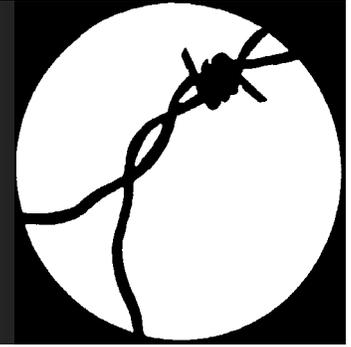


First Light



A Biannual Publication of the Canadian Centre for Victims of Torture (CCVT)

Genocide, War Crimes, Crimes against Humanity



Accredited member of the International Rehabilitation Council for Torture Victims (IRCT)

Winter 2009



 **TORONTO**

 Ontario



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada





First Light

First Light is published semi-annually and is intended to inform the interested reader about torture, its effects and what we can do in aiding survivors to overcome their experience of torture and war. CCVT views itself as part of a larger global community and is committed to the struggle for human rights, justice and the end of the practice of torture. We chose to call this publication **First Light** because as the first light before true dawn, it symbolizes the first ray of hope for survivors of torture.

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Mandate

The Canadian Centre for Victims of Torture aids survivors in overcoming the lasting effects of torture and war. In partnership with the community, the Centre supports survivors in the process of successful integration into Canadian society, works for their protection and integrity, and raises awareness of the continuing effects of torture and war on survivors and their families. **The CCVT gives hope after the horror.**

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CANADIAN CENTRE FOR VICTIMS OF TORTURE

The Right Honorable Stephen Joseph Harper
Prime Minister of Canada
Office of the Prime Minister
Langevin Block, 80 Wellington Street,
Ottawa, ON. K1A 0A2

January 6, 2009

Dear Right Honourable Harper,

We, at the Canadian Centre for Victims of Torture (CCVT), along with most of the world, are highly concerned about the escalation of hostilities in the Middle East. The conflict in Gaza Strip continues to cause havoc and destruction putting at risk hopes for the termination of a dangerous humanitarian crisis that has thus far taken a heavy toll. Since the escalation of the conflict on December 27, 2008, at least 700 Palestinians - including almost 100 children - have been killed. More than 2,700 have been wounded. At least ten Israelis have been killed by rockets fired from Gaza. The number of wounded Israelis has surpassed 55. At the time of writing, the toll has increased substantially with the reported deaths at the United Nations school.

Hospitals are damaged and medical personnel are being killed. 1.5 million people in Gaza lack food, water, power and fuel. In southern Israel, schools remained closed and hundreds of thousands of people have been rushing to shelter at the sound of alarms heralding incoming rockets. In addition to total closure of all crossings and destruction of essential infrastructure including electricity, running water, communications and roads, hospitals are on the verge of collapse due to overload and the inability to provide adequate intensive care to the high numbers of casualties. External evacuation of the sick and wounded has become impossible.

The ugly monster of the war has undermined the forces of moderation and has produced a vicious circle of violence that, if not stopped immediately, has the potential to continue for many decades to come.

In terms of the clear global responsibility for immediate intervention, what is most disturbing, Mr. Prime Minister, is the inadequate effort by the UN Security Council as well as the western governments including



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Canada. We are, unfortunately, not doing what we can and must do at these critical moments.

We, at the Canadian Centre for Victims of Torture, strongly believe that war is the cruellest absurdity in human life. History has undoubtedly and repeatedly proved that it is not a means for achieving political ends. We believe in the sacredness of life and are against the consecration of death and “martyrdom”.

Mr. Prime Minister! With our brilliant record as a global human rights leader and with our longstanding position as an honest broker, Canada is in a unique position to contribute towards an immediate ceasefire in this turbulent region as the first step towards negotiation and peace. We urgently appeal to you to rely on the moral authority of Canadian society and utilize all bilateral as well multilateral means to stop the conflict in Gaza Strip.

We urge you, Mr. Prime Minister, to adopt an impartial and objective position, based on international human rights instruments, specifically four Geneva Conventions of 1949, known as International Humanitarian Law (IHL) or the Law of Armed Conflict. What is needed today is political will and initiative asserting core ethics and principles of morality. Civilian populations from both sides of the conflict, including and specifically children, should be protected. There must be assurances that food, water, fuel and medical assistance are available. We rely on Canada's humanitarian and compassionate traditions and ask for your immediate intervention for relief and humanitarian aid to victims of the present conflict.

Further actions include re-opening crossing-points under international oversight so that instead of weapon-smuggling, humanitarian assistance is provided to the Gaza population. There should be immediate halt of military operations by the Israeli army and unconditional stop of the Hamas missile attacks against Israel. There is a need for a detailed UN Security Council resolution rather than issuing haphazard press statements such as that of 28 December 2008.

Our experience as a Centre helping survivors of war and torture has shown us that in a state of war, where certain people are regarded as enemies, torture, war crimes and all sorts of crimes against humanity are justified and even sanctioned by belligerent forces. War creates social polarization and drives people to “opposite extremes”. A contaminating hatred is produced with the alarming capacity to sustain decades after the termination of armed conflict. Thus, the basis for peaceful co-existence may irreversibly disappear.

What we are facing today in southern in Gaza is the dominance of the culture of death, carrying with it the potential to spread to the whole region. The continuation of the conflict will produce more destruction, more poverty, more deprivation, and multiple epidemic diseases. Humiliation and the insecurity of life have provided terrorist leaders with a rare opportunity to recruit youth for suicide missions. Where



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human life loses its value, death emerges as an unquestionable demonstration of honor, courage, loyalty, and moral character. It intensifies the circle of violence.

What is at stake today is the potential to betray our fundamental system of human values. With the passage of time, it might be possible to reconstruct war-ravaged areas or compensate for the war's human and material damages. However, as the destruction deepens, it becomes increasingly difficult to restore the universal values that once united us. With the continuation of violence, the war-ravaged area has, unfortunately, been reduced to a slaughterhouse devoid of all recognizable human values.

The ongoing devastation and slaughter of vulnerable civilians - women, children and elders alike, and the destruction of houses, crops and livestock are justified by both sides as "collateral damage," or the inevitable price that must be paid for "self-defense." There is almost no respect for customary international law.

Mr. Prime Minister, please act before it is too late. The Canadian Centre for Victims of Torture (CCVT) is willing to help you in addressing the present crisis in the Middle East and in finding a durable solution.

Canada has accepted the greatest challenges in global human rights leadership. We expect your government to protect Canadian values and play a leading role in putting an immediate halt to the present conflict in the Gaza Strip. Please help us to continue adhering to the basic principles that make Canada admired and respected.

With best wishes and in the hope future cooperation.

Yours sincerely,

Mulugeta Abai
Executive Director



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Crimes against Humanity

Ezat Mossallanejad

Crimes against humanity are those types of horrible, inhuman and cruel acts that travel beyond national borders and shock human conscience in every corner of the globe.

They are usually committed on a mass-scale and are considered a serious and everlasting blow against human dignity. It should be acknowledged, however, that the criteria for the identification of these crimes are not reduced to the scale of its perpetration. Crimes against humanity may be committed against one person but have a severe impact on the dignity of all humanity. Stoning, for instance, can be carried out against an individual woman, but under certain conditions, it may fall into this category of crimes. Crimes against humanity are usually perpetrated in a consistent, widespread, systematic manner and are carried out, enforced or condoned by government forces or the de-facto authorities⁽¹⁾. Isolated or sporadic cases can be considered human rights violations and/or war crimes but not crimes against humanity.

Although there are many overlapping similarities, it is important to note the differences among war crimes, genocide and crimes against humanity. For example, as oppose to war crimes, crimes against humanity may occur during both war and peaceful times. As well, unlike genocide, crimes against humanity are not intended to fully or partially destroy a group of people. A “crime against humanity” means any act, as listed by the Rome Statue, committed as part of a widespread or systematic attack directed against any civilian population, with the awareness of that act and its unlawful outcomes⁽²⁾.

Over time, the spectrum of transgressions included in this category has lengthened. The International Criminal Court (ICC), for example, has included crimes such as rape, the disappearance of individuals and apartheid in its list of crimes against humanity⁽³⁾. However, no matter who the defining party is, the common ground is found amongst all definitions: they refer to specific acts of violence against people irrespective of whether they are nationals or not, and they may happen during wartime or in times of peace. Moreover, all these crimes are characterized as systematic

and widespread, and are carried out against an identifiable group irrespective of the makeup of that particular group⁽⁴⁾.

The first time the term “crimes against humanity” was used was in May 24, 1915 by the Allied Powers, as a reaction to the extermination policies of the Ottoman Empire and had no legal connotations⁽⁵⁾. The first time this term was used in a legal context was during the Nuremberg International Military Tribunal, which took place from 1945 to 1949 and which sought the prosecution of a number of high profile Nazi leaders⁽⁶⁾. The Nuremberg Trials are considered a landmark in the fight against war crime impunity. The Trials directly addressed this issue for the first time on a global level.

Despite its limited authority (as the tribunal of triumphant Allied Powers composed of four judges from the USA, UK, USSR and France), the Nuremberg Tribunal revolutionized international law. It set a solid foundation for subsequent international legal instruments against impunity, including the Genocide Convention of 1948, the International Humanitarian Law (4 Geneva Conventions in 1949), the Convention against Torture (1984) and the Rome Statue for ICC (July 1998)⁽⁷⁾.

During the course of the trials, the notion that states rather than individuals should be prosecuted for war crimes was rejected because it was maintained that state-sanctioned crimes are implemented by individuals. It was during these trials that new concepts were introduced into the body of legal international law; such as, the concept of crimes of aggression and crimes against humanity. These new concepts included crimes of murder, enslavement, extermination, deportations, persecution or torture against conquered racial and religious minorities and other massive crimes against civilians before or during the war.

Another milestone in the development of international justice was the Russell Tribunal, named after British philosopher, mathematician and humanist Bertrand Russell. Joined by a number of distinguished intellectuals such as



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Jean Paul Sartre, Isaac Deutscher and Vladimir Dedijer, Russell organized a symbolic international tribunal with the purpose of assessing US military aggression in Vietnam⁽⁸⁾. The Tribunal gauged US culpability in five areas by adopting the same standards applied in the Nuremberg Trials. This type of trial had no historical precedent and Russell relied on the "integrity of the members" as the best guarantee for the impartiality of the hearings⁽⁹⁾.

Although the committee had no legal authority, the significance of such a court is that, in the interest of humanity, it awakened the world to its moral responsibility and broke the conspiracy of silence that accompanies impunity of those at the apex of power. The twelve weeks of proceedings were published in a report entitled *Crimes of Silence*.

Unfortunately, despite the fact that the Tribunal took on a formal organizational structure and continued to receive evidence from other international conflicts, it failed to achieve a more permanent status. Nevertheless, it did manage to raise consciousness amongst the population and to establish the notion of an international court aimed at judging crimes and their perpetrators who would have otherwise enjoyed impunity⁽¹⁰⁾.

As a result of this newfound awareness, the Women's International War Crimes Tribunal was instituted, publicly denouncing the usage of female sexual slavery in wartime Asia. The Tribunal also found Japanese Emperor Hirohito guilty of crimes against humanity in 2000⁽¹¹⁾.

Ten years later, in the course of the United Nations struggle against South African Apartheid, the General Assembly used the term "crime against humanity" in its resolution of 1976⁽¹²⁾. The UN considered systemic and consistent persecution of a racial group by another one as a crime against humanity. Unfortunately, at that time, there was neither a convention nor an international legal institution instituted to indict perpetrators of crimes against humanity and more bloodshed would occur before one was founded.

The 1990s was witness to two other genocidal wars, one in

former Yugoslavia and the other in Rwanda. These genocidal wars led to the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) - the two bodies that eventually paved the way for the Rome Statute for the International Criminal Court⁽¹³⁾.

While impunity for war crimes and crimes against humanity is a global problem, impunity for perpetrators of gender-related tortures is even more widespread. Sexual crimes such as gang rapes, forced prostitution and sexual enslavement have always occurred as part of genocidal practices, even in times of peace. Yet, until recently, little international attention has been paid to these human tragedies. Rape has been considered a "component" of every war and yet has not been considered a form of crime. For a long time, national and international tribunals failed to investigate or prosecute crimes of sexual or gender torture.



Despite initial reservations, the ICTR finally recognized sexual violence as a form of genocide and torture. The ICTY in Hague and the ICTR in Arusha have tried their best to overcome numerous difficulties to bring perpetrators of rape and other sexual crimes to justice. By June 2002, they had convicted 28 Yugoslav and 6 Rwandan defendants, among them the former Prime Minister of Rwanda⁽¹⁴⁾. In addition, Slobodan Milosevic became the first head of state to be indicted for war crimes.

Following the bitter experiences of 1990s, the idea of an International Criminal Court (ICC) developed within the UN system. A coalition of supportive states, referred to as the "Like-Minded Group", was developed with the purpose of creating a Diplomatic Conference to finalize and adopt the ICC Statute in 1998. Philippe Kirsch from Canada chaired this Like-Minded Group and he did his best to promote an independent and effective ICC⁽¹⁵⁾.

The "Like-Minded Group" concluded that an effective inter-



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national court must have:

1. Jurisdiction over the crimes of international nature including those committed during internal armed conflicts;
2. A positive relationship with the UN Security Council, allowing its independence and impartiality to be maintained;
3. A distinguished Prosecutor with full independence capable of going beyond state complaints and referrals from the UN Security Council and initiate new prosecutions;
4. The recognition of the experiences of women and of children in armed conflict.

The efforts of the Like-Minded Group resulted in the establishment of a Diplomatic Conference in Rome from June 15 to July 17, 1998. The Canadian delegation played a facilitating role throughout the negotiations and tried to bridge the gap between different countries in areas such as the jurisdiction of the Court and the definition of crimes. At last, a global proposal was organized rendering the formulation of the Rome Statute. The Chair of the Conference, Mr. Philippe Kirsch, played a crucial role in preparing the final draft. The package was adopted on July 17, 1998, with 120 votes in favor, 7 against it and 21 abstentions⁽¹⁶⁾.

Following the adoption of the Rome Statute for ICC, a Preparatory Commission (PrepCom), was founded, to negotiate specific supplementary documents; such as, the Rules of Procedure and Evidence of the Court, the Elements of Crimes, the Financial Rules and Regulations, the Relationship Agreement between the Court and the UN, and the Agreement on the Privileges and Immunities of the Court. The Rome Statute of ICC established the International Criminal Court as a permanent institution with jurisdiction over "persons for the most serious crimes of international concern" which "shall be complementary to national criminal jurisdictions."⁽¹⁷⁾ The court has jurisdiction with respect to: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; and (d) The crime of aggression⁽¹⁸⁾.

The Rome Statute is mandated to deal with "the crime of aggression." The Statute, however, has not provided any definition for the crime of aggression and has subjected the exercise of its jurisdiction over this type of crime to its future definition. The definition of the crime of genocide in Rome Statute is similar to the definition given in Article 2 of the 1948 Convention on Prevention and Punishment of the Crime of Genocide⁽¹⁹⁾. Genocide is defined as "acts committed with intent to destroy, in whole or in part, a national,

ethnic, racial or religious group."⁽²⁰⁾

The concept of "crime against humanity" that was introduced by the Nuremberg Tribunal, is well defined in Article 7 of the Rome Statute. It states that the following acts constitute crimes against humanity, when they are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender grounds ...; (i) Enforced disappearance of persons; (j) The crime of apartheid; and (k) Other inhumane acts of a similar character⁽²¹⁾.

