

## **Report on Canada's Compliance with the Human Rights instruments For the Occasion of the May 2013 Periodic Review of Canada**

### ***Introduction***

The Canadian Centre for Victims of Torture (CCVT) is a non-governmental charitable organization that helps survivors of torture to overcome the lasting effects of torture, war, genocide and crimes against humanity. Since its inception in 1977, the CCVT has provided services to over 19,000 survivors of torture, war from 136 countries. The centre is the first of its kind to be established in North America and the second such facility in the world. Working with the community, the centre supports survivors in the process of successful integration into Canadian society, works for their protection, and raises awareness of the continuing effects of torture, war, genocide and crimes against humanity. It provides "hope after the horror."

The centre offers survivors and their families a wide range of holistic services in the broad areas of settlement, mental health, and child/youth programming. It also offers coordinated professional services, including specialized medical and legal support. The CCVT conducts nationwide public education programs and specialized training to share its expertise with other service providers, governmental organizations, inter-governmental agencies and the general community about torture, its effects, and ways to provide an appropriate response.

Moreover, the CCVT has provided support to people in limbo, i.e., Convention refugees and many others who often fall through the cracks due to gaps in the Immigration act and problems such as the lack of identification documents. Being caught in limbo results in prolonged anguish and separation from loved ones and aggravates the impact of the past trauma on survivors. In such cases, our support has included ongoing contact with Canadian and UN officials, providing information and special counselling to refugees, urging the government for policy change, and ongoing collaboration with sister organizations such as the Ontario Council of Agencies Serving Immigrants and the Canadian Council for Refugees.

In our effort to prevent torture, we have been active in monitoring national and international instruments relevant to the protection of refugees, survivors of torture, genocide, war, and crimes against humanity. We have attended UN seminars on the prevention of torture and the rehabilitation of survivors and similar conferences in countries such as Switzerland, Denmark, Ethiopia, the former Yugoslavia, Chile, Peru, Cyprus, India, Thailand, Austria, Australia, United States of America, Nigeria, Uganda, Rwanda, and South Africa.

Given our knowledge of, and expertise in, physical, psychological and social issues faced survivors we welcome this opportunity to share our insights into a very important area of our human rights concern. We leave other areas of Canada's compliance with its human rights obligations to other sister agencies.

## Canada: A Global Pioneer of Human Rights

Canada has ratified most of the international human rights instruments including the UN Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). On June 24, 1987, Canada ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Canada has also accepted the competence of the UN Human Rights Committee and the Committee against Torture to consider communications from individuals who feel that their rights (as enumerated in the ICCPR and CAT) have been violated without domestic redress. It is with the pioneering efforts of Canada that the UN General Assembly adopted Convention on The Rights of the Child on November 20, 1989.

Canada joined the Organization of American States (the OAS) as an observer in 1972 and became a full member on January 8, 1990. The country is therefore subject to the jurisdiction of the Inter-American Commission on Human Rights.

In terms of domestic instruments, there are provisions in the Canadian Charter of Rights and Freedoms for the most fundamental rights of human persons. They include: the right to life, liberty and security of the person (Section 7), and the provision that “everyone has the right not to be subjected to any cruel and unusual treatment or punishment” (Section 12). Section 9 asserts the right not to be arbitrarily detained or imprisoned. Section 32 of the Charter guarantees the rights of private persons against action by the federal and provincial legislatures and governments.

Canada’s Criminal Code includes the absolute prohibition of torture. Section 269.1 of the Code provides a definition of torture that is similar to the definition contained in Article 1 of the CAT. Section 269.1(3) of the Criminal Code is an important tool in the prevention and prohibition of torture, according to which a command from a superior does not justify torture.

Canada has ratified and incorporated the Rome Statute of the International Criminal Court into Canadian legislation. This led to the passage of the Crimes against Humanity and War Crimes Act, which acts as a tool in the prosecution of torturers, war criminals and those who have committed crimes against humanity within or outside of Canada.

In 1997, the Canadian Forces adopted its Code of Conduct, which provides explicit instructions about respect for the Convention against Torture, and the prohibition of torture and inhuman treatment. Rule 6 of the Code of Conduct states that all detained persons must be treated humanely. Section 130 of the *National Defense Act* has subjected members of the Canadian Forces to the provisions of the *Criminal Code* and all other Acts of Parliament. They face prosecution if they engage in acts of torture, and can legally refuse to obey an unlawful command from their superiors.

