



CANADIAN CENTRE FOR VICTIMS OF TORTURE

United Nations Human Rights
Office of the High Commissioner
CH-1201
Geneva, Switzerland.

April 4, 2023

Dear madam/sir,

I am pleased to provide you with feedback on behalf of the Canadian Centre for Victims of Torture (CCVT) with regards to Canada's compliance with the human rights instruments for the occasion of the Universal Periodic Review of Canada (10 November 2023).

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 55,000 survivors of torture, genocide, war, crimes against humanity, and trafficking from 136 countries. Working with the community, the center 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."

Thank you for your consideration and we are looking forward for hearing from you. With warm regards and in the hope of more collaboration in the future,

Yours sincerely,

Mulugeta Abai
Executive Director

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CANADIAN CENTRE FOR VICTIMS OF TORTURE

Report on Canada's Compliance with the Human Rights Instruments For the Occasion of the 10 November 2023 Universal Periodic Review of Canada

Canada has ratified most of the international and regional human rights instruments. In terms of domestic instruments, there are provisions in the Canadian Charter of Rights and Freedoms for the most fundamental rights of human persons. 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 UN Convention against Torture (CAT). Canada has ratified and incorporated the Rome Statute of the International Criminal Court (ICC) into Canadian legislation. Canada plays a global leadership for the rights of LGBTQI+ people.

Canada's Non-accession to Major Human Rights Instruments

Canada has not yet ratified the following international and regional human rights instruments:

1. The Optional Protocol to the Convention against Torture;
2. The third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure;
3. The 1954 UN Convention on the Protection of Stateless Persons;
4. Occupational and Safety Convention;
5. Inter-American Convention on the Prevention, Punishment and Eradication of all forms of Violence against Women

We expect that Canada accedes to these crucial instruments that are essential for human rights improvements including prevention of torture and protection of survivors.

Canada and Indigenous People

There are three categories of Indigenous peoples in Canada: Inuit, Métis and First Nations. They have historically experienced ethnocide and are suffering from collective trauma. Frequent public apologies, began with that of the then Prime Minister Stephen Harper in 2008, have been a step forward. There is a need for nation to-nation negotiations between the government and indigenous people.

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Canada's Contribution to the UN Voluntary Fund

Canada is one of the initiators of the UN Fund for Torture Victims, but its contribution is minimal (\$60,000) compared with other countries. We expect that the Canadian government increases its contribution to the UN Voluntary Fund and allocate more resources for the rehabilitation of torture services at home.

Absolute Prohibition of Torture

Canada has legally complied with Article 2 of CAT and the principle of absolute prohibition of torture. Section 12 of the *Canadian Charter of Rights and Freedoms* guarantees the right of everyone "not to be subjected to any cruel and unusual treatment or punishment." Section 269 of the *Criminal Code of Canada* has made torture illegal and a punishable offence in this country. For the last 56 years, we have carefully monitored the Canadian compliance with the absolute prohibition of torture. We are pleased that there have never been reports about systemic torture in Canada. We have, however 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.

Right to Compensation

Article 14 of the CAT has categorically mentioned about the rights of victims to redress, compensation and rehabilitation. There is a gap in terms of rehabilitation of survivors of torture in Canada. 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. We expect the Canadian government to take effective measures to facilitate civil compensation to survivors of torture from their perpetrating governments. We believe that the *State Immunity Act* in Canada needs a specific exemption for those who have been involved directly or indirectly in torture, genocide, war crimes and crimes against humanity

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,

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Canada played a significant role in efforts that led to the adoption and later enforcement of the Rome Statute and establishment of the ICC.

On June 29, 2000, Canada became the first country in the world that incorporated the Rome Statute of the ICC through its comprehensive *Crimes against Humanity and War Crimes Act*. Canada is among the few countries in the world that has legally accepted universal jurisdiction in the prosecution of perpetrators of torture, war crimes, and crimes against humanity.

With the establishment of the War Crimes Unit in 1996, the Canadian government chose the path of deportation rather than criminal prosecution against perpetrators of international crimes. We are concerned that deportation of perpetrators of torture and other international crimes may lead to their further impunity.

Information Obtained under Torture

The CCVT was deeply concerned in the past on the media reports about the federal government's directions to the Canadian Security Intelligence Service to use information that might have been extracted through torture in exceptional cases of public safety concern. We believe this to be 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.

Immigration and Refugee Protection Act (IRPA)

The IRPA implemented in Canada on 28 June 2002. It underwent an amendment in 2012. In applying Article 1 the CAT, Canada has gone beyond the CAT definition of torture by protecting survivors of torture and those who might be subjected to torture upon their return to their countries of origin.

Following are CCVT's concerns with regards to the IRPA provisions:

1. We are concerned about the limitation of Pre-Removal Risk Assessment (PRRA) and imposing limitation on applying for humanitarian and compassionate (H & C) grounds after one year of rejection. For years PRRA and H & C have acted as remedies for survivors of torture and there should not be limitation as such.

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2. We are also concerned about the vacation of status and the cessation clause that might lead to the forcible repatriation of survivors of torture.
3. While we understand our government's concern in terms of migrant smuggling, we are concerned about penalizing victims rather than victimizers when it comes to government's actions against human smuggling. We recommend that legislative and policy changes be targeted against smugglers rather than those who have had no choice but to escape torture and persecutions.