The definition of war crimes in the Rome Statute is based on the provisions of the International Humanitarian Law (the four Geneva Conventions of 1949). According to these provisions, war crimes consist of the "serious break of the above Conventions through such acts as willful killing, torture, extensive destruction and appropriation of property, compelling a prisoner of war to serve in the forces of a hostile power,"⁽²²⁾ etc.

The Rome Statute for International Criminal Court is based upon the principle of "complementarity". The ICC intervenes only when national courts are unwilling or unable to prosecute and its jurisdiction is not retroactive. It can only investigate and prosecute crimes committed after 1 July 2002⁽²³⁾. It is difficult for the ICC to act in a country that has not ratified the Rome Statute unless the state where the crime has been committed accepts its jurisdiction. When a crime constitutes a threat to international peace and security, the UN Security Council can refer the case situation to the ICC. The Council also has the authority to postpone any investigation.

In its actual practice, the ICC is not mandated to prosecute authorities in power. Such prosecutions can be taken as violation of the principle of national sovereignty. Given today's system of international relations and the UN structure, it is hard to expect the UN Security Council to acti-



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vate the ICC for prosecution of ruling tyrants. Such decisions can be vetoed by a permanent member of the Security Council due to its close military, economic and political ties with the offending ruling power.

In Canada, there is the Canada's Crimes against Humanity and War Crimes Program, under the Ministry of Justice, which in collaboration with the Royal Canadian Mounted Police (RCMP) and the Canadian Border Service Agency (CBSA). They channel their investigations to the body of the Interdepartmental Operations Group (IOG)⁽²⁴⁾. Their aim is to examine allegations of crimes against humanity and war crimes against Canadian citizens or individuals residing in Canada. It also ensures Canada's compliance with its international obligations and cooperation with international tribunals in extraditing, surrendering people and revoking citizenship when necessary. This coordination takes place on several levels ranging from discussing and developing policy objectives common to all three departments to ensuring proper cooperation at the day-to-day working level. Senior officials from specialized units in each department are active in the IOG. They work under the provisions of Crimes Against Humanity and War Crimes Act that was passed through the Canadian parliaments on June 29, 2000.

Given the strife in several parts of the world over the last 30 years, it is possible that some potential war criminals may have managed to immigrate to Canada and subsequently become Canadian citizens. Unfortunately, this is a reality given that prior to the early 1990s, Canada did not have the legislative provisions on war crimes that it has today. Improved front-end screening procedures, the provisions that currently exist in IRPA (Immigration and Refugee Protection Act), as well as the formation of the Modern War Crimes Program in 1998, are some attempts in the expectation of reducing the risk of this type of occurrence in the future⁽²⁵⁾.

For the first time in human history, an international tribunal was established in July 2002 with the mandate of bringing perpetrators of genocide, torture, war crimes, and crimes against humanity to justice. Let us hope that the advancements in ICC endeavors will continue for they are necessary to address the long list of crimes plaguing humanity today.

**Ezat Mossallanejad is the Policy Analyst and Researcher at the Canadian Centre for Victims of Torture*

Notes:

1. Rome Statute, Art. 7(1-2).
2. Ibid., Art. 7(1).
3. Ibid., Art. 7(1g, i, j).
4. Rome Statute, Art. 7(1h).
5. Sévane Garibian, The Conceptualization of Crime Against Humanity, June 2008, Online Encyclopedia of Mass Violence, 10 Nov. 2008 <<http://www.massviolence.org/Crime-against-Humanity>>.
6. Ezat Mossallanejad, Torture in the Age of Fear (Hamilton: Seraphim Editions, 2005) 152.
7. Mossallanejad, 152.
8. Ibid., 153.
9. Bertrand Russell, The Autobiography of Bertrand Russell, The Final Years: 1944-1969 (New York: Simon and Schuster, 1970) 239.
10. Mossallanejad, 154.
11. Ibid., 154.
12. "Policies of Apartheid of the Government of South Africa," Resolutions Adopted by The General Assembly During Its Thirty-First Session, 26 Oct. 1976, United Nations General Assembly, 10 Nov. 2008 <<http://www.un.org/documents/ga/res/31/ares31.htm#top>>.
13. Mossallanejad, 155.
14. Ibid.
15. Ibid., 156.
16. Mossallanejad, 156.
17. Rome Statute, Art. 1.
18. Ibid., Art. 5.
19. Convention on Prevention and Punishment of the Crime of Genocide, Article 2, Adopted by Resolution 260 (III) A of the United Nations General Assembly, 9 Dec. 1948, retrieved from The Avalon project at Yale Law School, 10 Nov. 2008 <<http://www.yale.edu/lawweb/avalon/un/genocide.htm>>.
20. Convention on Prevention and Punishment of the Crime of Genocide, Article 6.
21. Rome Statute, Art. 7.
22. Ibid., Art. 8.
23. Mossallanejad, 158.
24. Interdepartmental Operations Group, 28 Mar. 2008, Department of Justice Canada, 10 Nov. 2008 <<http://canada.justice.gc.ca/eng/pi/wc-cg/oms-ams.html>>.
25. Mossallanejad, 177, 234.





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Genocide

Mulugeta Abai

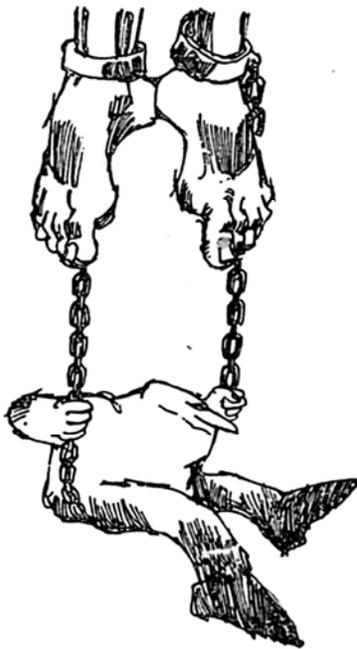
Genocide is generally considered one of the worst moral crimes a government (meaning any ruling authority, including that of a guerrilla group, a quasi state etc.) can commit against its citizens or those it controls. The major reason for this is what the world learned about the Holocaust, the systematic attempt of German authorities during World War II to kill all and every Jew no matter where they were found. This murder of between 5 to 6 million Jews became the paradigm case of genocide and underlies the word's origin. As the world learned about other genocides, there was an international attempt through the United Nations to make genocide an international crime and to bring its perpetrators to justice.

Thus, in 1948, it approved and proposed the Convention on the Prevention and Punishment of the Crime of Genocide (UHCG), and most recently convinced states to sign into being the International Criminal Court (ICC). As a crime, genocide is defined as the intention to destroy, in whole or in part, a national, ethnical, racial or religious group. As such, the ICC accepts this definition, further elaborates it, provides broader jurisdiction, and can subject individuals regardless of status or rank to prosecution. Noteworthy is the fact that the ICC now covers not only genocide, but crimes against humanity that include, aside from genocide, government murder, extermination campaigns, enslavement, deportation, torture, rape, sexual slavery, enforced disappearance, and apartheid.

The definition of genocide has, in essence, been of two types. One is the definition of genocide as the intention to wipe out people because of their group membership, even if political or economic. A second definition, which may also be

called democide, is any intentional government wiping out of unarmed and helpless people for whatever reason.

Taking both definitions into account, governments have wiped out probably around 174 million people during the 20th Century. Most of this exterminations, perhaps around 110 million people, is due to communist governments, especially the USSR under Lenin and Stalin and their successors (62 million murdered), and China under Mao Tse-tung (35 million). Some other totalitarian or authoritarian governments are also largely responsible for this toll, particularly Hitler's Germany (21 million murdered) and Chiang Kai-chek's Nationalist government of China (about 10 million). Other governments that have murdered millions include Khmer Rouge in Cambodia, Japan, North Korea, Mexico, Pakistan, Poland, Russia, Turkey, Vietnam, and Rwanda, Sudan, the former Yugoslavia.



Genocide is a product of the type of government a country has. There is a high correlation between the level of democratic freedom a nation enjoys and the likelihood that the government will commit democide. Regardless of type of government, the likelihood of genocide increases during their involvement in war, or when undergoing internal disruptions, as by revolution, rebellion, or foreign incursions. This provides the cover and excuse for genocide. Regardless of war or peace, the motive for genocide may be to deal with a perceived threat to the government or its policies, to destroy those one hates or envies, to pursue the ideological transformation of society, to "purify" society, or to achieve economic or material gains.

Genocide is foremost an international crime for which individuals, no matter how high in authority, may be indicted,



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tried, and punished by the International Criminal Court (ICC). According to Article 6 of the ICC Statute, this crime involves, "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group."

In 1998, 120 countries voted to adopt the treaty establishing the ICC. With its Statute signed by 139 states and ratified by 76, the ICC formally came into existence on July 1, 2002 at The Hague, in the Netherlands. It is a permanent court, independent of the United Nations, and intended to cover the world. In the Preamble to the Statute the State Parties agreed to the Statute, while:

"Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation, . . .

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole"

This shows a clear international desire that the crime of genocide not go unpunished regardless of where it occurs.

**Mulugeta Abai is the Executive Director at the Canadian Centre for Victims of Torture.*

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“A nation that continues year after year to spend more money on military defense than on programs of social uplift is approaching spiritual death.”

Martin Luther King, Jr.



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The Role of Impunity in the Perpetuation of Trauma

Teresa Dremetsikas MD

In order to position my presentation within the desired context, I chose the well known words of the prominent writer born in Spain, George Santayana, and also another, not so widely known but equally wise, Guatemalan born Dr. Roberto Cabrera. I hope to have their words anchor me in the presentation of this paper.

*"Those who forget history are condemned to repeat it."
George Santayana
(as quoted in a AI report and written in his book*)*

"Remembering should be linked to new dreams. There is no point in looking back if it does not help us to dream and create a better future."

*Roberto Cabrera (1)
(*Should We Remember? Recovering Historical Memory in Guatemala)*

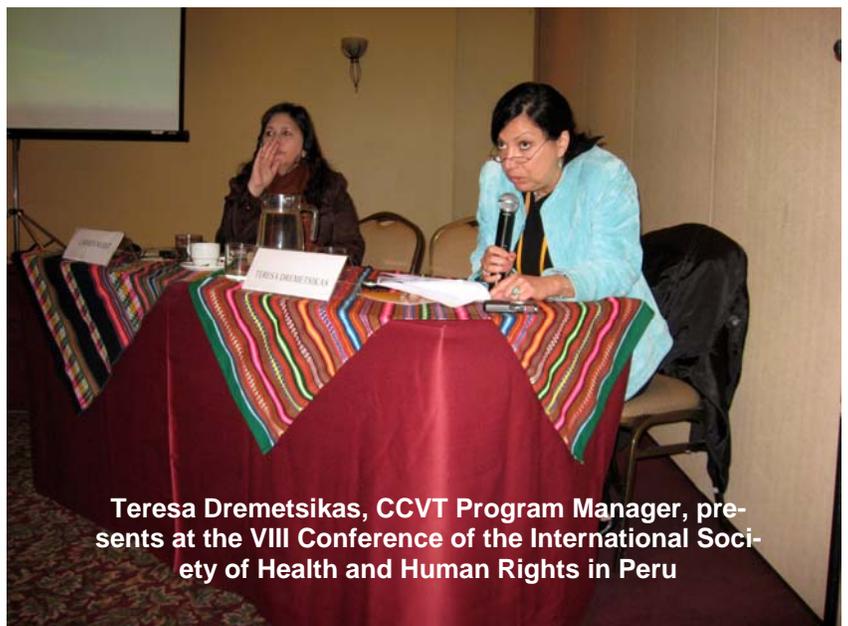
Presentation Outline

- History of "Truth and Reconciliation" in different contexts.
- Examples and their outcomes.
- Debate on the issue of forgiveness.
- Analysis of the role of Impunity in the perpetuation of trauma.
- Justice and Reparation as part of the recovery process.

In a report entitled Truth Justice and Reparation by Amnesty International, Truth commissions have been defined as "official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law, usually committed over a number of years." The object of their inquiry (i.e. the pattern of human rights violations, rather than a specific event) makes truth commissions different from other commissions of inquiry. Their temporary character distinguishes them from many national human rights commissions and other national

institutions whose work focuses on the promotion and protection of human rights. They are usually permanent monitoring and enforcement bodies. Truth commissions, on the other hand, are established by national authorities, generally during a political transition. They take a victim-centered approach and conclude their work with a final report containing both their findings and recommendations.

In the context of any political transition, either to peace or to a democratic regime, truth commissions can play an important role in providing a full account of past human rights violations. This makes them important contributors in the process of conducting investigation and eventual prosecution of the human rights violations. Their activity can help in preventing the violations from repetition, and can ensure that victims and their relatives are provided with full reparation. (2)



Teresa Dremetsikas, CCVT Program Manager, presents at the VIII Conference of the International Society of Health and Human Rights in Peru



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History of “Truth and Reconciliation” in different contexts

Since 1974, over 30 Truth and Reconciliation Commissions (TRC) have emerged worldwide to address the problem of impunity with the intention of revealing the truth, healing the wounds and laying the foundation for national reconciliation. (3)

TRCs have proved their effectiveness in some countries, engaging in the reinterpretation of the history and acknowledging the gross violations of the dark past. Unfortunately, there have also been cases when they have been ineffective in other countries, sometimes acting as substitutes for national courts. Let us have a historical glance at the successes and failures of TRCs in selected countries of the world.

During the Dirty War in Argentina (1976-1983), some 30,000 dissidents were kidnapped by the repressive army. Upon being seized, they “disappeared.” The country’s dirty warriors were granted amnesty in 1987. Today, they live among their traumatized victims, with total impunity, sparing no time to obfuscate the truth.

The problem of impunity also could not be addressed effectively in Haiti during the transitional period due to threats and retaliatory measures against survivors, lawyers and witnesses on the one hand, and the lack of state protection on the other.

The Aylwin government in Chile also established the National Commission on Truth and Reconciliation, or Rettig Commission, to make an inquiry into human rights abuses during the 1973-90 period of military rule. It eventually produced a voluminous report holding the security forces responsible for 2,115 deaths, including those of 957 detainees who disappeared and an additional 164 victims of political violence.

The government of El Salvador spared no effort in obstructing Truth Commission from addressing the problem of impunity during the period of transition. The Commission, however, withstood government’s pressure and published the names of over forty top officials as perpetrators of torture and other international crimes. The then President of El Salvador Alfredo Christiani pre-empted this action by granting a blanket amnesty to all human rights perpetrators.

Five days after the publication of the Commission’s report, with the full support from the army, the new government passed the Law of National Reconciliation, which granted amnesty to many of those responsible for human rights abuses since 1980 (Legislative Decree 486, March 20, 1993).

