

The Right Honourable Justin Trudeau, P.C., M.P.
Prime Minister of Canada
Office of the Prime Minister
Langevin Block, 80 Wellington Street,
Ottawa, ON. K1A 0A2

March 29, 2016

Dear Right Honourable Trudeau,

I am writing to you to urge that your esteemed government sign and seek ratification of the *Optional Protocol to the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (Optional Protocol or OPCAT). In December 2002 the United Nations adopted the OPCAT, an international instrument that has, since its entry into force in 2006, made an important contribution to preventing torture and ill-treatment worldwide. The OPCAT lays out a framework for regular national and international level inspections of detention centres, with a view to identifying and remedying the conditions that encourage and allow torture and ill-treatment to take place.

Based on our experience as an organization involved in the rehabilitation of torture survivors, we strongly believe that an effective inspection mechanism makes a significant difference in reducing and preventing the crimes of torture at a global level. It is disheartening that in the second decade of the new millennium, the practice of torture appears to be more widespread than ever. All over the world, torture is used by tyrannical governments as a means of extracting information or confessions, as well as a tool of mass intimidation and political repression.

The struggle to eradicate torture and ill-treatment remains one of the most serious human rights challenges the world faces. It is a global struggle, with important implications for Canadians. Cases such as Zahra Kazemi in Iran, William Sampson in Saudi Arabia, and Maher Arar in Syria are stark reminders that Canadian citizens themselves may be subjected to torture overseas. There have also been domestic concerns, such as the disturbing abuses that took place in the 1990's at the Prison for Women in Kingston and at the Robert-Giffard Psychiatric Hospital in Quebec City in 2003, which underscore that other forms of cruel, inhuman or degrading treatment or punishment can occur in Canada as well.

The Optional Protocol represents an important step in the campaign to eliminate torture worldwide. It is therefore a promising sign that international support for the Protocol has been steadily building. As of September 22, 2015, eighty countries have formally ratified it, among them, the United Kingdom, France, Denmark, Netherlands, Austria, Finland, Germany, Mexico, Norway, New Zealand, Sweden and Spain. A further 18 countries have signed the Protocol. The OPCAT entered into force on 22 June 2006, and the UN Subcommittee on

Prevention of Torture was established on 18 December 2006 to oversee its implementation. The Subcommittee is the first international expert body with jurisdiction to carry out inspections of detention centres with the express objective of preventing torture.

Canada is not among those states represented on the Subcommittee, nor is it currently involved in defining the Subcommittee's working methods and practices. Indeed, as a non-signatory to the Optional Protocol, Canada has very little role to play. This is in stark contrast to the leadership that Canada showed during the early stages of the Protocol's development and adoption. Canada played a very progressive role in the UN working group on the Optional Protocol, and voted in favor of it at the United Nations Commission on Human Rights on 22 April 2002, and at the UN General Assembly, on 18 December 2002.

We understand that Canada's delay in ratification of the Optional Protocol has been largely related to problems of implementation. The focus of the OPCAT is the regular inspection of prisons and detention centres that are predominantly under provincial jurisdiction, and ratification of the Protocol accordingly requires the approval of all of the provinces and territories. The negotiations between federal and provincial governments, however, do not appear to have reached any positive outcome. Nearly 14 years have passed since Canada voted in favor of the Optional Protocol at the UN General Assembly. It is time to break the deadlock between the federal government and the provinces, and to come to an agreement, 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 ratification of this crucial international instrument.

We urge you to stand by Canada's commitment to the global promotion of human rights, and to revive the deliberations on Canada's ratification of the *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*. The matter cannot be delayed any longer.

Thank you for your consideration of this fundamental international human rights problem. We would welcome an opportunity to discuss the issue further with you or with your respected representatives.