Canada can present its adversarial judicial system as an example to the international community and help other nations develop similar legal systems. In this system, the lawyer and the prosecutor (the Crown Attorney in Canada) contest the matter with each

other in a courtroom. Truth is sought in this adversarial system and there is no place for forced confession. This is in contrast to other countries, where, as it is documented, torture is practiced in jails and detention centers by law enforcement authorities in an attempt to extract information or confessions.

### **Consistency in implementation and respect for human rights experts**

Despite Canada's many efforts and great progress, it has not been consistent in executing and following all the human rights instruments it has pledged to adhere to. It was expected that Canada would show significant improvements in its implementation of the recommendations made by UN treaty monitoring bodies and the UN Human Rights Council's Special Procedures but this has been very slow.

Since February 2009 Universal Periodic Review (UPR), two treaty monitoring bodies have carried out their scheduled reviews. Additionally, two Special Procedures Mandate Holders have visited Canada and published their reports. Nevertheless, there have been no significant improvements to consultations with civil society groups, nor any attempt to show more transparency, coordination and accountability of Canada's attempt to implement the necessary standards.

### **Canada's Contribution to the UN Voluntary Fund**

Before looking into the issue of Canadian compliance with its human rights obligations, we would like to reiterate that Canada is one of the initiators of the UN Fund for Torture Victims, but its contribution is minimal (\$60,000) in comparison with other industrialized countries. We have frequently brought it to the attention of the Canadian government that given Canada's prominence in the human rights movement, this is inexcusable. Unfortunately, the government has not yet considered our frequent requests. We expect that the Canadian government increases its contribution to the UN Voluntary Fund and allocate more resources for the rehabilitation of survivors at home. The Canadian government has an enduring role to adequately fund the CCVT to provide much needed services to survivors.

### **Absolute Prohibition of Torture**

Canada has legally complied with Article 2 of Convention against Torture (CAT) and the principle of absolute prohibition of torture. For the last 35 years, we have carefully monitored the Canadian compliance with the absolute prohibition of torture. We have recorded statements and testimonies from our clients and their family members. We are pleased that there have never been reports about systemic torture in Canada. This does not, however, mean that there is no room for improvement. We have recorded sporadic cases of other cruel, inhuman and degrading treatment or punishments imposed against some clients of the CCVT in Immigration detention centres and in the course of removal from Canada. This can be minimized through the establishment of a complaint mechanism and our government's acceptance of an independent oversight of jails and detention centres across Canada.

## **The Alleged Complicity in Torture**

On November 18, 2009, a senior Canadian diplomat, who was based in Afghanistan in 2006-07, appeared before a special committee of the House of Commons and testified that those Afghans taken prisoner by Canadian forces in Afghanistan and were transferred to local authorities in Kandahar were likely tortured. He mentioned that Canada was extremely slow to inform the Red Cross when detainees were transferred to the Afghans. We, at the CCVT joined many human rights group to expect a full and public inquiry into the alleged complicity of the Canadian troops in torture in Afghanistan. We strongly believe that Canada should revisit the codes of conduct for its military personnel all over the globe with the view of absolute prohibition of torture.

## **Non-refoulement to Torture**

Article 3 of the UN Convention against Torture speaks to the principle of non-refoulement, i.e. that, under no circumstances should a person be returned to a country in which s/he will be at risk of torture. This is regarded by human rights and torture rehabilitation centers as an absolute that cannot be balanced with such considerations as danger to the public or risks to national security.

Canada has, unfortunately, failed to comply with this Article. There are scores of non-citizens in Canada who have ended up with removal orders due to the inadmissibility provisions of the Immigration and Refugee Protection Act. What is disturbing is the prolonged inaction and indecision. This keeps non-citizens in limbo.

Among refugees in limbo, the case of Mr. Suresh has received nationwide attention. In 1998, the Minister of Citizenship and Immigration signed an opinion that he was a danger to the security of Canada pursuant to section 53(1b) of the Immigration Act. He was at risk of being removed to torture in Sri Lanka. The case ended in the Supreme Court of Canada.

In its ruling of January 11, 2002, the Supreme Court allowed Mr. Suresh to stay in Canada pending a new deportation hearing under the Immigration Act. The Court ruled that "Determining whether deportation to torture violates the principles of fundamental justice requires us to balance Canada's interest in combating terrorism and the Convention refugee's interest in not being deported to torture."