Serious Crimes Unit in East Timor initiated prosecution of those responsible for masterminding the 1999 rampage. The indictment included military officials of the highest ranks. Acknowledgement, restitution and reparation of victims were among the main targets of the Truth and Reconciliation in East Timor that was named the Commission on Reception. It required perpetrators to reveal their past crimes voluntarily. Perpetrators were asked to enter into reparation agreements with their victims or be referred to courts for prosecution.

African National Congress, on the other hand, opposed the idea of blanket amnesty and agreed that amnesty be granted only to individuals upon their requests. A Truth and Reconciliation Commission was set up. The intention was to replace retributive justice (or legal punishment) with a restorative justice based on the needs of survivors and their participation in the process. Survivors were allowed to speak publicly about their past experiences and ask for reparation.

Amnesty was, more or less, a pre-condition for transition to a post apartheid political system in South Africa. The Truth Commission supported some forms of amnesty to individual only in exchange for revealing the truth. It was granted to 7000 applicants who gave all information about their crimes of the past. Amnesty as such exempted perpetrators from criminal prosecutions and civil suits. This was probably a better option for this developing country given the fact the trial of two cases of the crimes of apartheid in 1996 had the cost of \$8 million.

Most recently, on the 1st of June of this year, the TRC was created in Canada as a result of the Indian Residential School Settlement Agreement to address the abuse that the natives have suffered in Canada for 150 years while in the Residential Schools.

It is the longest period ever to be reviewed by a TRC. As an anonymous survivor put it:

“The Commission needs to hear the whole



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truth about what it was like in our communities when the children were all taken away to residential schools and what happened to the grandmothers and grandfathers or the mothers and fathers or aunts and uncles when there were no children in our communities. The Commission needs to tell the before and after story about how our people never had any shame about who they were before they went to residential schools. The principles and plans devised are clear and we are still to see the results.”⁽⁴⁾

The TRC is not a criminal tribunal and it was created as a result of the court-approved Indian Residential Schools Settlement Agreement. It hopes to guide and inspire First Nations, Inuit and Métis peoples and all Canadians in a process of truth, healing and reconciliation that will lead to renewed relations based on mutual understanding and respect. It will provide former students, families, communities and anyone affected by Indian Residential Schools with an opportunity to share their personal experiences. Participation in it is voluntary and its duration is five years.

The TRC is not a Federal Government commission. It does not report to a Minister or Parliament. Its legal authority and mandate come from the negotiated court-approved agreement to settle legal claims that residential school survivors and others brought against Canada and major churches. The TRC is court-monitored and reports to the parties, to the Settlement Agreement through the courts.

It should be noted that the changes of regimes in many countries have not led to structural change in the functioning of the state apparatus. Perpetrators remain active in army and the intelligence, using their influence to block the road to justice. Despite these limitations, Truth Commissions have tried their best to reveal the crimes of dark past with the help of tools such as uncovering of mass graves, reviewing secret files of the army and security forces, hearing and analyzing testimonies of survivors, witnesses and perpetrators, etc. They have contributed towards healing and empowering survivors. They have tried to engage in a series of efforts to reveal the harm inflicted upon survivors and their families, and help in the process of reparation.

They have also contributed towards the restoration of the victim to their original situation before the occurrence of torture or crimes of similar nature (restitution).

There is no doubt that addressing impunity by Truth and Reconciliation Commissions is the first step in the spiral road of establishing a holistic peace that can be achieved through national and international solidarity. Joan Simalchik, the former Executive Director of the Canadian Centre for Victims of Torture (CCVT), has emphasized the need for a great deal of national solidarity to overcome the problems of impunity:

“After cataclysmic natural disasters, such as floods and earthquakes, communities come together to commit resources, direct rebuilding efforts and learn from their mistakes. ‘Unnatural’ disasters require similar acknowledgement on a national level, the same psychological rebuilding and efforts to learn.”⁽⁵⁾

There is a need for a more integrated approach to the problem of transitional justice. Truth, reconciliation (amnesty), reparation and rehabilitation must come together. Victims should be compensated financially as well. This will help victims whose lives are destroyed to reestablish themselves. There is also a need for ongoing counseling and trauma intervention combined with physical and psychological treatments. The process of justice and accountability should be comfortable and safe in the eyes of victims. Victims’ participation is imperative. Their voices must be heard through their participation and written submissions. Other measures include apology, restoring legal rights, and revising history books to challenge the rhetoric.

Forgiveness

The question of forgiveness arises in any reconciliatory effort. The contemporary novelist of the South African origin, Gillian Slovo, has marvelously resolved the dilemma of forgiving one’s torturer or killers of close relatives during the period of transition. Her mother, Ruth First, was assassinated by the security forces of the apartheid regime. Years later, her father, Joe Slovo, contributed towards the creation of the Truth and Reconciliation Commission in post-apartheid South Africa. At that time, the government



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considered granting amnesty to the assassin of Gillian's mother. Let us learn from Gillian's personal reflections:

"The reconciliation that I experienced was with what happened, not with the perpetrators. And this for me is the important thing about TRC that it helps a whole society reconcile itself to its past without ignoring or denying it." (6)

It is easy to grasp from Gillian's experience that her idea of justice is by no means retributive. Punishment should serve objectives such as correction, deterrence, rehabilitation, reformation, reparation and cure. These objectives are accompanied with the ultimate idea of forgiveness, extended even to the perpetrators of heinous crimes, both at the individual and social levels.

The dilemma of forgiveness stems from the fact that all culprits ask for pardon. Then once it is granted, they repeat the same actions. Therefore, forgiveness must be attached to certain conditions. The perpetrators should show their sincere efforts to overcome their normal sense of denial and expose their past vices in all dimensions.

They must show that they are willing to pay their debt to their victims and to the society as a whole. There is a need for the victims and the entire society to develop the idea of ultimate forgiveness. We need to have both retrospective and prospective attitudes. Nobel Prize Laureate, Wole Soyinka, mentioned in his book *Burden of Memory – The Muse of Forgiveness* that "capacity to forgive enemy is based on love, at least a certain doctrine of love." (7) The transitional society that has emancipated itself from the regime of hate and terror must develop a new and all embracing perspective of love. Loving the enemy has a powerful healing impact both on victims and on the entire society. As my colleague Ezat, at the Canadian Centre for Victims of Torture, often says: "We must keep in mind though, that forgiveness is the right of victims. No one can forgive on behalf of those who have been affected."

Another impasse arises in active arm conflict when many innocent victims perish daily and culprits refuse to negotiate peace agreements unless given amnesty thereby denying chance to Peace. It is presently the case in Uganda and war lord Joseph Kony.

Impunity and the perpetuation of trauma

This point is not new to anybody working with survivors of torture, war and genocide. It has been well documented in the context of the Amnesty Law dictated by Pinochet and extensively analyzed by the prominent psychiatrist Dr. Carlos Madariaga who I had the honor to meet in Chile at the Centro de Salud Mental y Derechos Humanos en Chile (CINTRAS):

"The victim will suffer the impunity as a constant trauma that deepens the psychic disorders generated by direct violence; impunity thus becomes a new and powerful re-traumatizing agent acting on a daily basis on the whole of Chilean society." (8)

The above remark is valid in many other contexts and deserves to be kept as a reminder for anybody trying to involve oneself in the rehabilitation of survivors. There is a complexity in this type of trauma that the conventional therapies do not address and many processes of commissions underestimate.

Understanding this very hint is the key to develop practical models that attend to the specific issues arising in the life of individuals trying to overcome this specific form of trauma. I would like to add that once impunity is understood in the above terms (powerful re-traumatizing agent) and such knowledge recognized as fundamental knowledge, then the processes devised by communities to recover health and dignity of the survivors will include again fundamental measures to address impunity. It has to be done in the process of planning the reconstruction of societies, and particularly in the aftermath of trauma due to organized violence.

Martin Baro in Chapter 6 of the book *Writings for a Liberation Psychology* makes a formidable explanation and offers a model to explain the complexity of the trauma described above. His "Circles of silence" and the perpetuation of trauma through very strategically designed techniques of organized violence as well as his "Circles of Solidarity" make the corner stone of the present model of service delivery in organizations such as the CCVT. Baro also points the shortcomings of the PTSD as described in the DSM III to account for many other elements that play defining roles in the trauma of victims of torture and war:



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“Clearly mental disorders or problems pertain not only to the individual but also to the individual’s relationships with others. (...) It is important to emphasize that we are not trying to simplify a problem as complex as mental health by denying its personal roots (...) but we want to emphasize how enlightening is to change the lens and see mental health or illness not from the inside out but from the outside in (...).” (9)

I would like to illustrate with an example which I am sure is familiar to most of the people working in the field of rehabilitation for victims of torture:

“Repeatedly I heard and continue to hear from my clients at CCVT: Why do you want to send me to a psychiatrist? I am not crazy, crazy is the people who did this to me.”

I would like to add that even in the present DSM IV, the diagnostic criteria for PTSD continue to “leave much to be desired,” as Baro said, and they fall very short from being useful in diagnosing these type of trauma. Forgive my negativism, but I think I am right not to expect much more from the DSM V (to be released in 2012).

At CCVT we have the experience of clients meeting with their torturers and we witness the devastating effects on their mental health. We have also seen many times how individuals experience set backs with minimal reminders of the impunity enjoyed by their perpetrators. I remember in the early 90s a poster of Pinochet displayed in the subway of Toronto and three of my clients coming back in total disarray feeling offended and betrayed.

Justice and Reparation as part of the recovery process

It is impossible to reform perpetrator until and unless they acquire a new conscience. This new understanding should guide them to care for survivors more than they do for themselves. They must feel remorse and accept punishment in order to get emotional peace. According to the Bosnian scholar and linguist, Prof. Smail Balić, “evil cannot be offset by good when there is no genuine remorse.”⁽¹⁰⁾ There is no doubt that remorse and repentance serve no purpose unless accompanied by practical measures ensuring perpetrators’ action towards reformation and compensation of their victims.

It is in revising fundamentals about well established knowledge that new knowledge arises. Through repetition, by questioning and contradicting, as well as through the trial and error method, one can bring about great insights. So at the expenses of bringing up something that is probably well known to you, I will quote Desmond Tutu:

“Forgiveness is not just personally rewarding, it’s also political necessity. Forgiving and being reconciled to our enemies or our loved ones are not about pretending that things are other than they are. It is not about patting one another on the back and turning a blind eye to the wrong. True reconciliation exposes the awfulness, the abuse, the pain, the hurt, the truth. It could even sometimes make things worse. It is a risky undertaking but in the end it is worth while, because in the end only an honest confrontation with reality can bring real healing. Superficial reconciliation can bring only superficial healing.”⁽¹¹⁾

In addition to the above:

“If the victim could forgive only when the culprit confessed, then the victim would be locked into the culprit’s whim, locked into victimhood, no matter her own attitude or intention”⁽¹¹⁾

The last statement implies the existence of an inner force within survivors that can aim to transform their victimization into a more empowering experience. The new experience can embrace an understanding of the survivors’ influence in the process of their own healing. It can help in making such inner force independent of the perpetrator’s repentance. Nevertheless, the concept of Ubuntu takes it one step further by linking the individual to a wholeness which includes both victim and perpetrator...

Ubuntu is seen as one of the founding principles of the new Republic of South Africa:

“The concept of Ubuntu in the political arena highlights the need for unity or consensus in decision-making, as well as the need for a



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suitably humanitarian moral code to inform those decisions. It is a form of jurisprudence or penology that is not retributive but restorative.”

“A person with Ubuntu is open and available to others, affirming of others, does not feel threatened that others are able and good, for he or she has a proper self-assurance that comes from knowing that he or she belongs in a greater whole and is diminished when others are humiliated or diminished, when others are tortured or oppressed.”⁽¹¹⁾

Giving a more complete scenario where both victim and perpetrator are present makes the repentance process more sensible. An encounter between of the two sides (victim and perpetrator) becomes an essential part in providing the context. It also serves in the process of acquiring a sense of belonging and a better restoration of the mentioned wholeness.

Mandela expands on the other part of Ubuntu:

“Ubuntu does not mean that people should not address themselves. The question therefore is: Are you going to do so in order to enable the community around you to be able to improve?”⁽¹²⁾

As mentioned by Erick Doxtader and Charles Villavicencio in the book *To Repair the Irreparable*:

“Social solidarity is the type of empathy characteristic of those who have the disposition and the willingness to put themselves in the place of others. That this attitude is a condition of justice may be seen in the following way: an impartial perspective, and indispensable requisite of justice, is not achievable unless the person who judges is prepared to assume the place of the contesting parties. Moreover, in a democratic system, which distinguishes legitimacy from mere balances of power the only way to assure that the legitimacy of a law has been attained is by making sure that the law incorporates the interests of all who are affected by it. And this implies having an interest in the interests of others. This is, precisely, what constitutes social solidarity”⁽¹³⁾

The author of the above paragraph also explains that even though this may not be perfect justice and may not amount

to proportional reparation of the damage inflicted, it constitutes the grounds to build civic relations in countries coming out of conflict and authoritarian rule.

Solidarity has been recognized in other societies emerging from conflict as a way to address trauma at the community level. Martin Baro stressed the importance of many activities in this area which contribute to the recovery process:

“Utilizing the people’s virtues. Finally, we must work to utilize the virtues of our peoples. Going no further than my own people, the people of El Salvador, current history confirms, day by day, their uncompromising solidarity with the suffering, their ability to deliver and to sacrifice for the collective good, their tremendous faith in the human capacity to change the world, their hope for a tomorrow that keeps being violently denied to them. This virtues are alive in the popular traditions, in popular religious practices, in those social structures which have allowed the Salvadorian people to survive through history in conditions of inhuman oppression and repression – virtues that enable them today to keep alive faith in their destiny and hope for their future, in spite of a dreadful civil war that already (1986) has gone more than six years.”⁽⁹⁾

Money as reparation is another option and a valid form of reparation as well. It is worth mentioning that the right of victims of human rights violations to receive monetary reparation is now widely acknowledged. The basic principles and guidelines on the rights to a Remedy and Reparation for Victims of International Human Rights Violations (2005) set the basis for such acknowledgment.⁽¹⁴⁾

Conclusion

It would be too ambitious to pretend to be able to cover the four points mentioned in my abstract in 15 minutes. Each of these points could take hours and, in retrospect, a more realistic description of this paper should have been: a glance into relevant topics rather than an attempt to debate, let alone analyze any of them.





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Wondering about what was the use of writing this paper, I think that it was worthwhile to review some key elements pertaining to the role of impunity in the perpetuation of trauma. They should be regarded as core values and fundamental knowledge, as well as an integral part of any model addressing the needs of individuals and communities in the aftermath of organized violence.

I think that revisiting the concepts that have been brought to light by recognized personalities in the field is useful for anyone to keep in mind principles that may help deepen our understanding of the matters. It can also help us keep an open mind in our venture into new ways of addressing complex issues such as impunity and trauma. Finally, even a brief discussion can provide us with different perspectives, hence improving the quality of the debate.