With warm regards and in the hope of hearing from you,

Yours sincerely,

Mulugeta Abai
Executive Director

Canadian Centre for Victims of Torture's submission on Canada's Asylum System

We, at the Canadian Centre for Victims of Torture (CCVT), are writing to you from the perspective of survivors of torture, war, genocide, and crimes against humanity. We also share our feedback with you as an agency serving mental health and settlement needs of survivors. In this written submission, we will share the positive aspects of Canada's asylum system as well as areas of our concern. In conclusion, we will make some special requests to your esteemed department.

I. Introduction

To begin with, let us bring to your attention that since its inception in 1977, the Canadian Centre for Victims of Torture has provided its holistic services to more than 22,000 clients 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 of torture, war, genocide and crimes against humanity in the process of successful integration into Canadian society, works for their protection, and raises awareness of the continuing effects of torture and trauma on survivors and their families. CCVT's mandate is to provide its clients with "hope after the horror".

The Centre offers survivors and their families such services as the Volunteer Befriending Program, Mutual Support Groups, a children's program, a drop-in counselling program, and ESL classes. It also offers co-ordinated Professional Services, including specialised medical and legal support. These programs are currently being enhanced by the assistance of 257 volunteers, 152 of whom act as personal befrienders to survivors of torture.

II. Positive Aspects

Let us begin with positive aspects of Canada's asylum system:

1. The existence of Immigration and Refugee Board (IRB) as an independent, quasi judicial body is a distinctive and progressive feature of the Canadian asylum system. This makes our system free from foreign affairs considerations and short-sighted bureaucratic concerns. We fully support the IRB and its independence from the Ministry of Public Safety & Emergency Preparedness and the Ministry of Immigration, Refugees and Citizenship Canada.
2. The Canadian refugee determination system goes beyond the 1951 Geneva Convention and its 1967 Protocol by paying special attention to survivors of torture and considering Article 3 of the Convention Against Torture (CAT) that specifies non-derogable right of every human person not to be returned to torture. We strongly believe that protection will not be effective without an exhaustive approach to the question of torture at the international level and special attention to specific needs of torture survivors in Canada. Canada is a party to Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and is internationally committed to protect torture survivors.

3. We have found the IRB guidelines useful in providing guiding principles for adjudicating and managing cases. These guidelines act as sources of direction for refugee decision-makers and have adjudicative value and expand the definition of the five categories of the Geneva Convention. There is a need for mandatory consideration of the guidelines and their consistent implementation across the country. In particular, we have found the usefulness of the following guidelines: Guideline 1 - Civilian Non-Combatants Fearing Persecution in Civil War Situations,

Guideline 2 - Detention

Guideline 3 - Child Refugee Claimants: Procedural and Evidentiary Issues

Guideline 4 - Women Refugee Claimants Fearing Gender-Related Persecution

Guideline 7 - Concerning Preparation and Conduct of a Hearing in the Refugee Protection Division

Guideline 8 - Concerning Procedures with Respect to Vulnerable Persons Appearing Before the Immigration and Refugee Board of Canada

4. Based on our experience, living in limbo is extremely detrimental to the mental health of refugee survivors. We have found the present accelerated refugee determination system to be a great relief to the mental health of survivors of torture, war, genocide and crimes against humanity. It prevents them from going through the awkward process of re-traumatization due to uncertainty and prolonged waiting for determination of their claims. However, in many situations, the shortened timelines do not allow sufficient time to gather proper documentation of claimants' torture and trauma. Predictability of timeline is very good, but the timeline for hearing should be lengthened to 120 days to allow time to prepare.
5. The establishment of the Refugee Appeal Division (RAD) within the IRB is another positive aspect of the present system. However, the mandate of the RAD is quite limited.
6. Better treatment of the children and attempts for compliance with the UN Convention on the Rights of the Child are positive aspects of our asylum system. Attention to the best interest of the child when it comes to detention and removal and considering detention of children as the last resort are appreciated. There is, however, the need for clarification about the concept of the best interest of the child and finding alternatives to detention of children. Separation of children from their families during the incarceration of their parents is an area of concern.