The Supreme Court's ruling is a matter of grave concern. The Court's decision has serious national as well as global implications for the life and security of torture survivors who are in similar situations. It can set a dangerous legal precedent in the protection of torture victims and may provide governments with the green light to return people to torture.

There is a serious concern that, in their task of enforcing immigration legislation, immigration officials apply the Suresh exception in an overly broad fashion to send

genuine refugees back to torture. The passage of Bill C-36 into the Anti-Terrorist Act on December 18, 2001 and the subsequent Bill C-42 into Public Safety Act, 2002, which received Royal Assent on May 6, 2004, as well as the most recent amendments to the Immigration and Refugee Protection Act may also lead to the intensification of enforcement measures.

### **Independent Oversight of Law Enforcement**

We have received complaints from our clients about physical as well as psychological violence by police and enforcement officials while in custody. What is at stake here is people's civil and political rights. Lacking in Canada is an effective complaint mechanism against excessive measures and violence committed by police and other law enforcement officials. An internal committee from the police or the relevant law enforcement department looks into the complaints against individual offenders. While it is important to have an effective and powerful police force in the country, that power must be subject to independent civilian oversight.

We were shocked by the death of Mr. Robert Dziekanski, a Polish immigrant in Canada on October 14, 2007 at Vancouver International Airport after being hit by a Taser gun from the Royal Canadian Mounted Police (RCMP). He had come to Canada legally for the sole purpose of visiting his mother. It was encouraging that at least eight reviews were conducted into how Mr. Dziekanski died, including a public inquiry launched by British Columbia and a federal inquiry into the RCMP's use of Tasers. We are pleased that since that tragic incident, there has been no report on the use of Tasers in Canada.

### **The Use of Information Obtained under Torture**

On February 13, 2012, the Canadian Centre for Victims of Torture (CCVT) wrote to the Minister of Public Safety and Security Preparedness, Mr. Victor Toews, to share its concerns about then media reports about the federal government's directions to the Canadian Security Intelligence Service (CSIS) to use information that might have been extracted through torture in exceptional cases of public safety concern.

The CCVT finds any kind of involvement in torture, including the use of information extracted through torture and consent or acquiescence to it, as the blatant breach of Canada's domestic legislations, its human rights obligations and its obligations under various international human rights instruments.

We would like to reiterate that torture is absolutely and unequivocally prohibited under the Canadian domestic laws and international obligations. According to Article 269.1 of the Criminal Code of Canada, "Every official, or every person acting at the instigation of or with the consent or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years." Torture is considered as a crime against humanity under Article 4(3) of Canada's Crimes against Humanity and War Crimes Act.

We reiterated the provision of the Article 15 of the UN Convention against Torture according to which, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.”

We appeal to the Canadian government to take urgent action against the practice of the sordid crime of torture at the global level.

We urge the government to stick to the principle of the rule of law in our civil and democratic society. No public official, from the Prime Minister to ministers and low ranking authorities, should find oneself above the law. No one is allowed to break the pre-emptive principle of the strict prohibition of torture under any name or by using any guise whatsoever. If we extend our implicit warrant to torture, even in the most exceptional situations, it may become a rule. It is impossible to defend democracy by destroying its very foundation.

We call upon the government of Canada to reiterate its commitments against torture and make it explicit that no one can use information extracted under duress. We urge the government to abide by Article 10 of the Convention against Torture and come up with a systemic program of education and training for military, Intelligence, police force, prison guards, border officers and others involved in enforcement and interrogation.

### **Protection of Canadian Citizens Overseas**

Article 9 of the UN Convention against Torture is about the cooperation of the state parties in the process of prosecution of torturers. We believe that it will be against the spirit of this Article if states parties to CAT refuse to protect their citizens against torture by other states or, even worse, facilitate torture against their citizens under any guise or excuse.

Since the tragedy of September 11, 2001, the fundamental human rights of Canadian citizens overseas have increasingly come under attack. A tragic example is the death of Canadian photo-journalist Zahara Kazemi under torture in Iran on July 12, 2003. This was followed by the testimony of William Sampson about his experience of abhorrent tortures during his 31 months of imprisonment in Saudi Arabia. Following that Mr. Maher Arar testified that despite being a Canadian citizen, he was deported to Syria by the US authorities to face torture and other cruel, inhuman and degrading treatment there.