Regardless of the legal jargon (repair, redress, compensation, restitution etc.) and its validity, we are still short from giving validation to survivors in their decisions of pursuing or not pursuing their perpetrators. We all know that there is no panacea to address impunity, but our continuing pursuit of one may bring us closer to some more acceptable approaches. Involving the victims' perspective is always necessary as a pillar notion of most interventions.

In the Canadian context, within the resources available to the Canadian Centre for Victims of Torture, efforts are made to support any attempt of its clients to obtain reparation. At the level of community, the CCVT has supported the efforts of groups in this endeavor. One example might be the Canadian Centre for International Justice, with whom the Centre works in close cooperation. In fact, the CCVT played a role in the foundation of CCIJ.

In many contexts, whether it is therapy, legal work or community support for survivors of torture (quoting Nagel): "we have to distinguish between knowledge and acknowledgment".⁽¹⁵⁾ While some progress has been made in terms of knowledge, we are still far from achieving acknowledgment most particularly in the area of the implementation of legal instruments to ensure reparation and/or redress.

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Notes:

1. Mario Roberto Cabrera holds a Masters of Public Health and is also a physician. Presently he is the Psychological Restoration Area Co-ordinator for the Human Rights Office of the Archbishop of Guatemala working on The Recovery of the Historic Memory Project (REMHI) in Guatemala. Roberto Cabrera works on designing, planning and implementing the psychosocial component of the project.
2. Amnesty International Public Document (June 11 2007) - Truth, justice and reparation: Establishing an effective truth commission
3. Truth and Reconciliation Commissions. For detailed information see Library and Links, "Truth Commissions Digital Collections" at: <http://www.usip.org/library/truth.html>
4. Indian Residential schools Truth and Reconciliation Commission website: <http://www.trc-cvr.ca/indexen.html>
5. Joan Simalchik, "Impunity in Chile," in Maggie Helwig, "Tribunals and Justice," in a collection of articles entitled "Crimes and (no) Punishment," from A Symposium on Impunity and International Justice moderated by David Webster. See maisonneuve, Issue 4, Summer 2003, p. 53.
6. Gillian Slovo, "Truth and Reconciliation in South Africa," in footnote No. 2 above, p. 50.
7. Wole Soyinka, "The burden of memory - the muse of forgiveness". Oxford university press, 2000
8. Carlos Madariaga, "Psychosocial trauma, PTSD and Torture". CINTRAS 2002
9. Writings for a Liberation Psychology. Martin Baro, Harvard University Press, edited by Adrienne Aron and Shawn Corne. Pag 31, Chapter 6 particularly pages 110- 111
10. Simon Wiesenthal, "The Sunflower: On the Possibilities and Limits of Forgiveness", Schocken Books, New York , p. 111. Prof. Balić's remark is in repose to the following question put before him and other contributors by the book's author, Simon Wiesenthal: "You are a prisoner in a concentration camp, a dying Nazi soldier asks for your forgiveness. What would you do?"
11. Forgiveness is not about turning a blind eye to the wrong. Essay by Linda drawing from Desmond Tutu Book: God has a Dream (Double day 2004) by Desmond Tutu. Audio of Archbishop Tutu can be heard at: <http://godhasadream.com> http://greatergood.berkeley.edu/greatergood/archive/2004fallwinter/Fall04_Tutu.pdf
12. Mandela interview as in: [http://www.en.wikipedia.org/wiki/Ubuntu_\(philosophy\)](http://www.en.wikipedia.org/wiki/Ubuntu_(philosophy))
13. To repair the Irreparable by: Eric Doxtader and Charles Villavicencio pag 31.
14. Out of the Ashes, Reparations for victims of Gross and Systematic Human Rights Violations. by K.De Feyter, S Parmentier , Editors: M. Bosuit and P Lements pag 352
15. Thomas Nagel





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Reflections on the Sixtieth Anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide

Amir Hassanpour

The year 2008 marks the sixtieth anniversary of two major milestones in international law – the Convention on the Prevention and Punishment of the Crime of Genocide (adopted December 9) and the Universal Declaration of Human Rights (adopted December 10). The Declaration promulgated an elaborate regime of rights declaring that “all human beings are born free and equal in dignity and rights.” It emphasized, among other provisions, that “no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment” and “no one shall be held in slavery or servitude.”

The second document, the genocide Convention broke new ground in international law by adopting, defining, and applying a new concept, “genocide,” for identifying the “odious scourge” of destroying “a national, ethnical, racial or religious group.” Genocide was defined as an international crime, “whether committed in time of peace or time of war.” It is international in the sense that it is committed against all humanity and perpetrators may be prosecuted even in jurisdictions outside the country where the crime was committed. The convention was, thus, a major victory in the struggle against mass murder and annihilation of national, racial, ethnic, and religious groups. It would be appropriate, therefore, to take stock of sixty years of the struggle for preventing and punishing the crime. I try to assess the balance sheet from the point of view of citizens concerned about the continuing menace of genocide.

The word “genocide” was coined by lawyer Lemkin in 1944, and it was not used before the UN adopted it as a legal concept during deliberations on the drafting of the convention. Since 1948, our knowledge about genocide has grown in leaps and bounds. This is largely thanks to

the rich body of research on the Holocaust, the Nazi project of eliminating the Jewish people from 1933 to 1945. If the terms genocide and Holocaust were still not widely used by 1960, today there are, in English alone, several genocide and Holocaust studies journals, two encyclopedias of genocide and crimes against humanity, undergraduate and graduate programs of study, numerous museums and archival projects, doctoral theses, documentaries, feature films, and media interest.

The genocide convention of 1948 and, half a century later, the explosion of knowledge about the crime should be seen as a major step forward. However, the crime continues to be perpetrated under the very eyes of the United Nations and the television cameras that record it.

The genocide convention of 1948 and, half a century later, the explosion of knowledge about the crime should be seen as a major step forward. However, the crime continues to be perpetrated under the very eyes of the United Nations and the television cameras that record it. It seems that we are in a situation of one step forward and many steps backward. If this is the case, how can we explain it?

Genocide: A Modern Phenomenon

The convention noted that “at all periods of history genocide has inflicted great losses on humanity.” While it is true that mass annihilation of peoples and communities has occurred throughout history, we know now that genocide, as it was perpetrated against aboriginal peoples in the Americas, Armenians and Assyrians in Ottoman Turkey, and Jews under Nazi rule, should be distinguished from the ancient practice of mass murder. Zygmunt Bauman (*Modernity and the Holocaust*, Ithaca: Cornell University Press, 1989), among others, has argued that the Holocaust should be seen as a product of modernity rather than an ancient or pre-modern instance of barbarism. And the difference is not just in the methods of annihilation such as the use of gas chambers in the



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Holocaust, but rather in the politics and goals of the perpetrators.

While there is no common understanding of modernity, there is considerable consensus on nationalism as modernist politics. Genocide is a product of nationalism, its racism, nation-building, and preoccupation with “sovereignty,” “territorial integrity” and “indivisibility” of the nation. Although nationalism itself is not a single, homogenous political project, its various versions are interested in creating a unified, homogenous nation often on the basis of a pure race. In fact, long before the Holocaust, eugenics, i.e., the “science” of creating a pure race, emerged in Britain in late 19th century, and was adopted and practiced in liberal democracies such as the United States, Canada and Sweden (see, for instance, Edwin Black, *War Against the Weak: Eugenics and America’s Campaign to Create a Master Race*, New York: Thunder’s Mouth Press, 2004). In Canada, the province of Alberta adopted a Sexual Sterilization Act in 1928 and the Alberta Eugenics Board approved 2832 cases of sterilization of women, aboriginal people, and teenagers who were labeled “mentally defective.” The eugenics act survived the Nazi regime’s grand project of racial purification and was not repealed until 1972. Thus, crimes such as ethnic and racial cleansing, far from being products of dictatorial or totalitarian regimes, constitute the “dark side of democracy” (Michael Mann, *The Dark Side of Democracy: Explaining Ethnic Cleansing*. New York: Cambridge University Press, 2004).

If genocide is a product of *nationalism* and its nation-state, the Convention gives it a prominent place by treating it as an *international* crime. It is a crime against humanity. The international nature of the crime implies that the Holocaust, for example, was not a crime against the Jewish people or the Romas only but rather against all human beings. It also implies that non-Jews, unlike Iran’s president Ahmadinejad, should condemn, without reservation, the Nazi project of eliminating the Jewish people. If the crime is international in nature, the Convention made the bold attempt to internationalize its prosecution, too. The perpetrators of the crime may be prosecuted under any jurisdiction outside the territory where the crime occurred.

There is, thus, a contradiction between the international nature of the crime and the way it is anchored in nationalism and the nation-state. If the Convention gave

genocide the prominence it deserves by internationalizing the crime and its prosecution, the member states of the United Nation tried to ignore it in the name of “national interest” and sovereignty. Before elaborating on this conflict, let’s look at how the Convention has defined the crime.

Genocide: The Convention Definition

According to Article 2 of the convention (<http://www.un.org/millennium/law/iv-1.htm>), “genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.”

This definition has been criticized for a number of shortcomings including its failure to include forms of mass murder such as the killing of hundreds of thousands of communists in Indonesia in 1965. Another limitation of the Convention is its focus on punishment and marginal interest in prevention.

Nationalism Against the Convention

For much of its life, the Convention remained largely a piece of paper filed away or, at best, a legal document that could not be invoked by the victims or survivors of the crime. The nation-states were the main obstacle to the enforcement of the Convention. Non-state actors especially citizens and social movements working within the framework of nationalist politics were equally constrained in their struggle for the prevention and punishment of the crime. A few examples will help in substantiating this claim.

The Sovereign Nation

Member states of the United Nations had the option of not signing and ratifying the Convention. It took the United States thirty-six years to ratify the document, and this was



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done with two reservations, five understandings and one declaration, which made ratification virtually useless, since they shielded the country from indictment on charges of genocide. This was like a slap in the face of the Convention since it allows other member states to invoke the decision of the United States for the purpose of undermining the Convention.

An early case of attempt to implement the Convention was in 1963 when the Iraqi government launched a massive military offensive to wipe out the Kurdish autonomist movement. Mongolia and the Soviet Union requested the UN to consider the Iraqi offensive as a case of genocide against the Kurds. In the midst of the Cold War, the request was rejected for political reasons but also because, it was argued, there was nor proper judicial organ to deal with the accusation.

It was not surprising, therefore, that Leo Kuper, historian of genocide, argued some twenty years later "that the sovereign territorial state claims, as an integral part of its sovereignty, the right to commit genocide...and that the United Nations, for all practical purposes, defends this right" (*Genocide: Its Practical Use in the Twentieth Century*. New Haven: Yale University Press, 1981, p. 161). Here, Kuper is outspoken, candid, and serious: in spite of the Convention, the sovereign state commits genocide as a *right*.

Two decades later, when the International Criminal Court (ICC) was established (2002) as "an independent, permanent court that tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes," the United States refused to join, and the Bush Administration actively undermined it. The American Servicemembers' Protection Act, which critics have called the "Hague Invasion Act," allows the United States to save its citizens from extradition to the ICC, and to take "any necessary action" to free American soldiers "improperly handed over" to the court.

Nation-states undermine the prevention and prosecution of the crime by among other means a policy of denying genocides. Iran's President Ahmadinejad, for instance, organized in 2006 an international conference in order to deny the best documented genocide of all time, the Holocaust. To give another example, Israel, because of its political and military alliance with Turkey, denies the

Armenian genocide. Israeli scholar Yair Auron has criticized this politics and the ways in which it undermines the struggle for the prevention and punishment of the crime (*The Banality of Indifference: Zionism and the Armenian Genocide*, New Brunswick, Transaction Publishers, 2000).

Mark Levene, a historian of genocide, has called Eastern Anatolia (Eastern Turkey and Iraq) a "zone of genocide." The trial of Saddam Hussein and his top aids who were accused of war crimes, crimes against humanity and genocide left much to be desired. A fair, competent, and open trial would have allowed citizens and state officials a better understanding of these crimes; the trials undermined the ability of the citizens to resist genocide now and in future.

It is not, thus, surprising that genocidal practice continues to occur in countries such as Sudan and Congo, while the memory of Yugoslavia and Rwanda is still fresh. It seems that the UN is unable to prevent crimes against humanity.

Citizens Against Genocide

Citizens, unlike their states, are interested in putting an end to the crime of genocide. The progress made so far in implementing the Convention has been, to a large extent, due to the resistance of citizens and the social movements they participate in. Although there is increasing citizen awareness and organizing, nationalism continues to hold back the struggle against mass killing.

The adoption of the Convention was, to a large extent, a result of citizen initiatives, especially Raphael Lemkin. Another turning point in citizen resistance came in 1967. Noting the failure of the UN to put an end to the US war in Vietnam, the anti-war movement in Europe launched its own tribunals in order to try the US for committing war crimes and genocide. European intellectuals such as Jean Paul Sartre and Bertrand Russell were active in these informal courts known variously as Russell Tribunals, International War Crimes Tribunal or Russell-Sartre Tribunal. Representatives from 18 countries participated in the meetings of the tribunal. These non-state citizen courts played an important role in promoting the peace movement and isolating the United States and the countries that participated in the war. The tribunal has continued its work under the name of Permanent People's Tribunal, and in 1984 held hearings on the Armenian



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genocide and ruled that the Ottoman government was guilty of the crime "with regards to acts perpetrated between 1915-1917." Other non-state actors, the survivors and scholars of the Holocaust, have made significant contributions to the body of knowledge now known as "genocide studies."

These citizen initiatives are crucial for creating a genocide-free world. However, nationalist belonging often constrains the scope of citizen resistance. The Turkish Republic, for example, appeals to nationalist pride or honour in order to deny the genocide that was perpetrated in 1915 on the Armenians, Assyrians and Greek populations. The survivors of the genocide are not immune to nationalist persuasion. For instance, they often fail to forge solidarity in the struggle against the crime. There is a tendency among Armenian nationalists to consider all Turks responsible for a crime that was planned and conducted by the state. While it is true that some Turkish and Kurdish citizens participated in the crime, it is well known that many resisted it, and some saved their Armenian and Assyrian neighbours. There is also a tendency among some Armenian nationalists to ignore the Assyrian genocide; they assume that the recognition of this genocide may diminish the seriousness of the Armenian case. These concerns are not unique to the Armenians.

In her seminal work on nationalist appropriations of the Holocaust, Israeli historian Edith Zertal has documented the ways in which the memory of the Holocaust has been used for nation-building and state-building purposes, justifying the occupation of Palestinian territories and the building of settlements (*Israel's Holocaust and the Politics of Nationhood*, Cambridge University Press, 2005). Another researcher, Richard Gibson, in assessing Holocaust education, which is the most developed genocide education project, has criticized it for promoting nationalism and failing to comprehend and overcome fascism ("Teaching about the Nazi Holocaust in the context of comprehending and overcoming fascism," <http://eserver.org/clog/c/4-1/gibson.html>).

