



## **Submission to the Senate Standing Committee on National Security and Defence**

### **For its study on the policies, practices, and collaborative efforts of Canada Border Services Agency in determining admissibility to Canada and removal of inadmissible individuals**

**1 April 2014**

#### **1. Introduction**

The Canadian Council for Refugees (CCR) is a national non-profit umbrella organization committed to the rights and protection of refugees and other vulnerable migrants in Canada and around the world and to the settlement of refugees and immigrants in Canada. The CCR's more than 170 member organizations are involved in the settlement, sponsorship and protection of refugees and immigrants. For over 35 years, the Council has been serving the networking, information-exchange and advocacy needs of its membership.

The CCR recognizes that the Canada Border Services Agency is responsible for enforcing the immigration legislation, including with respect to admissibility to Canada and removal of inadmissible individuals. Some aspects of that legislation are of serious concern to the CCR: we appreciate, however, that the legislation itself is not the focus of this study by the Senate.

Our comments will address some of the ways in which CBSA actions can and do hurt people, including some of the most vulnerable, such as refugees and children. The inadmissibility provisions in the *Immigration and Refugee Protection Act* are wide-ranging, meaning that an inadmissible person might be a person convicted of a serious crime of violence, but might also be a person who was brought into Canada for exploitation by a trafficker, a refused refugee claimant who nevertheless has compelling reasons for fearing removal, or a person who has been a peaceful and productive permanent resident for a decade, but who has been found to no longer need Canada's protection as a refugee.

The CCR believes that there is a need for more constraints on the work of CBSA, to ensure respect of rights and to prevent abuses. This is required because of the broad scope of inadmissibility as established in the *Act*, which often does not take into account individual circumstances, and because of the wide power given to CBSA to enforce the law. The implications of this wide power have become more evident in recent times, as a result of increases to the CBSA budget. Finally, the lack of an independent complaints mechanism means that there are limited checks on abuses.

The CCR is calling for measures to ensure that CBSA enforces the law in a way that fully respects human rights and the dignity of the person. Among the rights of particular concern to the CCR are the right to seek and enjoy asylum from persecution, gender equality, the consideration of the best interests of the child and the fundamental right to liberty.

The recent tragic death of Lucia Vega Jiménez, detained by CBSA, highlights the human dimension that needs to be given priority by this Senate Committee in its study of CBSA actions. She attempted to hang herself at the immigration holding centre at the Vancouver Airport, and died in late December 2013 in hospital. Her death was lonely and silent: information was not made public until more than a month after it occurred. Lucia Vega Jiménez was a hotel worker who was reportedly trying to save money to send to her family in Mexico. While suicides thankfully are rare, the CCR is keenly aware that many individuals who are detained and face deportation share some degree of her acute distress.

## **2. Security inadmissibility**

Security inadmissibility, defined at section 34 of the *Immigration and Refugee Protection Act*, is a good example of how the law casts a very broad net. A person is inadmissible on security grounds if they engage in various acts of terrorism or subversion, or are or were a member of an organization that has engaged in such acts. For those found inadmissible on the basis of membership in an organization, there is no requirement that the person have been directly involved in the acts in question, or even have known that such acts were committed by the organization he or she was a member of. The person might not be a member at the same time as the organization committed those acts: having left the organization before the violent acts were taken, or joining the organization after it renounces violence will not save a person from being inadmissible on security grounds.

According to the Act, people who are caught by this definition but who represent no kind of security threat can be exempted through ministerial relief. Under this provision, the Minister of Public Safety, who must personally decide each case, exempts otherwise inadmissible persons if it is not contrary to the national interest.<sup>1</sup> The provisions relating to ministerial relief have been narrowed by Bill C-43, the Faster Removal of Foreign Criminals Act, passed in June 2013. The same bill bars people inadmissible on security grounds access to humanitarian and compassionate consideration (s. 25 of the Act).<sup>2</sup>

The CCR has published a report on the devastating impact of the security inadmissibility provisions on many Eritreans.<sup>3</sup> Among those found inadmissible on security grounds are people who participated in the Eritrean liberation movement or were active in opposition groups, in completely non-violent and often very minor ways,.