Both Mr. Sampson and Mr. Arar mentioned the inadequate support from the Canadian government to protect them as Canadian citizens. Mr. Arar even made an allegation about possible collaboration between the Royal Canadian Mounted Police (RCMP) and the Canadian Security and Intelligence Services (CSIS) on the one hand and US and Syrian authorities on the other. The UN Committee Against Torture has criticized the alleged roles of the Canadian “authorities in the expulsion of Canadian national Mr. Maher Arar, expelled from the United States to Syria where torture was reported”<sup>19</sup>

It should be acknowledged that the government of Canada took some measures in the cases of Ms. Kazemi and Mr. Arar. The consistent and effective Canadian protests forced the Iranian government to initiate an investigation into Ms. Kazemi's death under torture. However, despite hair-raising exposures by the Iranian Dr. Shahram Azam on March 31, 2005 of the rape and deadly tortures of Ms. Kazemi, Canada has so far failed to explore national and international procedures to secure the prosecution of Ms. Kazemi's torturers.

Canada, unfortunately, has not come up with a firm and consistent policy for the protection of its citizens abroad.

## **Impunity**

Canada has always been at the forefront of the global campaign against impunity for torturers and other perpetrators of international crimes. From the very beginning, Canada played a significant role in efforts that led to the adoption and later enforcement of the Rome Statute and the establishment of the International Criminal Court.

It is encouraging that Canada has also demonstrated its willingness and ability to conduct investigations into allegations of torture against Canadian perpetrators. During the Canadian peace-keeping mission in Somalia (1992-93), Canadian soldiers shot from behind at two Somali youths who were allegedly trying to steal supplies from the Canadian base. A second incident involved the torture and killing of a Somali youth. There were some reports about a cover-up by higher officials.

The government of Canada conducted a thorough investigation that continued for two years. The members of the airborne regiment responsible for the torture and killing of the Somali teenager, Shidane Arone, were prosecuted. A private was convicted of manslaughter, and a sergeant attempted suicide before facing trial. The Commission of inquiry admitted that the peacekeeping troops were ill-prepared for their mission and unclear about their mandate. The Commission made a series of constructive recommendations to the Canadian army and the United Nations to reform the system that governs their peace-keeping mandate. This sent a positive message to the Canadian as well as the world community on the zero tolerance of the Canadian government in accepting the crime of torture.

While Canada should be credited for its leadership towards the establishment of the ICC, it should also be noted that Canada is not free from blemish in addressing the problem of impunity. It is upsetting that the Canadian government has always approached deportation as a substitute for punishment without considering the possibility that the deportation of perpetrators of torture and other international crimes may lead to their further impunity. The establishment of the War Crimes Unit in 1996 strengthened the Canadian government's tendency towards deportation. In terms of criminal prosecution, thus far, Canada has not done adequately.

The lack of attention given to criminal prosecution is justified by high costs, and by the technical difficulties of obtaining evidence and bringing foreign witnesses to Canada as well getting permission to enter the offending country to conduct investigations.

Among various anti-impunity measures, due attention should be paid to extradition. On June 17, 1999, Canada's new Extradition Act came into force. The Act permitted the surrender of persons sought to states and to entities like the International Criminal Tribunals for the former Yugoslavia and Rwanda.

The UN Convention Against Torture could also be used as a basis for extradition. It is positive that the Canadian government is presently cautious in considering the option of extradition. It is crucial for Canada to ensure that the subject of extradition receive a fair trial after extradition. It is a fact that there is rarely any functioning judicial system or viable witness protection program in place in countries that suffer from war or generalized violence. Another problem is the close connection between the judiciary and effective powers in these countries. Politicians as well as police and bureaucratic authorities can assert influence over the outcome of particular investigations or prosecutions. Given these limitations, the best remedy is the prosecution of torturers and other perpetrators of international crimes in Canada.

Despite the recognition of universal jurisdiction in the prosecution of torturers, Canada has failed to take effective measures in this respect. There are people who have been tortured in their countries of origin and in the course of time have become permanent residents or citizens of Canada. It is almost impossible for these torture survivors to ask for compensation from the governments responsible for their torture.

The UN Committee against Torture has criticized Canada for "the absence of effective measures to provide civil compensation to victims of torture in all cases." The Committee has recommended that Canada ensures "the provision of compensation through its civil jurisdiction to all victims of torture." The State Immunity Act "needs a specific exemption for torture."