III. CCVT Areas of Concern

Short Time-line

Our 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. Based on our experience, it is neither feasible nor just. It sometimes takes us three months to obtain the proper documentation of someone's torture, by using psychiatrists, psychologists, and physical practitioners. This has so far been problematic. We do not have resources for providing survivors with physical, psychological and psychiatric reports. Many survivors have appeared before the Immigration, and Refugee Board without medical report. This has jeopardized their refugee claims. We have seen many cases where refugee hearings are postponed due to impracticality and unfeasibility of the present time-lines. We propose a time-line of four months for all refugees.

Refugee Appeal Division

Another area of concern is the fact that almost five categories of refugee claimants are denied access to the Refugee Appeal Division (RAD), and in some cases they are denied Federal Court remedies. Let us provide one example. The present system has denied people whose claims are found to have no credible basis or manifestly unfounded. Most of our clients contradict themselves because they are highly traumatized as survivors of torture, war, genocide and crimes against humanity. The impact of their traumatic experiences is horrible. In a majority of cases, Post-Traumatic Stress Disorder (PTSD) has left negative effects in survivors' consciousness, values, feelings and the way they relate to others. People with PTSD may become emotionally dead. They may avoid people and places – even their immediate family members. They may avoid matters or situations that are associated with the original traumatic incident. People with PTSD often show constant hyperarousal symptoms such as sleep disorders, irritability, hyper vigilance and lack of concentration. They feel persistently threatened by their initial traumatic event. All these symptoms may lead them to contradict themselves during their refugee hearing and jeopardize their credibility. There are other remedies that in the course of time will prove their credibility. We believe that all refugee claimants should have access to the Refugee Appeal Division and to Federal Court remedies.

Designated Country of Origin

Another area of concern is the Designated Countries of Origin (DCO). We are living in a changing world: The situation of a country can change overnight, we strongly believe that refugee claims should be based on the merit of the individual case rather than a Minister's opinion of the overall situation in a country. There are some categories of people, for example LGBTQ people, who are subject to persecution almost everywhere. DCO provisions may lead to the pre-judgment of claims and denial of protection. This is true about survivors of severe trauma who need effective rehabilitation as a part of their protection. This is not available in many countries that are supposedly considered safe.

Designated Foreign Nationals

We are very concerned about Designated Foreign Nationals provisions. Based on our experience, working with refugee survivors in Canada, we are concerned that these provisions may keep them in detention indefinitely. Detention has been shown to have

detrimental impact on mental health, especially of those who are already vulnerable having suffered torture and other human rights abuses. DFNs can remain in limbo for many years, because they are denied access to the landing process for five years. They have no opportunity for family re-unification during that period. Even if they are accepted as protected persons, they must report to CBSA on a regular basis. This is highly detrimental to survivors of torture, war, genocide and crimes against humanity. Encounters with police and enforcement officers may act as a trigger to revive their traumas. This is against article 16 of the Convention Against Torture that speaks to the prohibition of other inhumane, cruel, degrading treatment or punishment.

Lawyers and Interpreters

We have witnessed serious problems in the refugee determination system due to poor representation of refugee claimants and utilisation of the services of incompetent interpreters. This is specifically true in the case of torture survivors who could not adequately express themselves during their hearings. Their deep-rooted trauma can result in what may be seen as the evasiveness and inconsistency during their hearings. The IRB may consider recruitment of professional interpreters and lawyers similar to Duty Counsels in courts.

Fast-track Refugee Determination

We propose review of country conditions to expedite more claims, where justified by human rights records. Straightforward cases could be prioritized on the basis of merit or country conditions. There are survivors who carry multiple scars in their body or have authentic documents in their possession about their torture and persecution. There are minorities who are living under ongoing and historical genocide or persecution in certain countries: Baha'is in Iran, LGBTQ people in Saudi Arabia and Persian Gulf countries, Alavi and Kurdish activists in Turkey, Shia activists in Saudi Arabia, Pakistan and Bahrain, etc.