Progress in the Struggle Against Genocide

If nationalism is a major obstacle to the formation of international resistance movements against genocide, we have seen, in recent years, considerable activism inspired by ideas of internationalism. In Turkey, where the recognition of the Armenian genocide is treated as a crime

against the state, there is increasing recognition of the crime among intellectuals and political activists. While the majority of Kurds denounce the crime, an increasing number of Turkish intellectuals call on the state to abandon denial politics. Taner Akçem, a Turkish sociologist, has devoted his academic work and career to the recognition of the Armenian genocide (see, among others, *From Empire to Republic: Turkish Nationalism and the Armenian Genocide*, London: Zed Books, 2004). Ismail Besikçi, another Turkish sociologist, has been sentenced to 115 years of jail for protesting the genocidal policies of the Turkish Republic against the Kurdish people. A young Turkish director, Yesim Ustaoglu, has exposed, in her feature film *Journey to the Sun* (1999), state violence against the Kurds including the destruction of Kurdish villages. The film emphasizes the ability of the Turks and Kurds to live together even in the context of state violence. In Turkey, there is now more research and publishing on the genocide of Armenians, Assyrians, Pontus Greeks and the Kurds.

In March 2001, fourteen Arab intellectuals denounced a forthcoming Holocaust denial conference planned to be held in Beirut. They wrote: "We Arab intellectuals, are indignant at this anti-Semitic enterprise. We alert Lebanese and Arab public opinion to this subject and call upon the relevant authorities in Lebanon to forbid this unacceptable demonstration from being held in Beirut." The protestors included Edward Said and poets Adonis and Mahmoud Darwish. There were other protests which were effective in preventing the anti-Semitic conference. In Iran, many citizens treated the government sponsored Holocaust denial conference as a propaganda effort.

To conclude, the Convention, in spite of its limitations, continues to be a major legal framework in the struggle for prevention and punishment of the crime of genocide. However, six decades of the life of the document shows that law alone cannot prevent crimes against humanity. The political usually overwrites the legal, and state politics, its sovereignty and national interest, have the upper hand. Without citizen awareness, commitment, organizing and international solidarity, it would be impossible to stop the machinery of mass killing.

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Rwanda: The Rebirth of the Land of a Thousand Hills

Jackie Gakumba

Fourteen years after the war and genocide in Rwanda, efforts to reconstruct the economy and to establish good governance have started to pay off. The problems that the leadership of this country had to deal with were numerous: rebuilding an already poor economy; fighting against poverty; stopping the spread of HIV/AIDS; promoting the status of women; protecting the eco-system; and finally, establishing higher levels of education and literacy. They also still needed to maintain peace and stability and to reconcile the ethnically diverse population. These were just a few of the insurmountable challenges they faced.

Although the international community has been slow in bringing the perpetrators of the genocide to justice, Rwanda has worked very hard on promoting reconciliation and on ensuring justice. In particular, one has to applaud the abolishment of the death penalty. As well, with a program of free market reforms and with the help of the World Bank, Rwanda has achieved broad, economic success. According to different international economic agencies, the country now sees an annual growth rate of 8%. It has also implemented significant social and political changes that have made it one of the most promising countries on the African continent.

This year's elections saw women taking 45 seats out of 80 in parliament, including the first woman speaker in the history of the country. To put this in perspective, this East African country has become the first nation in the world to have woman represent 56% of its parliamentary seats. This makes it the largest number of female MPs in a single legislative assembly amongst all democratic countries in the world. This representation may be historical in the eyes of other African countries and to the rest of the world, but it is not surprising to the Rwandan people. Women have always played an important role in the pre-colonial Kingdom of Rwanda and in its culture. Another important observation is that the country has lost half of its male population to genocide. There has also been the long and violent struggle to uproot an irresponsible, political regime that ruled Rwanda to the detriment of its people. Thus, women have become the main contributors in this African nation.

Another important aspect of the hopeful future for this country lies in education. The transformative power of education and knowledge in any society is important. The accomplishments of the public and private sector can only be achieved by a knowledgeable, educated and skilled workforce. And Rwanda strives to provide education for all its citizens, young and old, by 2015. A new program spearheads a project that hopes to provide one laptop per child within the next 15 years. Recently, Rwanda has also been the centre of education on an international level. The seminars that Rwanda hold attract scholars from the around the world. The importance of these meetings has a great impact on the growing reputation of the country. Rwanda has revolutionized its educational system and has adopted radical reforms to boost the future productivity and effectiveness of its labour force. This country has over ten universities which have the highest technical and computer science institutes in Africa.

All these achievements are the result of a resolved people and an accountable government working for a brighter future. The common goal of creating a better future for Rwanda is more important than the interests of specific groups, special interests or individual's ambitions. There is a statement that is repeated by many people in today's Rwanda, "every Rwandan has the same opportunity to life, resources of this country, as the other." President Paul Kagame said in a recent interview with Christianne Amanpour of CNN: "one can only hope the example of Rwanda serves as an honorable and hopeful/brighter future for all Africa."

Jackie Gakumba works as a Settlement Counselor at the Canadian Centre for Victims of Torture.



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Armenian Genocide

Ezat Mossallanejd

From 1915 to 1922, approximately 1.5 million Armenians perished as a result of a well-planned genocide by the rulers of the Ottoman Empire. Mass deportation and the relentless slaughter of Armenian civilians resulted in one of history's greatest disasters. Entire families were murdered; women and girls were violated and raped, and children were sold into slavery or sent to their deaths.

Individual Armenians still carry a collective trauma as a result of the impunity of their perpetrators. For a long time, the Turkish authorities denied the Armenian request for an acknowledgement of the genocide and a public apology for the crimes committed against Armenians.

It is promising that during the recent years, the Turkish grass-root people and agencies have started recognizing the historical genocide of Armenians by the Ottoman authorities. In the February 2005, the celebrated Turkish novelist Orhan Pamuk made the following statement in an interview with a Swiss publication: "thirty thousand Kurds have been killed here, and a million Armenians. And almost nobody dares to mention that. So I do." This provoked ultra-nationalist groups to organize rallies and burn his books. A criminal case was opened against this prestigious Nobel Prize laureate. The charges were dropped on 22 January 2006 as a result of international solidarity with the author.

A positive development took place later in 2006 when the Prime Minister of Turkey, Mr. Rajab Tayyip Erdogan, made a suggestion about the establishment of a friendly commission of the Turkish and Armenian historians to study the Armenian "genocide". We wish best of luck for the joint endeavor between Armenia and Turkey in the service of durable peace and prosperity for both nations.

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The Armenian Massacre in Sassun, August 1894



The massacre of the Constantinople's (Istanbul) Armenians on September 30, 1895



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“Comfort Women” - Japan’s Military Sexual Slavery

Chizuru Nobe

Most Japanese, if asked what they know about World War II, would most likely give an answer referring to the atomic bombs which caused as many as 140,000 civilian deaths in Hiroshima and 80,000 in Nagasaki in 1945. Since then, thousands more have died from injuries or illnesses attributed to exposure to the radiation released by the bombs. These two horrific events remain in the collective memory of the Japanese who often used to define themselves as victims of war. Japan’s colonial history is largely disregarded and there is little talk about its occupation of large parts of Asia and the Pacific Islands from the 1930s through to the end of World War II.

It wasn’t until the 1990’s when this colonial memory was vividly revived. A handful of women started talking about their experiences as “comfort women”. These “comfort women” or “ianfu” were forced into sexual servitude to Japanese Imperial Armed Forces before and during the World War II. Although estimates vary, a number of historians estimate that around 200,000 women from Korea, China, the Philippines, Thailand, Vietnam, Malaysia, Taiwan, the Dutch East Indies, Indonesia, and Japan, were enslaved. Girls, as young as 12, were taken from their homes through coercion, intimidation and deception. Most came from poor rural backgrounds. As a result of multiple rapes, many of the women were later unable to bear children and were never able to marry. The Japanese Imperial Armed Forces justified this barbaric controlled system by claiming that it reduced the number of rapes in areas where its forces were stationed; that it prevented sexually transmitted diseases; that it countered the threat of espionage and provided a recreation facility for soldiers; that sex would improve soldiers’ morale and relieve them of “combat stress”. Amnesty International concludes that the “comfort women” system was one of the largest cases of human trafficking in the 20th century.

Although at the end of the war, the Allied Forces established the International Military Tribunal for the Far East, in which many Japanese military and political leaders were found guilty of crimes against humanity and other war crimes, the plight of the “comfort women” who were raped and sexually enslaved was never addressed. The international community perceived wartime rape as an inevitable consequence of hostilities, and the Japanese government never addressed the matter. In fact, the Japanese government denied any involvement in the “comfort women” system until 1992 when an increasing number of comfort women started talking about their experiences and a Japanese scholar, Professor Yoshimi Yoshiaki, unearthed documentary evidence proving the role of the Japanese government and military.

Since then, Japan has acknowledged only “moral responsibility” which it manifested through apologies made by senior officials and the establishment of the Asian Women’s Fund to distribute “atonement money”, made up of private donations rather than government funding. Japan has refused to accept legal responsibility arguing that the 1951 San Francisco Peace Treaty and other bilateral agreements supported this position.

Former “comfort women” have been fighting for justice for years. They came together in 2000, holding The Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery. Although a non-judicial tribunal, it made recommendations based on legal findings and gave survivors the opportunity to testify in a formal environment and have their experiences publicly acknowledged. Women’s





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right activists and human rights organizations have been pressuring the government of Japan to take total legal responsibility, by providing full reparation through restitution, compensation, rehabilitation and satisfaction of victims' demands including full public disclosure, apology and guarantees of non-repetition.

In March 2007, the then Prime Minister of Japan, Shinzo Abe, outraged former "comfort women" and the international community by saying that "there was no evidence to prove there was coercion as initially suggested. That largely changes what constitutes the definition of coercion, and we have to take it from there". This type of continuing denial from the Japanese government not only deepens the wounds of former "comfort women" but also furthers the lack of accountability. Now most survivors are over 80 years old. They do not have much time left to heal, seek for justice or share their stories. If the government of Japan is allowed to continue denying its responsibility, another circle of silence will be created where future generations will not know the brutality of such atrocities.

In the words of the great philosopher George Santayana, "those who cannot remember the past, are condemned to repeat it". Let us not set ourselves up for such future atrocities.

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Notes:

- Amnesty International, Still waiting after 60 years - Justice for survivors of Japan's Military Sexual Slavery System, Report, Stop violence against Women, October 2005
- Sajor, Indai. The Women's International War Crimes Tribunal On Japan's Military Sexual Slavery: A Historical Landmark in Ending Impunity, Presented at Asia Pacific War Conference. <http://www.aplconference.ca/speech/Sajor.htm>
- Sakamoto, Rumi. The Women's International war crimes tribunal on Japan's Military Sexual Slavery: A Legal and feminist approach to the "Comfort Women" issue, *New Zealand Journal of Asian Studies* 3, 1 (2001): 49-58.
- CBC News.ca "Comfort women weren't coerced, Japanese PM suggests". March 1, 2007 <http://www.cbc.ca/world/story/2007/03/01/japan-slave.html>

"The secret of all life is obedience; obedience to the urge that arises in the soul, the urge that is life itself, urging us to new gestures, new embraces, new emotions, new combinations, new creations."

D.H. Lawrence



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Systemic Elimination Bahá'í Community

By Donna Hakimian

Persia was among the first nations to enact a charter of human rights. There have also been periods in more recent Iranian history where equal access of education to both women and men was a reality. Today, sadly, the Islamic Republic of Iran has dramatically eliminated many basic human rights and civil liberties. The regime has tried to silence the women's movement, has targeted and harassed individuals – a vivid example being the attacks on those who participated in the "Million Signatures Campaign" in August 2006. Kurds, students, labor leaders, human rights defenders and individuals from a diversity of political movements and sympathies have all been targeted.

The case of the Iranian Bahá'ís, the largest religious minority in Iran with about 300,000 members, is one more group singled out for harsh, systematic persecution. The Iranian Bahá'í community has faced persecution and social marginalization since its inception in the middle of the 19th century. Through the Qajar, Pahlavi, and Islamic Republic's rule Bahá'ís have been accused of everything from being untouchables (nagiis) to being spies of the Russians, the British and the Americans, and, most recently, of being Zionists. The persecutions have included actions that have directly affected the social and economic well-being of the Iranian Bahá'ís.

Information from the Bahá'í International Community Office at the United Nations indicates that between 1978 and 1998 the Iranian government executed more than 200 Bahá'ís while hundreds of others were arrested, imprisoned and dismissed from university. During this period tens of thousands of Iranian Bahá'ís lost their jobs, pensions, and faced harassment and confiscation of their homes and

property.

The current regime of the Islamic Republic of Iran has intensified, in a cruel and systematic manner, this persecution of Baha'is to such a degree that some experts in the field of human rights have even expressed fears that the worst is not unthinkable: a large scale genocide of the entire Iranian Bahá'í community. This has not occurred yet, and there is hope that, through heightened international pressure and public attention, genocide will not only be averted but some moderation in the repression might take place.

The current regime of the Islamic Republic of Iran has intensified, in a cruel and systematic manner, this persecution of Baha'is to such a degree that some experts in the field of human rights have even expressed fears that the worst is not unthinkable: a large scale genocide of the entire Iranian Bahá'í community.

Over the past two years, the relentless attacks on the Bahá'ís have included the arrest and continued imprisonment of the informal leadership of this community. These seven individuals have been imprisoned in Tehran's notorious Evin Prison since May 2008 in the case of six of the individuals, since March in the case of the other. They have been without access to legal counsel or formal charges. In Shiraz three young Bahá'ís are being held in prison for a four year term, while a group of 51 others have suspended sentences which require them to take Islamic propaganda classes. All these have occurred despite the internal report of last June from the Office of the Representative of the Supreme Leader for the province of Fars stating that those arrested had been involved in only humanitarian activities and nothing else. This confidential report was published on October 23, 2008 on the website of Human Rights Activists of Iran. One year has passed since the imprisonment of the prisoners of conscience, Haleh Rouhi, Raha Sabet and Sasan Taqva, with no prospect for their release.



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The Iranian government has also targeted young Bahá'ís in debarring them from entering both universities and technical institutes. This systematic oppression has also worked to harass Bahá'í school children and secondary students.

The Bahá'ís have also been the target of major media attacks which have published false information in order to incite hatred against this community within the larger Iranian population. The government newspaper Kayhan, for example, has run 219 articles with anti-Bahá'í content.

The economic base of this community has also been suppressed, including government publication of a "black list" of 25 employment categories in which Bahá'ís are forbidden to work. They are denied bank loans, and there has been elimination of public service contracts to Bahá'í owned companies.

Among other shameful actions there has been widespread destruction of Bahá'í cemeteries across Iran, and national monitoring and listing of Bahá'ís following an October 2005 letter from the Head of the Armed Forces to all police, intelligence and military forces in Iran. The secret memorandum was made public by the UN Special Rapporteur on religious freedom at a news conference in March 2006.

A Draft Penal Code is currently before the Majlis (parliament) which would impose an automatic death sentence for males, and life imprisonment for women, if found guilty of apostasy. This will permit the government and clergy to act with impunity against Iranians on the basis of their religious affiliation.