## **Training**

The CCVT has continued with providing training for panel members (acting judges) and Refugee Protection Officers at the IRB. In these training sessions, we have focused on torture as an international crime, its impact on survivors, and the need for its prevention. We have shared our expertise on problems related to the testimonies of survivors of torture in their refugee hearings. We are willing to provide training for all levels of personnel in Canada involved in enforcement and interrogation. In particular, such training is very much lacking for staff in enforcement centres, the police, and prison authorities. Unfortunately, we have not been approached by these sectors and there remains a gap in education and training with regards to the Article 10 of CAT and human rights training for enforcement officials.



## **Optional Protocol to the Convention against Torture**

The Optional Protocol to the Convention against Torture has been available for ratification since February 4, 2003. Canada actively played a leadership role in the working group that wrote the final draft. Canada also voted in favour of the protocol's adoption at the 57<sup>th</sup> session of the United Nations General Assembly in December 2002. However, Canada has unfortunately not ratified the Protocol yet.

Delay in ratification of this important document seems to be related to problems of implementation. The primary focus of the protocol is the regular inspection of prisons and detention centres that are mainly under the jurisdiction of the provincial governments. We have told that it had not been possible for the federal government to ratify the protocol without the approval of all Canadian provinces and territories. Negotiations between the federal and provincial governments of Canada have not yet reached any positive outcome. There is an urgent need to break the deadlock, as was done with the Convention on the Rights of the Child. Canada cannot play an effective global leadership role in the prevention of torture without the ratification of this crucial legal instrument.

## **Non-Citizens in Limbo**

Limbo is normally used to denote any place or condition of uncertainty, instability, or being taken for granted. Based on our documentation about the global perpetration of torture, limbo is used as an actual technique of torture by torturers, war criminals, and perpetrators of genocide. While the psychological effect of living in limbo is hard on every human being, it is specifically fatal for survivors of torture, war, genocide and crimes against humanity. Based on our experience, almost all survivors have suffered by existing in limbo in some form during their incarcerations.

Unfortunately, there are certain gaps in the Canadian Immigration legislation and practices that keep non-citizens in limbo. We, at the CCVT, have been serving refugees and non-citizens in limbo coming to Canada from different corners of the globe.

One of the most tragic effects of keeping non-citizens in limbo is the separation of families. This happens due to the fact that delay in landing of refugees and other categories of uprooted people leads to further delay in family reunification. Furthermore, non-status people cannot sponsor their family members to come to Canada. It is expected that Canada respects its international obligation towards the protection of family life. Article 10 of the International Covenant on Economic, Social and Cultural Rights calls upon the state parties to provide "the widest possible protection and assistance" to "the family which is the natural and fundamental group unit of society." According to the article 23 of International Covenant on Civil and Political Rights, the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Limbo puts double pressure on women, especially, those with children. Women who flee with their children lack the familial support system that is crucial for the children's well-being and the well-being and happiness of themselves. The impact of family separation is so devastating that its consequences could continue years after family separation is over.

Limbo has frequently acted as an implicit psychological torture against children who either remain separated from one of their parents or witness ongoing retraumatization of their both parents. More often than not their own lack of permanent resident status in Canada prevents them from enjoyment of their own rights as minors. This is being practiced despite Article 37 of the UN Convention on the Rights of the Child that has protected children against torture. It is also against Article 24 of the International Covenant on Civil and Political Rights that speaks about children right to protection "on the part of his family, society and the state."

Keeping non-citizens in limbo is against Article 14 of the UN Convention against Torture (CAT). This Article obligates states to guarantee the rights of torture victims to redress, compensation and rehabilitation. Limbo creates a situation that prevents redress, reparation and rehabilitation of survivors. It cripples the hopes of its victims. Article 16 of the CAT calls upon state parties to "prevent .... other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture...." Limbo is a kind of psychological torture and it works against the spirit of the this crucial provision of the UN Convention against Torture.

We have learned from our experiences at the CCVT that limbo is particularly devastating for any family or individual who has experienced war and/or torture. With the prolongation of limbo, it becomes very difficult for organizations such as the CCVT to help victims effectively due to the fact that survivors of torture are forced to experience it all over again. While we endorse the Canadian government's global campaign against terrorism, we are concerned about its excessive measures of post-September 11. Enforcement officials must be accountable and accessible. There is also an urgent need for their training and education. We strongly recommend for designation of an independent ombudsperson by the Canadian parliament with the responsibility of overseeing the practices of the Citizenship and Immigration Canada as well as the Canadian Border Service Agency.