Bureaucracy

Bureaucracy as a system is demonstrated where relationships required to meet basic needs become subordinate to strict application of rules. It is characterized by officialdom, rigidity, red-tape, fixed procedures, hierarchical authority, and complex systems of decision-making. There are many redundancies in our Immigration and asylum system. These redundancies create a tremendous loss of our society's financial and human resources. They also create suffering for vulnerable people with no justification. For instance, when Protected Persons apply for a travel document, they are advised to wait for five months to receive it. It takes only ten days for Canadian citizens to receive passports. The situation is different in most European countries. Following their acceptance, Convention refugees receive a special kind of passport that acts as their work permit, travel document and refugee certificates. In Canada, work permits, Interim Federal Health certificates, and Social Insurance Numbers expire after a year or so. When it comes to permanent resident status, there is a gross discrimination between refugee who are processed overseas and those who get Convention status in

Canada. With the present system of security clearance, it is definitely possible to provide the same status to those who get accepted in Canada and avoid the waste of tremendous financial and human resources.

Detention

We are concerned about our present legislative and regulative provisions on detention and the officials' broader discretion in this area. As detention is source of retraumatization of survivors, we strongly propose that detention be considered as the last resort and be avoided to the greatest extent possible. There must be no new grounds for detention. It is positive that our present asylum system pays special consideration to the detention of children, but we are very concerned that it ignores the impact of the unofficial detention of children as "guests" of detention centres when only their parents are formally detained. Our experiences dealing with traumatized children have proved that detention is contrary to the best interests of children. We propose a provision on the prohibition of children's detention and separation of families. We also recommend a new legislative provision for determining the maximum period (three months) that a person could be kept in Immigration detention. We also request national standards for Immigration detention centres as a requirement to be fulfilled by the government through regulations. **We strongly recommend ratification of the Optional Protocol to the Convention against Torture by Canada that provides for the international oversight of the Canadian jails and detention centres. We call upon the government of Canada to designate an ombudsperson monitoring detention facilities.** We have frequently raised our concerns about the circumstances under which most refugees and torture survivors flee their countries with no opportunity to obtain identifications documents. They should be protected because the governments of their countries of origin persecute them. They should not be detained or penalized as improperly documented claimants. We would be pleased to offer greater input to your department on the impact of current detention provisions to assist in the development of improved regulations.

H & C and PRRA

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 the rejection of refugee claims, in most cases, longer for DCO claimants. . These are additional remedies for survivors who may not be able to express themselves effectively due to reasons mentioned earlier. We have found these as effective remedies based on our experiences of the past. The CCVT clients are more comfortable to share their past traumas with us. However, there are certain clients who are unable to reveal their horrible experiences with their care-givers at the CCVT. A woman survivor of gang-rape, for example, shared her experience with us five years after being our client and twenty years following his initial trauma.

Vacation of Status and the Cessation Clause

We are very concerned about the vacation of status and the cessation clause. Please be noted that the scars of torture, war, genocide and crimes against humanity never go away.

Psychologically, the scars will remain for the rest of one's life. Also, a country's situation might change, but the change could be on its face value not real value. It is a well-known fact that impunity is a global problem and warlords and perpetrators of heinous international crimes remain active even if a country's situation changes. Canada should seek to make recognized refugees permanent members of society as soon as possible, for the good of the country, and for their rehabilitation and integration into society.

Second Claims

Our present asylum system does not allow for making a second claim - no matter how many years pass or how far the situation in the person's country changes. There is a lifetime ban. We are concerned about exceptional cases where torture and changed circumstances are evident. The new legislation, in our opinion, should be promoted to the international standard and restore this right.

Inadmissibility

Our present asylum system refuses access to the refugee determination process if claimants have had any connection with a terrorist or a violent organization. We have had clients who were wrongly described as national security risks. Unfortunately, there is no transparency in this sphere and there is no accessibility or accountability in terms of decision-makers of the Canada Border Service Agency (CBSA) or the Canadian Security Intelligence Service (CSIS). We propose that these serious gaps be addressed and covered in a new legislation. Refugee claimants are inadmissible if they are convicted in another country for a serious crime. It should be noted that there are people who get convicted because of using a false document to enter a country (as many refugees have to do). A distinction should also be made between criminals and victims of torture who are falsely convicted of crimes, under tyrannical regimes, as a means of their persecution.

