for the rights to freedom of peaceful assembly and of association, including for CSOs.\textsuperscript{17} Mr. Kiai noted that the “right to freedom of association obliges States to take positive measures to establish and maintain an enabling environment,” including the obligation to ensure that organizations can operate freely, without

\textsuperscript{13} In some cases, rhetorical vilification has carried implicit or even explicit overtones of criminalization and subversive activity. The Hon. Joe Oliver, Minister of Natural Resources in 2012 accused environmental and “other” groups of being “radical” and pursuing a “radical ideological agenda.” Open Letter, Government of Canada: Online: \url{http://www.nrcan.gc.ca/media-room/news-release/2012/1/1909}. The public vilification of such groups has targeted such well-established and respected CSOs as Environmental Defence, Tides Canada, the David Suzuki Foundation and the Sierra Club Canada Foundation: Kristin Courtney, “Canadian resource firms step up legal fight against green groups” (Thomas Reuters Foundation, 22 January 2013).


\textsuperscript{15} See e.g. the case of Edgar Schmidt, currently before the Federal Court of Canada. See the compendium of court proceedings at \url{http://charterdefence.ca/court-proceedings.html}. For a case summary, see Canadian Journalists for Free Expression, \url{<http://www.cjfe.org/resources/features/update-canadian-whistleblower-edgar-schmidt>}.  


\textsuperscript{17} Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, online: \url{http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.27_En.pdf}.  


fear of smear campaigns. He further noted that associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection, stating: “Associations should enjoy, inter alia, the rights to express opinion, disseminate information, engage with the public and advocate before Governments and international bodies for human rights.” Finally, he underscored that the ability of associations to access funding and resources is integral and vital to freedom of association.18

**IV. Conclusion**

The ability to participate freely and meaningfully in debates on key public policy and political questions engages Canada’s international human rights obligations such as obligations to ensure freedoms of opinion, expression, peaceful assembly, and association. It further engages with the growing emphasis on the processes and mechanisms that facilitate and enable the exercise of these rights and freedoms, including an enabling environment, the duty to negotiate, to consult, to accommodate, and to participate in democratic governance.19

Some mechanisms that foster the role of civil society to participate in policy debates are the availability of spaces for inclusive dialogue with governments, the meaningful opportunity to influence policy agendas, a legal and policy framework that facilitates collective organizing, and the ability to raise funds. While Canada is to be applauded for recent efforts in 2014 to respond to these criticisms and develop a framework for an enabling environment, the reality on the ground for CSOs and human rights defenders remains troubling.

Restrictive and punitive tactics deployed by the federal government of Canada have reduced the operating and fundraising capacity of human rights defenders and CSOs that oppose government policies. One particularly troubling trend is the selective targeting of organizations by Canadian revenue authorities to strip certain organizations of their charitable status. Another is the public vilification of those with whom the government disagrees, leading the public to believe that CSOs and human rights defenders engaged in lawful activities are dangers to the State to be surveilled and spied upon with impunity.

**VII. UN Human Rights Council Mandate**

The United Nations Human Rights Council is mandated to promote and protect human rights by, *inter alia*, preventing violations, removing obstacles to enforcement, engaging states in dialogue, and making recommendations for the protection of human rights.20 The Council should affirm the illegality of monitoring and surveillance activities directed against the peaceful and lawful activities of CSOs and human rights defenders that promote environmental protection, Indigenous Peoples’ rights and fundamental rights and freedoms. The Council should encourage Canada to undertake practical measures to reinstate an enabling environment for CSOs and human rights defenders in Canada, including the

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18 Ibid.
20 General Assembly Res. A/RES/48/141 20 Dec. 1993, articles 3 (a), (f), (g), and General Assembly Res. A/RES/60/251, 3 Apr. 2006, art. 5(i).
cessation of surveillance and intimidation of peaceful CSOs and human rights defenders, and the development of more modern tax framework for charitable activities that allows CSOs and individuals to participate freely in democratic governance.