Safe Third Country Agreement

The Safe Third Country (STP) agreement between Canada and the USA was implemented on December 29, 2004. It stipulates that asylum seekers must make their claims in the first safe country they reach. The CCVT is concerned about agreement due to the lower refugee protection standard in the USA, its poorer rate of refugee acceptance and the connection of its refugee policies with foreign policy considerations. The STP is in sharp conflict with our Canadian values plus humanitarian and human rights traditions enshrined in Section 7 and Section 15 of the Canadian Charter of Rights and Freedom.

On 24 March 2023, the Safe Third Country Agreement updated with a protocol extending it to all borders. It came with only eight hours of warning. The Canadian government implemented tougher immigration policies on border crossing of asylum seekers. There are shocking reports about forcible return of refugee claimants from Canada to the USA, including an 8-month pregnant woman and ten Kurdish men from Turkey. Some people who came to Canada had already been rejected in the USA. Upon their return to the USA, they have to face removal, most of them, to torture and persecution. They cannot sustain their lives, as there is no social assistance for them in the USA. Last year, 6 people died while wandering in Canada-US borders. The current measure may lead to more death, physical and mental damages.

Non-Citizens in Limbo

Limbo has been 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 and trauma. Unfortunately, there are certain gaps in our Immigration legislation and practices that keep non-citizens in prolonged limbo. We, at the CCVT, have been serving survivors of torture living in limbo for up to the past 20 years – among them are vulnerable women and senior citizens. People are in limbo due to various reasons, including lack of identity documents, government's security obsessions, and alleged or real criminality.

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One of the most tragic effects of limbo is the separation of families. There is 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. We call upon the government of Canada to pay special attention to stateless and undocumented people as well as other categories of non-citizens in limbo and normalize their Immigration status.

Protection against Refoulement

We, at the CCVT, have had the case of rejected refugees' deported to countries notorious for torture. We expect meticulous attention to the article 3 of the CAT and the non-degradable right of each and every human person not to be returned to torture at all levels of immigration: the IRB hearings, Pre-Removal Risk Assessment, and Humanitarian & Compassionate applications.

Diplomatic Assurances

In recent years, we have witnessed a growing trend among Western governments – Canada is not excluded – of seeking diplomatic assurances of humane treatment in order to deport undesirable non-citizens to countries with records of gross human rights abuses, including the practice of torture.

The main problem of diplomatic assurances is the total lack of monitoring system after a person is removed. Diplomatic assurances are unjustified justifications for transferring non-citizens to torture. It is a utilitarian short-cut that takes away responsibility from host governments that are pre-occupied with deportation and removal. It erodes the global ban on the practice of torture.

Independent Oversight of Law Enforcement

Despite the heavy emphasis of IRPA on removal and detention and the existence of an ever-increasing number of Immigration detainees in Canada, torture is not used in Canadian jails and detention centres as part of a systematic, political strategy of repression and we feel lucky and proud in this regard. The issue of violence by police and other law enforcement officials, however, is an increasing concern in Canadian society.

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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.

Protection of Canadian Citizens against Torture

The CCVT has served clients with family members who are Canadian citizens and languishing in jails overseas. We believe that through ongoing diplomatic efforts, Canada should work towards establishing a system of unrestricted consular access to its detained citizens overseas. There is a need for unmonitored meetings between the Canadian officials and those who languish in overseas detention with arrangements for their medical care. We are pleased that positive steps have been taken in recent years.

Training

Canada is obligated under Article 10 of CAT to provide ongoing human rights training for all levels of personnel in Canada involved in enforcement and interrogation. Such training is inadequate in Canada and we recommend our government's special attention to it. It should be extended to the members of the IRB as well.

Detention

Refugees who have faced detention and torture back home, can be detained in Canada by the discretionary power of an official of Canada Border Security Agency (CBSA). Refugees are detained because a CBSA officer may suspect that the refugee is a danger to public or a risk to national security or is a flight risk (will not appear for refugee hearing). Refugees could also be detained if they cannot satisfy the official of their identity. Detention has always been harmful to survivors of torture who might go through the unfortunate process of re-traumatization. Detention centres in Canada are far from the metropolitan cities that makes it difficult for detainees to have access to lawyers. Another problem in Canada is detention of Children. There is also no effective mechanism of complain in detention centres.

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Human Rights of Mental Health Patients



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The CCVT is concerned about 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 acts, 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.

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 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 difficulties in Canada for newcomers continue to be housing and employment problems. There is a housing crisis in big cities. 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. We recommend that the government promotes employability of single mothers through more generous support for daycare programs. We also recommend that the government engages in national housing strategy.

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We are highly concerned about the prolonged process of refugee family unification in Canada. 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 racism, sexism, red tape, and bureaucracy that should be addressed consistently by the government.

Right to Education

There is a gap in the implementation of the universal child's right to education 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.

Conclusion

Canada has accepted a long-term commitment towards eliminating torture, investigating its practice, and supporting its survivors. Canada has also played a crucial role in the adoption of the Rome Statute of the International Criminal Court and has incorporated this vital instrument into the Canadian legislation. Yet, although Canada has made sincere efforts towards the prevention of torture and rehabilitation of survivors, there is much work to be done for the achievement of such challenging goals.

While we endorse the Canadian government's global campaign against terrorism, we are concerned about its excessive measures of post-September 11. Canada must do more to address the principle of *non-refoulement* to torture and to act against cruel, inhuman, or degrading treatment or punishment by enforcement officials. There is a need for genuine effort by the Canadian government to reform its domestic legislation and regulation with regards to refugee determination, detention, and removal. We are particularly concerned about prolonged detentions and keeping non-citizens in Immigration limbo indefinitely. Enforcement officials must be accountable and accessible. There is also an urgent need for their training and education.

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