Ministerial Intervention

While we agree with the right of the Minister of Public Safety to intervene in refugee hearings, we are concerned about the excessive use of this right, which could change the non-adversarial nature of refugee hearings. We have documented cases of Minister's representatives who have played the role of the prosecutor. This could lead to retraumatization of survivors. We are also concerned about Minister's ability to appeal decisions.

Impunity

As a Centre concerned with addressing the root causes of torture on a global level, we strongly believe that the Canadian asylum system must address the problem of impunity and report cases of asylum by perpetrators of torture, war crimes and crimes against humanity to respected authorities for prosecution. We feel that our government's direction for removal of perpetrators international crimes from Canada is inadequate and ineffective. We believe that removal should not be approached as a short cut in resolving the complicated problems of war crimes and crimes against humanity. Deportation should not act as a substitute for punishment. In some cases, deportation of perpetrators to other countries could result in their impunity. A war criminal or a person

who has committed crimes against humanity is a threat to international peace and security, wherever he/she moves. We believe in prosecution rather than deportation.

Protection of Stateless People

There is only a casual reference to statelessness in Canada's refugee determination system. We, at the CCVT, have encountered cases of people who fall through the cracks and find themselves without status, nationality or citizenship: in other words, they are de facto **stateless persons**. With geopolitical changes resulting from the termination of the Cold War and the subsequent rise of ethnic conflicts, the problem of statelessness has continued to increase and has the potential of turning into a critical global problem. There is a need for Canada to ratify 1954 UN Convention on the Protection of Stateless Persons and incorporate it in the upcoming Immigration legislation.

Non-status People and Refugees in Limbo

We believe that it is in the long-term interest of the Canadian society to deal with non-status people and refugees in limbo. They also need protection and attention like other asylum-seekers. We need to consider regularization of status for people who have not been removed due to government's inaction and are living in Canada for long periods of time with no status. We propose a publicly announced program for "illegals" with the intention of providing them with a kind of temporary status and landing them after some time. If we do not consider a sort of relief for those who have remained "illegals" for years, we will have to face an underworld in Canada with an alternative system of uncontrollable and sophisticated underground relief and protection. We are also concerned about the hundreds of Convention refugees who are living in limbo as a result of their inadmissibility with no prospect for getting their landed status. We are particularly concerned about many survivors for whom limbo has continued as a source of re-traumatization. We propose legislative changes to address the plight of Convention refugees in limbo with a view to grant them permanent resident status, with no processing fee requirement, and in an expedited manner.

IV. CCVT Special Requests

1. We request for special attention to the rights of people with disability in the whole process of refugee determination.
2. We request for the protection of the victims of human trafficking. We also request for effective prosecution of their victimizers.
3. We request for special attention to the refugee claims of survivors of rape and gender-related torture and persecution and the sensitivity of survivors. Instances of rape may not be revealed due to the feeling of shame and cultural reasons. There is a need for close collaboration with survivors' caregivers.
4. We request for incorporation of all important provisions in the legislation itself and not leave them for regulations.
5. We recommend provisions in the legislation for clear, consistent, merit-based and accountable regulations on the appointment of IRB members

and their ongoing training by service and human rights organizations such as the Canadian Centre for Victims of Torture.

6. Please provide the minister with the discretionary power to protect people who need protection. Even the most comprehensive legislation cannot anticipate exceptional cases.
7. Please be as flexible as possible. Tough legislation and tight restrictions will be counter-productive if they fail to consider the root causes of the problem.
8. It is well-known fact that since 1976, legislation has gone through many changes, many amendments, and still we have the problem. Please come up with a vital link between immigration and human rights. Please designate an ombudsperson responsible to the Parliament for monitoring immigration, refugees and citizenship practices.