

## **CANADIAN CIVIL LIBERTIES ASSOCIATION – SUMMARY CONCERNS SUBMITTED TO THE UN COMMITTEE AGAINST TORTURE, MAY 2012**

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### **Refugee Protection**

CCLA is seriously concerned that Bill C31 with its excessive Ministerial discretion; mandatory 6 month detentions for “irregular arrivals”; separation of children; lack of proper appeals on the merits; and five-year moratorium on seeking permanent resident status creates the potential for serious and unjustifiable violations of the principle of *non-refoulement*, of *habeas corpus*, of the right to be free from arbitrary detention, and the corresponding legal guarantees found in the Convention, the 1951 UN Convention Relating to the Status of Refugees and the Optional Protocol, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child.

*For more detail, please see paras. 5-13 of CCLA’s Shadow Report.*

### **Redress for Victims of Torture**

CCLA notes the introduction of legislation, *Justice for Victims of Terrorism Act*, permitting civil suits to victims of terrorism in certain circumstances. CCLA calls upon Canada to extend this right to victims of torture.

CCLA calls upon Canada to recognize that the *State Immunity Act (RSC 1985)* in Canada should not be interpreted as barring exceptions for violations of *jus cogens* crimes including torture. CCLA argues that State Immunity is the exception to jurisdiction -- which exception can be granted by the forum State which retains adjudicatory jurisdiction. CCLA argues that the exception of sovereign immunity to jurisdiction, cannot justifiably apply where it would effectively grant **impunity** for *jus cogens* violations. There is no justifiable argument – such as sovereign equality or smooth relations between States – to permit impunity. CCLA notes the statement of former ICJ President and Judge, Dame Rosalyn Higgins, “It is very easy to elevate sovereign immunity into a superior principle of international law and to lose sight of the essential reality that it is an exception to the normal doctrine of jurisdiction”, as quoted in “State Immunity Human Rights, and Jus Cogens: A Critique of the Normative Hierarchy Theory”, Lee M. Caplan, ASIL 97:741 at p.757.

*For more information, see paras. 91-95, of CCLA’s Shadow Report*

### **Violence Against Women**

CCLA is seriously concerned that the root causes of alarmingly disproportionately high violence against Aboriginal women; and the alarmingly and disproportionately high incarceration of Aboriginal women be investigated and addressed. Aboriginal women and their communities must be provided with meaningful participation and direction in such efforts.

CCLA calls upon the Canadian government to recognize that domestic violence can

constitute torture, cruel, inhuman or degrading treatment in violation of the Convention; and a State that fails to protect victims may be guilty of condonation. CCLA calls upon Canada to urgently protect Nathalie Morin and her three children – all Canadian citizens – who seek to leave Saudi Arabia.

*For more information, please see paras. 30-35 of CCLA's Shadow Report.*

### **Non-Refoulement**

CCLA is concerned that Canada is relying upon diplomatic assurances; and engaging in deportation, extradition or other removals, that may result in violations of the principle of *non-refoulement*.

CCLA calls upon Canada to prosecute crimes of universal jurisdiction, rather than deport suspected criminals (i.e. 30 Most Wanted List)

CCLA calls upon Canada to urgently hold a public inquiry into the transfer of Afghan detainees to the risk of torture in Afghanistan, in violation of the principles of non-refoulement found in international humanitarian and human rights law.

CCLA is seriously concerned that Canada is extraditing or deporting individuals to the risk of torture, to the risk of manifestly unfair trial, and to face charged potentially based upon secret evidence procured from torture (see cases of *Leon Mugasera*, *Hassan Diab*)

*For more information, please see paras. 36-67 of CCLA's Shadow Report.*

### **Security Certificates**

CCLA is seriously concerned that the concerns of fundamental justice and due process raised by the Supreme Court of Canada in *Charkaoui 1* are not properly addressed by Canada's 2008 introduction of Special Advocates. Named Individuals cannot directly discuss content with the Special Advocates; cannot properly instruct the Special Advocates; and accordingly cannot properly know the case against them or make full answer or defence in violation of the principles of fundamental justice and due process.

CCLA is also concerned that Security Certificate process creates a second-tier of justice for non-Canadians.

CCLA is seriously concerned that information which forms the basis for issuance of Security Certificates, has in some cases, found to be tainted by torture. CCLA is further concerned that the burden of proof is wrongly placed upon the Named Individual.

*For more detail, please see paras. 14-29 of CCLA's Shadow Report.*

### **Segregation of Mentally Ill Prisoners and Administrative Detentions**

CCLA is seriously concerned about the overuse of segregation in Canadian jails regarding mentally ill persons, and the abusive use of ‘administrative detentions’ that are not subject to any regulatory framework. CCLA calls upon immediate implementation of the recommendations of the Arbour Commission, investigation by the Federal Government, and a strengthening of oversight mechanisms for prison guards.

*For more information, please see para. 69 of CCLA’s Shadow Report.*

### **Federal Commissions of Inquiry into the Actions of Canadian Officials Regarding Maher Arar; Abdullah Almalki; Ahmad Abou-Elmaati; and Muayyed Nureddin (i.e. Arar Commission, Iacobucci Commission)**

Notwithstanding representations of Canada, CCLA is seriously concerned that the policy recommendations of the Arar Commission with respect to implementation of legal safeguards regarding information collection, sharing, labeling and dissemination; as well as policy recommendations calling for integrated oversight and review of integrated security and intelligence operations ***remains outstanding***. CCLA is seriously concerned that the proposed Canada-US Security Perimeter envisages greater “information sharing and pooling” and “integrated policing” between the two countries, without proper implementation of the policy recommendations.

*For more details please see paras. 70-80, and 101 of CCLA’s Shadow Report.*

### **Canadians Detained Abroad on National Security Charges**

CCLA calls upon Canada to urgently repatriate Omar Khadr, and to comply with the recommendations and findings of the 2009 SIRC review into CSIS role in interrogating Omar Khadr in his particular circumstances at Guantanamo Bay at age 15, and passing on that information to the US.

CCLA calls upon Canada to urgently inquire into the circumstance, charges, detention and treatment of Bashir Maktal and Huseyn Celil, held respectively in Ethiopia and China, on alleged terrorism charges.

For more information, please see paras. 81-90

### **Police Accountability**

CCLA investigated and reported on serious violations of fundamental rights and freedoms which occurred during policing of the June 2010 G20 Summit in Toronto. CCLA is concerned about policing practices during the Montreal student protests in 2012. This past week, the Ontario Investigative Police Review Director (OIPRD) released a review finding serious planning, training, and implementation failures regarding the G20. CCLA is calling for appropriate disciplinary action.

*For more information please see paras. 97-100 of CCLA’s Shadow Report, and visit <http://www.ccla.org>.*