Such widespread, multi-faceted and systematic persecution is a cause for alarm and directly opposes the tenants of the Universal Declaration of Human Rights and the two major international human rights instruments: Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights to both Iran is a signatory. These actions indicate a highly sophisticated plan to weaken and possibly eliminate the entire Iranian Bahá'í Community. The collective effort of international agencies, scholars, governments and individuals are necessary in order to draw attention to this issue. The Bahá'í community pursues a range of activities at national and international levels and welcomes with gratitude efforts of others who are speaking out in the defense of this peaceful and oppressed religious community, hoping that the day will come when there will be justice for Baha'is and for all the many Iranians now facing persistent and unrelenting human rights violations.

**Donna Hakimian obtained an undergraduate degree at McGill University with great distinction as well as a Masters degree at the University of Toronto in the Department of Women and Gender Studies. Ms. Hakimian's research focused on the experience of Iranian Bahá'í women prisoners in Iran, and she carried out this work under the supervisor of Professor Shahrzad Mojab. Ms. Hakimian now works at the Bahá'í National Centre as a Project Coordinator.*



The House of the Báb in Shiraz, Iran, one of the most holy sites in the Bahá'í world, was destroyed by Revolutionary Guardsmen in 1979 and later razed by the government.



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Defining Torture by Non-State Actors in the Canadian Private Sphere

By Jeanne Sarson and Linda MacDonald

Differentiation

Imagine yourself being told to 'choose' which door you will walk through, the door on the left marked "abuse" or the door on the right marked "torture". As resistive as you feel about being placed in such a victimizing, no-win situation, you are forced to choose. Which door will it be? We suggest most would not choose the "torture" door. Why? Because, at least intuitively, most of us consider the harms suffered would involve acts considered to be more brutal, cruel, degrading, dehumanizing and possibly deadly.

Presenting this scenario is not meant to diminish the harms inflicted by abusers; rather the scenario is posed solely to suggest that an intuitive collective understanding regarding *severity* exists which distinguishes torture victimization from abuse victimization. This understanding became visible when we devised a questionnaire to promote discussion and awareness by asking such a question. Of the 52 people who answered, 45 (86.5%) selected abuse⁽¹⁾; the dominant rationale for rejecting torture was severity.

This article identifies acts of torture inflicted by non-state actors – a spouse, human trafficker(s), parent(s), relative(s), guardian(s), and other like-minded persons – in the Canadian private sphere. It presents that such torture must be specifically recognized, named and criminalized in the Canadian *Criminal Code*, otherwise, as it stands, Section 269.1 on torture⁽²⁾ is and will remain discriminatory and provide impunity for such torturers. Differentiating non-state actor torture from state inflicted torture and abuse is necessary so that persons who have survived non-state torture can seek equality and justice. The ongoing impunity of such non-state actor torturers severely and negatively impacts their victims' ability to heal, as it does for other persons who have endured severe human rights violations.⁽³⁾

Not "Every Person"

Part V111 of the *Criminal Code* includes a comprehensive list of criminal acts such as uttering threats, administering a

noxious thing, sexual assault and assault amongst others. In these and other listed crimes, it is written that "every one" or "every person" who engages in such crimes is liable. For example, Section 266 on assault reads, "Every one who commits an assault is guilty of ... an indictable offence and liable to imprisonment ...". However, Section 269.1 on torture does not read or apply to "every one" or "every person". Rather, it limits who can be charged with committing torture to persons designated as state actors or "officials" – police, military, peace officers, or others directed by officials. This creates a Canadian legal environment whereby:

- Only state actors can be held criminally responsible for torturing, and;
- Only torture committed by state actors in what is designated the public sphere - jails, military bases or other officially designated sites or circumstances – is criminalized.

Consequently, this creates an environment of impunity for *other persons* who inflict acts of torture in the private sphere – space commonly 'designated' for women and children. Private places within this sphere refer to locations such as the home, apartments, vehicles, cottages, or private access to warehouses or work offices amongst others.⁽⁴⁾ Partner assault, femicide, human trafficking and the manufacture of adult and/or child crime scene "pornography", which is frequently homemade⁽⁵⁾ and whose contents contain an averaged 20% of scenes of torture,⁽⁶⁾ are violent crimes disproportionately committed against women and female children within the private sphere. Non-state torture,⁽⁷⁾ including gender-specific reproductive torture of forced impregnations, forced abortions and reproductive organ damage or loss must be added to this list. However, under the present *Criminal Code*, torture by non-state actors remains unacknowledged and invisible, misnamed and minimized as an "assault", thus creating legal inequalities, gender-based discrimination and impunity for non-state actor torturers.



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Endemic Misogyny and Discrimination

Section 269.1 of the *Criminal Code* mirrors the definition of torture contained in Article 1 of the 1984 United Nations (UN) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT)⁽⁸⁾, which denounces state torture in the public sphere but excludes non-state torture in the private sphere. This omission ignores “the dignity and worth of the human person” – of women – not to be “subjected to torture ...” as stated in the 1948 UN *Universal Declaration of Human Rights*. Furthermore, it reflects a worldwide, gender-based prejudice that derives from endemic misogynistic ‘values’ which disavow that women endure torture inflicted by non-state actors in the private sphere.

There is evidence that an endemic misogynistic Canadian climate exists. For instance, on May 12th, 1982. Margaret Mitchell, one of the few women Members of Parliament, started her statement to the House of Commons with, “The parliamentary report on battered wives states that one in ten Canadian husbands beat their wives regularly”.⁽⁹⁾ Instantly, a patriarchal laden system gave voice and sound to misogyny – the uproar of male shouts and laughter made it impossible to hear her report.

Misogynistic, discriminatory and prejudicial laughter is a tool



of non-state and state torturers. It humiliates⁽¹⁰⁾, degrades and, combined with physical and sexualized torture, it dehumanizes victimized women. In order to further communicate the reality of these issues, we will now highlight the case of Lynne, a woman who endured heinously dehumanizing acts of violence at the hands of non-state actors. Eight years before Margaret Mitchell spoke of battered wives and eleven years before CAT, Lynne ‘disappeared’ in Canada for four and one-half years. If Lynne’s lived ordeals had been sought by the House of Commons she would have stated:

I was called bitch, slut, whore and “piece of meat.” Stripped naked and raped – “broken in” – by three goons who, along with my husband, held me captive in a windowless room handcuffed to a radiator. Their laughter humiliated me as they tied me down spread-eagled for the men they sold my body to. Raped and tortured, their penises and semen suffocated me; I was choked or almost drowned when they held me underwater threatening to electrocute me in the tub. Pliers were used to twist my nipples, I was whipped with the looped wires of clothes hangers, ropes and electric cords; I was drugged, pulled around by my hair and forced to cut myself with razor blades for men’s sadistic pleasure. Guns threatened my life as they played Russian roulette with me. Starved, beaten with a baseball bat, kicked, and left cold and dirty, I suffered five pregnancies and violent beatings forced abortions. They beat the soles of my feet and when I tried to rub the pain away they beat me more. My husband enjoyed sodomizing me with a Hermit 827 wine bottle causing me to hemorrhage and I saw my blood everywhere when I was ganged raped with a knife. Every time his torturing created terror in my eyes, he’d say, “Look at me bitch; I like to see the terror in your eyes.” I never stopped fearing I was going to die. I escaped or maybe they let me escape thinking I’d die a Jane Doe on that cold November night.⁽¹¹⁾

We assert that Lynne endured acts of cruelty, degradation and dehumanization committed by non-state actors that mirror acts commonly listed as torture perpetrated by state actors. Universal lists that repetitively include ran-



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domly applied blows, kicks, or overall beatings and, specifically, applied blows such as falanga; as well as other tortures such as water torture, suffocation and choking tortures, oral/gang rapes, deprivation and immobilization tortures, forced drugging, exhaustion torture that occurs with malnourishment, exploitation and trafficking.⁽¹²⁾ Nakedness, degradation and overexertion⁽¹³⁾ were tortures Lynne suffered when forced into sexualized “performing”, causing psychological tortures of humiliation and dehumanization. Death threats, forced starvation, infamous medical techniques and sleep deprivation are also commonly listed tortures,⁽¹⁴⁾ however, forced self-cutting is not. As with women worldwide⁽¹⁵⁾, Lynne suffered internal injuries, object raping⁽¹⁶⁾, forced impregnations and abortions similar to other women who suffer sexualized tortures. Lynne was the victim of non-state torturers⁽¹⁷⁾ who turned a private space into torture chambers using homemade tools, just as state torturer’s tools are easily homemade.⁽¹⁸⁾

Torture is not extinct – we must work together to make it so, internationally and nationally, for immigrants, for those seeking refuge, for migrant workers, and for women tortured by non-state actors in the Canadian private sphere.

Elements of Torture

Elements in CAT that have defined torture include (a) the infliction of severe physical and mental pain and suffering, (b) intentionality, (c) purpose, (d) State involvement, and (e) most recently, the powerlessness of the victimized person.⁽¹⁹⁾ There can be no doubt of Lynne’s state of powerlessness as she reported being handcuffed to an iron radiator and watched 24 hours a day. Were the actions of the torturers intentional? Absolutely. Did they have a purpose? Definitely. Lynne’s captivity satisfied their sadistic pleasures including the pleasure of exerting totalitarianistic power and control over a woman as well as making money by trafficking Lynne.

State involvement is the remaining element to consider. CAT historically connected torturing solely to state actors but this perspective is being increasingly challenged. *Criminal Code* Section 269.1 on torture mirrors CAT; it too must be challenged.⁽²⁰⁾ Canada has due diligence responsibilities⁽²¹⁾, to prevent, punish, investigate and redress harms inflicted by non-state torturers. Specifically, criminalizing non-state torture will remove the discriminatory effects of the present law that disavows the existence of torture in-

fllicted by non-state actors in the private sphere.

Torture-Free Zone

Making torture in all its forms extinct can begin by making Canada a torture-free zone. To do this we are circulating a certified petition⁽²²⁾ (see box) which our Member of Parliament will present to the House of Commons. Every person of any age with a Canadian residential address can enlarge the petition, sign it, circulate it and mail originals back to us.

To overcome such ordeals, women require the right to name their victimization truthfully as non-state torture, they need to be visible and create a collective memory that validates their suffering personally and socially, they need

access to non-discriminatory just laws and they need supportive care that is appropriate for the victimization they survived. These are the fundamental healing

requirements needed to restore their dignity and worth as human persons.

Torture is not extinct – we must work together to make it so, internationally and nationally, for immigrants, for those seeking refuge, for migrant workers, and for women tortured by non-state actors in the Canadian private sphere.

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Notes:

1. Four (7.6%) people did not answer the question and 3 (5.7%) people selected torture because infant and childhood histories of non-state torture victimization made such torture familiar and abuse an unknown; one woman added that this familiarity involved a conditioned/programmed response that “creates and



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"Everything we shut our eyes to, everything we run away from, everything we deny, denigrate or despise, serves to defeat us in the end. What seems nasty, painful, evil, can become a source of beauty, joy, and strength, if faced with an open mind"

Rigoberta Menchú Tum (1959-)



First Light

Petition to the Government of Canada

We, the undersigned, residents of Canada wish to bring to your attention the following: non-state actor torture is torture that is committed in the private sphere by such persons as parent(s), other family members, guardian(s), spouse, human trafficker(s)/ exploiter(s) and/or other like-minded person(s); that non-state actor torture that happens in the private sphere occurs in Canada; that Canada is a Signatory to the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (CAT) and the United Nations Special Rapporteur on torture has stated that States have a responsibility to prevent torture from occurring in the private sphere and “have obligations to take legislative measures and implement them” (International Service for Human Rights. (2008, March 11). Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (continued) Interactive dialogue (p. 6). *Council Monitor*).

Therefore, we request the Government of Canada bring forth legislation to amend the Canadian *Criminal Code* to make non-state actor torture a crime.

Signatures: Sign your own name. Do not print.	Addresses: Give your full home address, <u>or</u> your city and province, <u>or</u> province and postal code.



First Light

Have I Assisted Them Today?

Diana Lika



This is the question that is in my mind every day before leaving my office. Are my clients pleased with what I did for them today? I think, yes, I did my best - then I smile to myself and leave.

Some interesting info about myself: I am from Albania, the same country as Mother Teresa, which I'm proud to say. I have started work at CCVT as a Settlement Counselor about two months ago and I am still learning new things and having new experiences here. To me, it feels like I have been here for a long time because of all the friendly people around me - my co-workers and my clients. I have really enjoyed working with and for them.

Working with a **Great Team** is like a **Miracle**. It makes me feel good; I enjoy my work and am very happy to come to work. Being happy at work makes one work better and working better makes our clients feel better and happier. We know that they are not always happy because of all the trauma they have experienced in their past. However, it is our duty and our pleasure is to help them overcome the terrible effects of torture and war and to help them successfully integrate into the Canadian society. We work to give them hope after the horror.

Majoring in Economics, I completed university several years ago. Although I had good experience working in this field, it did not make me happy. So I received training in social sciences because I realized I really enjoyed working with people. Working with the American Peace Corps in Albania made me love this field even more. It was my first time working with diverse people from different cultures and ethnicity and it was a great experience.

After being in Canada for a year, I started working with Direct Energy Ltd. I worked with a wonderful team there, but the reason I had to leave was because I didn't enjoy working on the computer all day. What I enjoy is working with people and helping them, so I started volunteering with "Lamp Ask! Community Health and Information Centre". This work gave me a lot of satisfaction. I volunteered with this agency for more than a year. It provided me with the experience of working in the social services field in Canada and it was also where, for the first time, I had the pleasure of serving newcomers to Canada. Being a newcomer myself, I understood their needs, frustrations and confusion and that helped me to work better in this position.

Doing many different volunteer jobs and participating in a lot of their training programs and workshops helped me to improve my knowledge and skills in getting ready for my current position. I really appreciate the help that I received from Lamp Ask! and I have enjoyed the wonderful colleagues who I worked with. I will never forget them and their generous supports. I still continue to visit them and I will always go to the Centre because that has been my first step into the field. I want to encourage everyone to volunteer in the field they would like to work in. For those who have a desire to help others, CCVT is a great organization to become a volunteer because one can help people who will really appreciate and need the help.

I am also a part-time student at George Brown College studying career and work counseling. I am sure this program will help me provide more assistance to my clients. It helps me better understand their employment needs and priorities. If I am able to help our clients obtain a job or get ready to start a job, it will be the greatest reward for me. Let me end with a quotation that I believe comes from Mother Teresa:

The most beautiful thing in life is to see a person smiling and even more beautiful is the knowing that you are the reason behind it!!!

This is why I love my job now.

*Diana Lika works as a Settlement Counsellor at the Canadian Centre for Victims of Torture.



First Light

Invisible Twin

(A Poem for CCVT Students)

Trauma lives in your skin
an invisible twin,
a poison guest,
a walking monster of a story.

The demons that stalk you
evade photographs
and only *you* can say
where they keep the keys to your cell.

But an attentive friend can apprehend,
around the corners of conversations,
delicate fringes of the shroud
that veils your suffering.

Your shadow reveals his choices
when you sit where you can check
who enters the room,
when the words loss, lost, have lost
and death, dead, have died
pitch you into a private hell.