### **Limitations on Interim Federal Health Program**

The government of Canada has recently taken measures towards limitations of the health care for refugee claimants and certain categories of non-citizens in limbo. These vulnerable groups of people, specifically survivors of torture and trauma, need both preventive and curative health need that include all the above. Most of our clients come from refugees camps or first or second countries of asylum where they did not have access to medical care. Their hidden diseases come to the fore in Canada due to the change of environment and cultural shock. They need immediate care.

Refugee clients have usually experienced persecution, torture, family separation, and the death or execution of their beloved ones back home. Majority of them have risked their lives to cross the border and reach the first country of asylum. Some are left with no choice but to stay in a refugee camp where they face starvation, constant physical and psychological harassments. Life becomes extremely dangerous if they do not stay in a protected camp. The first country of asylum is normally close to their country of persecution. In the case of some clients, they have to change their names, live underground and be super vigilant against local police and agents from their countries of origin; smugglers are luring everywhere to rob the money they have borrowed or have earned by selling all their belongings. They are not even immune from their fellow-asylum seekers or their compatriots whom you expect to help.

All these accentuate their Post-Traumatic Stress Disorder that should be taken care of before it leads to deep and incurable depression or paranoia. In our view the first priority is the mental health needs of our clients. Another priority is the whole area of reproductive health of women. This applies to LGBT clients, specifically transsexual ones, as well. Refugee women come with complicated health problems that should be addressed before other complications arise. We, at CCVT, have served pregnant women by using the government's Interim Health Plan (IFHP) and in two cases by taking help from the Midwifery College. Our next priority is the dental care for clients. It adds to the traumatic condition of clients. It is not adequate today, but at least emergency dental care is covered. Finally, physical and mental health of children have always been our topmost priority.

Under the new policy of limitation or removal of the government's Interim Federal Health Plan, medication for cardiovascular disease, diabetes, hip osteoarthritis, or heart attack (following a discharge from hospital) will not be covered. Medical needs such as eye glasses, cavity fillings, or medication for arthritis are not covered. The worst impacts will go to rejected refugee claimants and those who have come from designated countries of origin or safe countries. They are not eligible for any kind of medical services except conditions that threaten public health or safety, such as tuberculosis, HIV, or mental disorders with psychotic symptoms. If a woman in this category delivers a baby or undergoes emergency surgery for a heart attack at a Canadian hospital, she will have to pay out of her pocket. Pregnant women from countries not on the safe list who give birth in hospital would have their required tests, delivery, hospital stay, and initial post-partum follow-up covered, but not any further basic medications or the use of reproductive health techniques. Government has announced that Protected Persons and refugee claimants from non-designated countries of origin would be covered for most basic health needs such as hospital, medical, diagnostic, and ambulance services in most cases, but not for services such as long-term care or home care. The loss of prescription coverage is a matter of grave concern. The following groups of our clients will suffer most from the new policy:

- Children who suffer from fever or infection and need medications on an urgent basis.

- Clients who suffer from PTSD and severe mental health complications and cannot live without medications. Lack of treatment will increase the risk of suicides and will lead to paranoia or drug abuse.
- Women will be disproportionately affected by the lack of access to reproductive health services. This may result in infant mortality, unwanted pregnancies and higher rates of sexually transmitted infections.

With the lack of medical care, refugee clients may go to places where incompetent people deliver services. It may lead to illegal and underground medical practices that are harmful to the health and safety of the society as a whole. The government has announced that the cut aimed at discouraging "unfounded" refugees from coming to the country. This is an illusion. Refugees would continue to come as long as root causes of refugee flow exist. Most of the claimants who come to Canada do not know about the Canadian health system. Government has also mentioned that it is "only a short interim measure" due to fast refugee determination process and the expedited removal of rejected refugee claimants. If it is short, there will be very little cost to the Federal government and the new policy would lose its *raison d'être*. Finally, it should be mentioned that a great number of refugees are future citizens of Canada. Protecting and improving their health is an investment that benefits our Canadian society.