A tragedy we read in *The Toronto Star*
sets the ghosts to whispering,
demanding "Remember, remember!"
when you want with *all* your strength to forget.

Quick to take offense,
your pain flashes out in bitter responses
that the sensible call overreaction
but the sensitive know
arise from the depths of your rage
at the cruelty of dogmatists, thugs, criminals in uniform.

Trauma haunts you
but also gives courage a voice,
exhaling stories that pull you to the surface,
intact and shining with resilience.



Catherine Raine has taught English as a Second Language at CCVT for five years.



First Light

Reflections on the 60th Anniversary of the UN Declaration of Human Rights

The General Assembly of the United Nations adopted the Universal Declaration of Human Rights on 10 December, 1948. Although it was a non-binding treaty, the declaration was a starting point for the development of a UN Human Rights system in many areas. The following year, for example, the United Nations General Assembly adopted the four Geneva Conventions collectively known as the International Humanitarian Law (IHL) or the Law of Armed Conflict. The Geneva Conventions emphasized the rights of civilians living in war zones, prisoners of war, and the wounded and shipwrecked. The IHL, which is part of that area of international law governing inter-state affairs, is a collective attempt to mitigate the miseries born of conflict.

In 1951, the Geneva Convention relating to the Status of Refugees was adopted by the UN as a regulative document for European refugees. It was not until the adoption of the 1967 Protocol, however, that the geographical limitations of the 1951 convention were removed. In 1954, the UN Convention on the Rights of Stateless Persons was adopted. It was followed by the 1961 Convention on the Reduction of Statelessness. The greatest achievement, however, came in 1967 when the UN adopted the above mentioned refugee protocol that extended international protection to all refugees regardless of their countries of origin. All these achievements were based on the right of asylum as defined in Article 14 of the Universal Declaration of Human Rights.

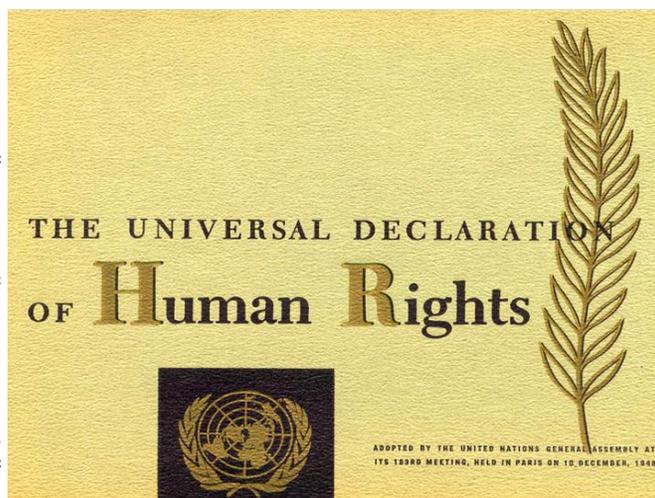
The International Covenant on Civil and Political Rights (UNCPR) was adopted in 1976, and acted as an addendum to the Universal Declaration of Human Rights, which was promoted to an abiding treaty. This international covenant was supplemented by two optional protocols. The first created a complaint mechanism through which

individuals of member states could submit what are called “communications” to be reviewed by the UN Human Rights Committee; the body established to supervise and adjudicate on matters concerning the UNCPR. This committee’s adjudications have created the most complex system of jurisprudence in the UN’s international system of human rights law. The second optional protocol concerns itself with the abolition of the death penalty.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966, and came into force on January 3, 1976. It commits parties to work towards granting individuals economic, social and cultural rights (ESCR) in areas including labour, health and education.

By December 2008, the Covenant had 159 signatories. The ICESCR is part of the International Bill of Human Rights, along with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: (better known as the Convention against Torture or CAT) was adopted on 10 December, 1984. CAT reached its enforcement stage on 26 June, 1987 and is celebrated every year by human rights workers around the globe. A United Nations Committee against Torture was established to supervise the compliance of states to CAT. The committee can receive “communications” (complaints) by individuals of violations by governments. CAT is supplemented by an





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optional protocol that gives permission to a Subcommittee on Prevention to inspect prisons and detention centres where torture might be occurring. Though the optional protocol has reached its enforcement stage, Canada has yet to ratify it.

The United Nations Convention on the Rights of the Child (CRC) was adopted in 1989 assisted by pioneering efforts from Canada. It was highly praised as the Magna Carta of children's rights. Central to the Convention are the best interests of the child. A United Nations Committee on the Rights of the Child monitors the implementation of the CRC. The Convention has been ratified by all countries except Somalia and the USA. It is supplemented by two optional protocols. The first restricts the involvement of children in military conflicts, and the second prohibits the sale of children, child prostitution and child pornography. Both protocols have been ratified by more than 120 states.

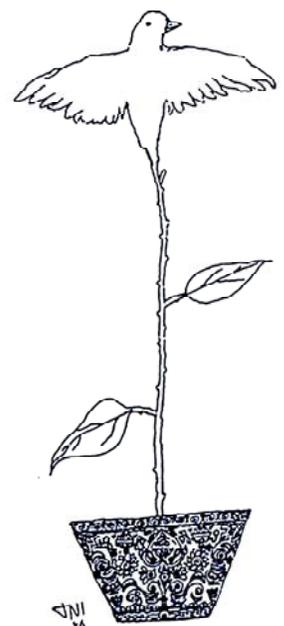
The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the UN General Assembly, and is often described as an international bill of rights for women. The Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." By accepting the Convention, states commit themselves to undertake a series of measures to end discrimination against women in all forms.

Currently, 185 countries - over ninety percent of the members of the United Nations - are parties to this Convention. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted by the UN General Assembly on December 21, 1965, and entered into force on January 4, 1969. As of June 2, 2008, it had 173 parties. The Convention is monitored by the Committee on the Elimination of Racial Discrimination (CERD).

For a long time, a major gap in international law was the problem of addressing impunity. There was no effective binding treaty in place for bringing perpetrators of genocide, war criminals, and those who had committed crimes against humanity to justice. There was a need to send a strong message to the whole world that no safe haven exists for perpe-

trators of these horrendous crimes against the family of nations. It was with consistent leadership from Canada that the UN adopted the Rome Statute for the International Criminal Court on 17 July, 1998. This excellent piece of legislation deals with four categories of international crimes: genocide, war crimes, crimes against humanity, and crimes of aggression. For the first time rape in war zones was recognized as both a war crime and a crime against humanity. The Rome Statute is actually the constitution of the International Criminal Court which began its work in July 2002. This statute was the greatest human rights achievement of the twentieth century.

Apart from the above instruments, there are scores of other binding and non-binding human rights instruments all owing their existence to the provisions of the Universal Declaration of Human Rights. Despite all these achievements, there are still many challenges to be tackled in today's world. There is a gap between ratification and implementation. Human rights are being violated in almost all countries of the world to varying degrees. All kinds of torture continue to be perpetrated around the world. The right to freedom of movement internationally is not even being discussed at the UN. Aboriginal rights are under threat and there is no effective international action to counter this. Since the destruction of the Berlin Wall, western countries have built new "walls" against refugees and uprooted people. Millions remain oppressed and enslaved around the world. Governmental impunity remains unaddressed. Children suffer from abject poverty and all sorts of man-made evils. The UN human rights system has failed to prevent war and genocide. Human rights workers have remained unprotected. Simply put, human rights violators have reduced a once beautiful planet to an inferno. There is an immediate need to raise all our voices in a battle-cry of solidarity to force all governments to implement the provisions of the Universal Declaration of Human Rights.





First Light

Report on Canada's Compliance with the Human Rights instruments for the Occasion of the February 2009 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 and war. Since its inception in 1977, the CCVT has provided services to over 15,000 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 and war. 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, 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 torture experience on survivors. In such cases, our support has included ongoing contact with Canadian and UN officials, providing information and special counselling to refugees, lobbying the government for policy change, and ongoing collaboration with sister organizations such as the Toronto Refugee Affairs Council, 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, war, and organized violence. 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, Nigeria, Uganda, Rwanda, and South Africa.

Given our knowledge of, and expertise in, physical, psychological and social issues faced by refugees and survivors of torture, 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.

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. Following are some examples:





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A Sri Lankan client of the CCVT has been in limbo for the last 21 years. He suffers from a schizophrenic illness and has to take different pills in order to stand his uncertain and fearful life. Another client of the Centre, a vulnerable single mother, has been living in limbo for 12 years. The trauma brought on by her experience of torture in Iran has been compounded by the uncertainty she faces on a daily basis. She suffers from anxiety and depression, and fears for herself and her daughter, a Canadian citizen who was born in Canada 11 years back. Her daughter understands the situation very well and it weighs on her heavily. We at the CCVT suffer from the suffering of another Iranian client who has been living under a terrible psychological condition, because of vacillating between fear and hope for the last 15 years. He loves to continue with his studies, but is incapable of doing it because of the lack of proper status. He has frequently told us with a pale voice: *how long should I pay for nothing.*

We have a client who has been imprisoned twice in his country of origin and has gone through various techniques of torture. He has had to escape to different countries and ask for asylum. He has frequently told us about his opposition to violence. In 1998, he broke completely with an organization deemed violent by Canada. He was posed inadmissible to Canada upon his arrival and was denied access to refugee determination system. He spent 23 months in a Canadian detention centre before being bailed out more than five years back. He has been accepted under Pre-Removal Risk Assessment, but has remained a non-status person due to his Immigration inadmissibility. He often wakes part way through the night and then has difficulty falling back asleep. He has nightmares about his torture. He feels depressed most of the time. He tries to work hard and does physical exercise, to cope with his situation. The condition of living in a tormenting limbo has made concentration difficult for him, his mind wanders frequently.

We are serving a senior woman, a survivor of torture and trauma, who has suffered at the hands of the tyrannical regime of Saddam Hussein. She has been languishing in limbo for the last seven years due to no reason but the slow process of her landing application as a result of the red tape and Immigration bureaucracy. At present, she is under tremendous psychological tension. She is a highly vulnerable woman living alone and dealing with her language and other multiple barriers single-handedly. She has been away from her children and ailing husband for years with no prospect of

family reunification that requires receiving her permanent resident status in Canada.

There are thousands of similar cases of non-citizens in Canada who have been languishing in limbo for many years - among them are vulnerable women, youth and senior citizens. People are in limbo due to various reasons, including lack of identity documents, government's security obsessions, lack of immigration status and alleged or real criminality.

The use of the "security certificate" against inadmissible non-citizens has led to keeping them in appalling condition of limbo in detention. The CCVT has served two clients in this awkward condition of limbo. One of them has languished in jail for seven years without trial. He is presently under house arrest. The security certificate is a legal tool against foreign nationals on the basis of being a risk to the national security. It allows the government to detain non-citizens without charge indefinitely for the purpose of deportation. By allowing individuals to be detained indefinitely on the basis of secret evidence and without charges being laid, the security certificate process infringes upon basic rights guaranteed by the *Canadian Charter of Rights and Freedoms*, notably, the right not to be arbitrarily detained and the right to be informed of the reasons for one's detention.

There are also scores of cases of prolonged detention of non-citizens for solely Immigration related issues. We have had cases of people languishing in Immigration jails or detention centres up to four years. Living for a long time under awkward condition of detention can be very harmful for vulnerable groups such as women and children as well as for survivors of war and torture. It can lead to their re-traumatization and irreparable life-long mental damage.

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." Ac-



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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. There is also the loneliness of living in limbo and the feeling of being excluded and rejected which in turn can lead to feelings of apathy, hostility, isolation, and being a "nobody." It leaves a negative impact on survivors' endeavours to empower themselves.

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. This makes the healing process extremely difficult and in some cases virtually impossible.

One of the main reasons of keeping non-citizens in limbo is the existence of a powerful bureaucracy with vested interests that works behind closed doors and prolongs the process. There is also the problem of unjustified discretionary power for immigration and visa officers, and of a total lack of accountability of these officials. The absence of face-to-face contact between people in limbo and immigration officials often results in a lack of compassion and absence of attention to special individual needs and emergency situations. There are also problems dealing with the lack of correct information and the inexperience, inadequate training, and sheer ignorance on the part of immigration or visa officials.

While we endorse the Canadian government's global campaign against terrorism, we are concerned about its excessive measures of post-September 11. There is a need for genuine effort by the Canadian government to reform its domestic legislations and practices with regards to the implementation of the fundamental rights of humankind. We are particularly concerned about prolonged detentions and keeping non-citizens in Immigration limbo indefinitely. There must be a strong link between Immigration and human rights in Canada. 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

"We will have a choice today: non-violent co-existence or violent c-annihilation."

Martin Luther King, Jr.



First Light



Canada School
of Public Service École de la fonction
publique du Canada



October 28, 2008

Mulugeta Abai
Executive Director
Canadian Centre for Victims of Torture

Dear Mulugeta,

On behalf of the Canada School of Public Service Leadership Across Borders program I want to thank you for all of your assistance and cooperation in planning and executing the live case site visits on Monday September 8, 2008. Your willingness to accommodate our group of international public service leaders was appreciated very much. I know that the group highly rated the visit to the Canadian Centre for Victims of Torture. The briefing that you provided regarding the specialized services that your organization provides to newcomers was both informative and thought-provoking.

Participants were struck with the challenges to service delivery to newcomers in many ways. The programs and services that the Centre provides and the challenges of meeting client volume as well as financial constraints and space limitations were understood clearly by the participants. Your dedication for serving clients was very much evident in the presentation. The unique work of the Centre and the fact that it is one of only two Centers worldwide was also commented on.

Thank you again for your cooperation and willingness to assist in the learning of the participants in the Leadership Across Borders program from Australia, New Zealand, Canada and the United Kingdom. Best wishes and continued success in the vital work that the Canadian Centre for Victims of Torture does.

Sincerely,

A handwritten signature in blue ink that reads "Janet Henstock". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Janet Henstock
Global Learning Division



First Light



CANADIAN CENTRE FOR VICTIMS OF TORTURE

The Right Honourable Stephen Joseph Harper
Prime Minister of Canada
Office of the Prime Minister
Langevin Block, 80 Wellington Street,
Ottawa, ON. K1A 0A2

March 10, 2008

Dear Prime Minister Harper,

We at the Canadian Centre for Victims of Torture (CCVT) are extremely concerned about the well-being and fate of Mr. Omar Ahmed Khadr who has been held in Guantanamo without trial for five years. We remind you Mr. Prime Minister of Canada's indefatigable endeavour in promoting the fundamental rights of humankind nationally and overseas.

Since January 2002, approximately 775 people have been detained in Guantanamo and zero trials have taken place thus giving us an indication of what might be in store for Mr Khadr. He has been accused of murder, attempted murder, conspiracy and of aiding the enemy, with little evidence to support these charges. Much of his time in Guantanamo has allegedly been spent in solitary confinement, under continuous torture and banned from communicating even with his family. Although he was 15 years old - still a child - when captured, the US officials have treated him as an adult, therefore violating the International Humanitarian Law (the Geneva Conventions).