### **Changes to Immigration Act**

Early in 2012, the government of Canada moved towards amendment of the Immigration and Refugee Protection Act. Our major human rights concern comes from the Protecting Canada's Immigration system Act (Bill C-31) that received Royal Assent on June 28, 2012. The first concern, as a centre providing direct services to survivors, is the very short time period for processing refugee claims. It ranges from 30, to 45, to 60 days for different categories of refugees. In our view that is neither feasible nor just. It sometimes takes CCVT three months to come up with the proper documentation of someone's torture, by using psychiatrists, psychologists, and physical practitioners. We are wondering how it will be possible to do that in a short time, and whether there are resources for that.

The second area of concern with Bill C-31 is the fact that almost five categories of refugee claimants are denied access to the refugee appeal division, and in some cases they are denied Federal Court remedies.

We would like to share one example. The bill has denied people whose credibility is rejected. Most of our clients contradict themselves because they are survivors. They are disassociated. They suffer from deep depression and severe mental health problems, so they are rejected. There are other remedies that in the course of time will prove their credibility. We believe they should have access to the appeal division and Federal Court remedies.

Another area of concern is the designated countries of origin. It should be acknowledged that we are living in a changing world: The situation of a country can change overnight, so we ask the government to be extremely careful in preparing the

list. There are also some categories of people, for example LGBT people, who are subjected to torture almost everywhere. Canada is an exception. But when the government just comes up with the list of designated countries of origin, they might be denied protection. We are very concerned about that.

Another area is designated foreign nationals. We are very concerned about this. Based on our experience working with survivors in Canada for 35 years, we know that they can be in detention forever. They can be in limbo also for many years, because they are denied access to landing process for five years. They have no opportunity for family reunification. Even if they are accepted as protected persons, they should report to the police. This is against article 16 of the Convention against Torture that speaks to the prohibition of other inhumane, cruel, degrading treatment or punishment. Please do something about that.

Also, we are concerned about the limitation of Pre-removal Risk Assessment (PRRA) and imposing limitation on applying on humanitarian and compassionate grounds after one year of rejection. These are the remedies for survivors and we have done it in the past.

We are very concerned about the vacation of status and the cessation clause. Our experiences show that the scars of torture never go away. Psychologically, the scars will remain for the rest of one's life. People "mis-present" themselves as survivors and that should not act as a ground to vacate their status. Also, a country's situation might change, the change can be a change on its face value not real value, given the fact that impunity is a global problem and that warlords and torturers remain active even if a country's situation changes. That should not act as a ground to come up with cessation of refugee status.

Finally, it is a well-known fact in Canada that since 1976, the immigration act has gone through many changes, many amendments, and still we have problems. What we need today is a vital link between immigration and human rights.

### **Poverty and Homelessness**

We feel that Canada has only partially complied with Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Despite government attempts, we face the tragic reality that 12% of Canadian populations are living under poverty line. This has led to homelessness and increasing rate of crimes and juvenile delinquency. Situation becomes worse for refugees and survivors in big cities. Downsizing of social programs in cities like Metropolitan Toronto has resulted in impoverishment of the vulnerable groups, specifically women and children. The meager amount of government social assistant is not even adequate to cover one's rent.

The main settlement and resettlement difficulty in Canada for newcomers continues to be housing and employment problems. We have the challenge of helping new clients who have no job and source of sustainable income. There is a housing crisis in big

cities like Toronto. With the ever-increasing rate of impoverishment, vulnerable people cannot afford high rents. Government's geared to income subsidized housing is very limited due to two reasons: 1) lack or inadequacy of new housing projects; 2) high level of demands for affordable housing. Most of our clients have to live in dilapidated basements with hardly any sanction. They face tremendous hardship in Canada due to living in a place that does not fit persons who have faced torture and trauma in the past.

In terms of equal opportunity, we recommend that the government promotes employability of single mothers through more generous support for daycare programs. We also recommend that Convention refugees be provided with the same rights as permanent residents of Canada.

### **Family rights**

We are highly concerned about government's recent limitations in family sponsorship of refugees and immigrants. It ranges from conditional status of sponsored spouses to the long process for family unification.

Convention refugees can sponsor their spouses right after their acceptance. Processing of the landed application will continue simultaneously in Canada and in the country of residence of the spouse. Any kind of delay in either place will postpone landing for both sections of the separated family. A structural problem comes from the fact that, in some countries, there is no Canadian embassy or visa post. In the whole of Africa, for instance, there are only 4 Canadian visa posts. There is also problem of red tape and bureaucracy that should be addressed consistently by the government.