It is unfortunate and shameful that Canada is the only country which has refused to call for the extradition or repatriation of its citizens in detention in Guantanamo. We are deeply worried about the harsh and degrading treatment inflicted upon this young man and the lifelong psychological consequences of such treatment. There is not enough evidence available to keep Mr. Khadr detained and charged; his safety is being endangered and his mental health compromised. On the other hand, there are numerous reports of torture and of several suicides amongst detainees. As a human rights pioneer and as an exemplary civil society, Canada must use its authority to protect its citizens.

Mr. Prime Minister, we believe Omar Khadr's prolonged detention to be grossly unjust and reprehensible. If proper and credible charges are laid against him, the least Canada should do is have him extradited and prosecuted him at home. What is at stake here Mr. Prime Minister is Omar Khadr's life. His most basic human rights have been denied from the moment he was imprisoned at Guantanamo.

The detention of Mr. Khadr has raised the urgent need for the Canadian government to intervene and bring justice to this appalling case before it is too late.



First Light

Canada has accepted the greatest challenges in global human rights leadership. We expect your government to protect Canadian values and play a leading role in the promotion of the civil and human rights here and abroad. Please help with the continuation of adhering to these basic principles that make Canada an admired and respected nation.

With best wishes and in the hope of more collaborations in the future,

Yours sincerely,

Mulugeta Abai
Executive Director

** For the response to this letter from the Government of Canada, please refer to page 44 and 45.*

Convention on the Rights of the Child

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.



First Light

Minister
of Foreign Affairs



Ministre
des Affaires étrangères

Ottawa, Canada K1A 0G2

MAY - 2 2008

Mr. Mulugeta Abai
Executive Director
Canadian Centre for Victims of Torture
2nd Floor
194 Jarvis Street
Toronto, Ontario
M5B 2B7

Dear Mr. Abai:

The Office of the Right Honourable Stephen Harper, Prime Minister, has forwarded to me on March 20, 2008, a copy of your letter, (Folder: 647508), concerning the case of Mr. Omar Khadr, Canadian citizen detained at the U.S. military prison at Guantanamo Bay, Cuba.

I understand your concerns and I can assure you that the Government of Canada has an interest in Mr. Khadr's case and in his treatment. Canadian observers have been present at his hearings before the Military Commission in Guantanamo Bay and the Court of Military Commission Review in Washington, D.C. Furthermore, officials of Foreign Affairs and International Trade Canada have carried out several welfare visits with Mr. Khadr and will continue to do so. Canada has sought and received renewed assurances from the United States that Mr. Khadr is being treated humanely.

Although Mr. Khadr is no longer a juvenile, he was 15 years old when he was alleged to have committed crimes in Afghanistan. Canada has sought to ensure that the treatment of Mr. Khadr is consistent with internationally recognized norms and standards for the treatment of juvenile offenders, and that his age at the time the alleged events occurred is considered in all parts of the process. Canada has also consistently sought to ensure that Mr. Khadr receives the benefits of due process, including the access to Canadian counsel of his choice. The Canadian government has received unequivocal assurances from the U.S. authorities that Mr. Khadr will not be subject to the death penalty, and indeed the charges against him were referred to the Military Commission on a non-capital basis.

.../2

Canada



First Light

- 2 -

In keeping with Canada's long-standing policy, the Canadian government strongly believes that the fight against terrorism must be carried out in compliance with international law, including established standards of human rights and due process.

With respect to Mr. Khadr's repatriation to Canada, it is premature to discuss this issue since his case is still before the courts.

Thank you for taking the time to write and share your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maxime Bernier', written in a cursive style.

Maxime Bernier

c.c. cims_oper@pco-bcp.gc.ca

"I am convinced that if we are to get on the right side of the world revolution, we as a nation must undergo a radical revolution of values. We must rapidly begin the shift from a "thing-oriented" society to a "person-oriented" society. When machines and computers, profit motives and property rights are considered more important than people, the giant triplets of racism, materialism and militarism are incapable of being conquered."



Martin Luther King, Jr.



First Light

Chief Seattle's Message

At the Canadian Centre for Victims of Torture, we strongly believe in the need to blossom a culture of peace and non-violence at a grass-roots level as the most effective means of preventing torture, genocide, war crimes and crimes against humanity. It is important to note that nonviolence did not appear in North America with the arrival of European immigrants. Native Americans have had an everlasting tradition of reverence for life. They have always respected human dignity, and understood the interconnection of all things to an extent that has yet to be surpassed. The genocide perpetrated by various governments on the indigenous tribes and culture – a pattern, which still continues today, remains one of the most thorough indictments of white civilization. In 1854, Chief Seattle, leader of the Suquamish tribe in the Washington territory, delivered this prophetic speech to mark the transfers of ancestral Indian lands to the federal government of the United States of America.



The great Chief in Washington sends that he wishes to buy our land.

The Great Chief also sends us words of friendship and good will. This is kind of him, since we know he has little need of our friendship in return. But we will consider your offer. For we know that if we do not sell, the white man may come with guns and take our land.

How can you buy or sell the sky, the warmth of the land? The idea is strange to us.

If we do not own the freshness of the air and the sparkle of the water, how can you buy them?

Every part of this earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in the memory and experience of my people. The sap, which courses through the tree, carries the memories of the red man.

The white man's dead forgets the country of their birth when they go to walk among the stars. Our dead never forget this beautiful earth, for it is the mother of the red man. We are part of the earth and it is part of us. The perfumed flowers are our sisters: the deer, the horse, the great eagle, these



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are our brothers. The rocky crests the juices in the meadows, the body heat of the pony, and man – all belong to the same family.

So, when the Great Chef in Washington sends word that he wishes to buy our land, he asks much of us.

So, the Great Chef sends word he will reserve us a place so that we can live comfortably to ourselves. He will be our father and we will be his children.

So we will consider your offer to buy our land. But it will not be easy. For this land is sacred to us.

This shining water that moves in the streams and rivers is not just water but the blood of our ancestors. If we sell you land, you must remember that it is sacred, and you must teach your children that it is sacred, and that each ghostly reflection in the clear water of the lake tells of events and memories in the life of my people. The water's murmur is the voice of my father's father.

The rivers are our brothers, they quench our thirst. The rivers carry our canoes, and feed our children. If we sell you our land, you must remember, and teach your children, that the rivers are our brothers, and yours, and you must henceforth give the rivers the kindness you would give my brother.

The red man has always retreated before the advancing white man, as the mist of the mountain runs before the morning sun. But the ashes of our fathers are sacred. Their graves are holy ground, and so these hills, these trees, this portion of earth is consecrated to us. We know that the white man does not understand our ways. One portion of land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother, but his enemy, and when he has conquered it, he moves on. He leaves his fathers graves behind, and he does not care. He kidnaps the earth from his children. He does not care. His father's graves and his children's birthrights are forgotten. He treats his mother, the earth, and his brother, the sky, as things to be bought, plundered, sold like sheep or bright beads. His appetite will devour the earth and leave behind only a desert.

I do not know. Our ways are different from your ways. The sight of your cities pains the eyes of the red man. But perhaps it is because the red man is a savage and does not understand.

There is no quiet place in the white man's cities. No place to hear the unfurling of leaves in spring or the rustle of insects' wings. But perhaps it is because I am a savage and do not understand. The clatter



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only seems to insult the ears. And what is there to life if a man cannot hear the lonely cry of the whip-poorwill or the arguments of the frogs around a pond at night? I am a red man and do not understand. The Indian prefers the soft sound of the wind darting over the face of a pond, and the smell of the wind itself, cleansed by a midday rain, or scented with the pinon pine.

The air is precious to the red man. For all things share the same breath. The white man does not seem to notice the air the breaths.

Like a man dying for many days, he is numb to the stench: But if we sell you our land, you must remember that the air is precious to us, that the air shares its spirit with all the life it supports. The wind that gave our grandfathers his first breath also receives his last sigh. And the wind must also give our children the spirit of life. And if we sell you our land, you must keep it apart and sacred, as a place where even the white man can go to taste the wind that is sweetened by the meadow" flowers.

So we will consider your offer to buy our land. If we decide to accept, I will make one condition: the white man must treat the beasts of this land as his brothers.

I am a savage and do not understand any other way. I have seen a thousand rotting buffaloes on the prairie, left by the white man who shot them from a passing train. I am a savage and I do not understand how the smoking iron horse can be more important than the buffalo that we kill only to stay alive.

What is man without the beasts? If all the beasts were gone, Men would die from a great loneliness of spirit. For whatever happens to the beasts, soon happens to man. All things are connected.

You must teach your children that the ground beneath their feet is the ashes of our grandfathers. So that they will respect the land, tell your children that the earth is rich with the lives of our kin. Teach your children what we have taught our children, that the earth is our mother. Whatever befalls the earth befalls the sons of the earth. If men spit upon the ground they spit upon themselves. This we know. The earth does not belong to man; man belongs to the earth. This we know. All things are connected like the blood, which united one family. All things are connected.

Whatever befalls the earth befalls the sons of the earth. Man did not weave the web of life; he is merely a strand in it. Whatever he does to the web, he does to himself.



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But we will consider your offer to go to the reservation you have for my people. We will live apart, and in peace. It matters little where we spend the rest of our days. Our children have seen their fathers humbled in defeat. Our warriors have felt shame, and after defeat they turn their days in idleness and contaminate their bodies with sweet foods and strong drink. It matters little where we pass the rest of our days. They are not many. A few more hours, a few more winters, and none of the children of the great tribes that once live on this earth or that roam now in small bands in the woods will be left to mourn the graves of a people once as powerful and hopeful as yours. But why should I mourn the passing of my people? Tribes are made of men, nothing more. Men come and go like the waves of the sea.

Even the white man, whose God walks and talks with him as friend to friend, cannot be exempt from the common destiny. We may be brothers after all; we shall see. One thing we know, which the white man may one day discover – our God is the same God. You may think now that you own him as you wish to own our land; but you cannot. He is the god of man, and his compassion is equal for the red man and the white. This earth is precious to him, and to harm the earth is to heap contempt on its Creator, The white too shall pass; perhaps sooner than all other tribes. Continue to contaminate your bed, and you will one night suffocate in you own waste. But in your perishing you will shine brightly, fired by the strength of the God who brought you to this land and for some special purpose gave you dominion over this land and over the red man. That destiny is a mystery to us, for we do not understand when the buffalo are all slaughtered, the wild horses are tamed, the secret corner of the forest heavy with the scent of many men, the view of the ripe hills blotted by talking wires. Where is the thicket? Gone. Where is the eagle? Gone. And what is it to say goodbye to the swift pony and the hunt? The end of living and the beginning of survival.

So we will consider you offer to buy our land. If we agree, it will be to secure the reservation you have promise. There, perhaps, we may live out our brief days as we wish. When the last red man has vanished from the earth, and his memory is only the shadow of a cloud moving across the prairie, these shores and forests will still hold the spirits of my people. For they love this earth as the newborn loves its mother's heartbeat. So if we sell you our land, love it as we've loved it. Care for it as we've cared for it. Hold in your mind the memory of the land, as it is when you take it. And with all your strength, with your entire mind, with all your heart, preserve it for you children, and love it . . . as God loves us all.

One thing we know. Our God is the same God. This earth is precious to him. Even the white man cannot be exempt from the common destiny. We may be brothers after all. We shall see.

CCVT Programs and Services

1. **Mental Health**
 - **Counselling**
 - **Individual and Group Therapy, Mutual Support Groups**
 - **Crisis Intervention:** suicide attempts, breakdowns, family problems, etc.
 - **Art Therapy**
 - **Coordinated professional services:** doctors, lawyers, social service workers provide treatment, documentation and legal support
2. **Settlement Services**
 - Includes information/orientation, interpretation/translation, counselling, employment-related issues and referrals to resources relating to the economic, social, cultural, educational and recreational facilities that could contribute to the initial settlement of the client.
3. **Children/Youth Program:**
 - Intake/assessment, settlement services, mental health services, recreational and empowerment activities that incorporate conflict resolution, mentoring, peer support and story-telling
4. **Volunteer Program**
 - **Befriending** to assist survivors in rebuilding their connections to others as well as to the greater community.
- **ESL Tutoring** and **Conversation Circles** to help students learn and practice their English.
- **Escorting and interpreting** for survivors at different appointments (medical, legal, social).
5. **Public Education**
 - responds to numerous requests for information, assistance and consultations on torture and the effects of torture as well as regularly producing resource materials
6. **Refugees in Limbo**
 - Providing services to refugees in limbo that include counselling, assisting in sponsorships, family reunification and other immigration-related issues.
7. **Language Instruction and Training**
 - LINC/ESL classes specially designed to address the needs and realities of the survivor of torture (concentration, memory, depression, triggers)
 - Computer training: basic and intermediate levels
8. **International Projects:** CCVT is associated with a coalition of Centres which support victims of violence, repression and torture, in exile or in their own countries

Any comments or thoughts about *First Light*
We warmly welcome letters to the editor!

Just mail your comments to:
CCVT
194 Jarvis St. 2nd Floor,
Toronto, Ontario, M5B 2B7
Canada

Or email them to: The Editorial Committee c/o mabai@ccvt.org ...

and we'll do our best to publish them in the next issue. We reserve the right to shorten any letters due to space requirements.

YES!

I want to help CCVT respond to the needs of survivors of violent oppression who have sought refuge here in Canada.



- \$20 \$40 \$50 \$150
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Yes I'd like to join the CCVT Monthly Giving Plan by making a monthly donation of:

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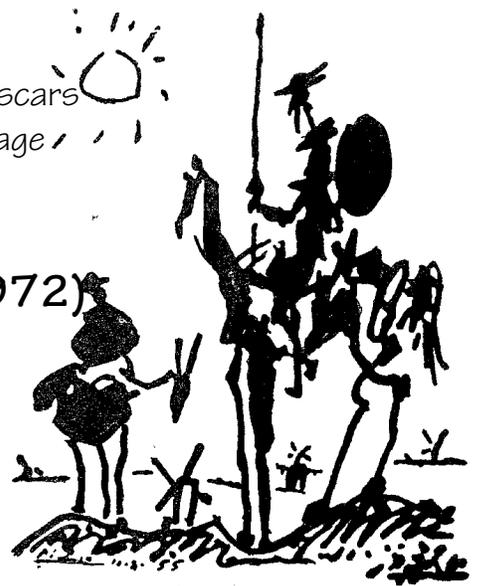
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The Impossible Dream

To dream the impossible dream
To fight the unbeatable foe
To bear with unbearable sorrow
To run where the brave dare not go
To right the unrightable wrong
To love pure and chaste from afar
To try when your arms are too weary
To reach the unreachable star
This is my quest
To follow that star
No matter how hopeless
No matter how far
To fight for the right
Without question or pause
To be willing to march into Hell
For a heavenly cause
And I know if I'll only be true
To this glorious quest
That my heart will lie peaceful and calm
When I'm laid to my rest
And the world will be better for this
That one man, scorned and covered with scars
Still strove with his last ounce of courage
To reach the unreachable star

From **MAN OF LA MANCHA (1972)**
Lyrics by Joe Darion



دن کیشوت و سانکویانزا، اثر بابو بیکاسو