### **Right to Education**

The Federal government of Canada has demonstrated its willingness "to recognize the right of everyone to education." There is, however, a big gap in the implementation of this right when it comes to children of Convention refugees, refugee claimants and children with no status. We have had cases of the children of CCVT clients who were refused registration in schools because of their status. There must be collaboration among 3 levels of government in Canada to guarantee children's universal right to education. We also recommend that the Canadian government allocate more financial resources for higher education. The qualities of education in universities is becoming lower and lower with serious financial difficulties for students to continue. We also recommend that Heritage Canada and other departments allocate more technical as well as financial resources to ensure "the religious and moral education" of visible minorities "in conformity with their own convictions."

### **Human Rights of Mental Health Patients**

The CCVT has received disturbing reports on violation of the rights of mental health patients from some individuals and their family members. They have shared their direct

or indirect experiences with us about the way some psychiatric hospitals treat people suffering from paranoia and other mental health disorders. They transferred them to special psychiatric centres outside big cities where there is no meaningful access by families. They are not allowed to return to their normal lives and there are allegations about using them for medical experimentations.

Our major concerns are inconsistencies and gaps in the Federal and Provincial mental health acts. There is an urgent need for amendments of those acts in conformity with the fundamental human rights of mental health patients. According to the provision of the present act, a person who is hospitalized in a mental health facility can be charged by police for attacking nurses or other patients. This applies to those mental health patients who are not medically responsible for their actions. Police charges this category of the patients but they do not fit the trial criteria. In this situation, they are either kept in jail or get transferred to the forensic section of the mental health hospitals. A Board reviews their cases normally once a year. They may remain in limbo of isolation and seclusion forever, because of not being diagnosed for fitting the trial. A minor offence by mentally irresponsible persons can leave them in limbo indefinitely. This is disproportional in our strong opinion. It is the responsibility of the hospital to protect mental health patients and keep them apart from agitation and attacks. Police should not be involved in hospitals' affairs.

## **Conclusion**

Although Canada has made efforts towards the compliance with human rights standards, there is much further work to be done for the achievement of such challenging goals. As a democratic country, Canada needs to create a balance between the global campaign against terrorism and the protection of civil and human rights of Canadian citizens and non-citizens. The implementation of the Anti-Terrorist Act and Public Safety Act, 2002 and the impending implementation of the Balanced Refugee Reform Act pose serious concerns. There are provisions in these documents that limit fundamental rights, and can lead to the imposition of cruel, inhuman or degrading treatment against non-citizens.

Canada must do more to address the principle of non-refoulement to torture. There is a need for reforming Canadian domestic legislations and regulations with regards to refugee determination, detention and removal. Human rights agencies are particularly concerned about prolonged detentions and keeping non-citizens in Immigration limbo indefinitely. Enforcement officials must be accountable and accessible. Canada should come up with more resources for human rights training of all levels of personnel involved in enforcement, interrogation and correctional activities. There is also a need for public education about the scourge of torture, the rights of survivors, and the urgent need for the prevention and eradication of this human plague.

The government of Canada must accede to the Optional Protocol to the Convention against Torture. That would be a significant step towards Canadian global leadership in the prevention of torture. It is also to be expected that, as one of the initiators of the UN

Fund for Torture Victims, Canada will increase its contribution to this world institution for the global rehabilitation of torture survivors.

There is also a need for Canada to overcome “practical difficulties” and introduce legislations that would specifically prohibit trade or production of weapons and instruments that are specifically designed to inflict torture. It is distressing that there is no provision in the Canadian Criminal code for such a prohibition.

We strongly believe that there should not be poverty in a rich country like Canada. Chronic problems of unemployment, underemployment, malnutrition and homelessness should be removed from Canada. The most vulnerable sections of the society, specifically non-citizens, should be protected. A special attention should be paid to the human rights of mental health patients.

While we admit about the scourge of the present global economic stagnation, we do not support austerity measures and downsizing of service agencies in Canada. On the contrary, we feel that in the time of recession, government should increase its public expenditure to boost the economy by creating more jobs and providing further education and training to the youth. We strongly recommend that our government makes a vital link between civic and political rights on the one hand and economic, social and cultural rights on the other.

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