Another example of the impact is Sugunanayake Joseph, a widow from Sri Lanka, who was found inadmissible as a member of a terrorist organization, the Liberation Tigers of Tamil Eelam. Ms Joseph was not in fact a member of the Tigers, but she supported the activities of her husband, a Member of Parliament who was assassinated. Ms Joseph's husband was not actually a

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<sup>1</sup> Section 42.1 (since the passage of Bill C-43 in 2013). Previously the wording used for ministerial relief referred to persons whose "presence in Canada would not be detrimental to the national interest."

<sup>2</sup> Similar provisions and concerns apply to inadmissibility under s. 35, which renders inadmissible a broad range of officials in a government that commits human rights abuses, even though the individual may have committed no crimes, and may in fact even have opposed the abuses.

<sup>3</sup> *From Liberation to Limbo*, April 2010, [http://ccrweb.ca/files/from\\_liberation\\_to\\_limbo.pdf](http://ccrweb.ca/files/from_liberation_to_limbo.pdf)

member of the Tigers either, but he participated in an alliance that pressed for negotiations between the government and the Tigers.<sup>4</sup>

Oscar Vigil is a Salvadoran who is currently facing deportation from Canada, after 13 years living here, and despite the fact that his wife and children are Canadian citizens. He has been found inadmissible to Canada because of his involvement in the FLMN, which was recently re-elected as the government of El Salvador. Although FLMN members of the government are allowed to travel to Canada, the strict interpretation of the law is being applied to Oscar.<sup>5</sup>

While the definition of security inadmissibility is extremely broad, ministerial relief can and should be used to exempt individuals whose presence in Canada would not be contrary to the national interest. However, this measure is being applied inconsistently at best, both in policy and in practice. The Supreme Court of Canada has ruled that this exemption is a necessary “escape valve” that can remedy the injustice that would otherwise be done by the breadth of the security inadmissibility provision.<sup>6</sup> The CCR recommended to CBSA that guidelines to officers on applying ministerial relief should draw their attention to this ruling of the Supreme Court and advise them that ministerial relief must be offered when refusing it would result in a violation of Charter rights. CBSA declined to do so.<sup>7</sup> There is thus no responsibility being taken by CBSA to ensure that the ministerial relief applications are considered in a manner consistent with the Canadian Charter of Rights and Freedoms.

In practice, too, this provision is not being used, as it properly should, to exempt those who have no personal responsibility for acts of violence. A preliminary barrier for those affected is lack of information about the provision. There is no application form and unrepresented persons are often unaware of their right to ask for ministerial relief. Even those who are aware of the exemption process and have experienced counsel to help them have little chance of success. Applicants routinely wait years for an answer. Recommendations to the Minister are usually against granting an exemption, even where there is no evidence cited to suggest that the person committed any crimes or represents any kind of danger to Canada. In many cases, CBSA has simply relied on the inadmissibility finding itself as a reason to also deny an exemption from inadmissibility. Successive Ministers of Public Safety have tended to simply adopt the negative recommendations of CBSA. As a result, the exemption provision has proven a meaningless, illusory remedy.<sup>8</sup>

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<sup>4</sup> Toronto Star, “Widow, 74, labelled a terrorist and ordered out of Canada”, Tracey Tyler, 15 April 2011, [http://www.thestar.com/news/gta/2011/04/15/widow\\_74\\_labelled\\_a\\_terrorist\\_and\\_ordered\\_out\\_of\\_canada.html](http://www.thestar.com/news/gta/2011/04/15/widow_74_labelled_a_terrorist_and_ordered_out_of_canada.html)

<sup>5</sup> Toronto Star, “‘Unfair’ deportation from Canada threatens to rip apart family”, Oakland Ross, 31 March 2014, [http://www.thestar.com/news/world/2014/03/31/salvadoran\\_journalist\\_faces\\_unfair\\_deportation.html](http://www.thestar.com/news/world/2014/03/31/salvadoran_journalist_faces_unfair_deportation.html)

<sup>6</sup> *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3, §110.

<sup>7</sup> CCR provided CBSA with comments on draft guidelines for National Security and National Interest cases in December 2004 and discussed the concern regarding *Suresh* at a meeting with CBSA in January 2005. The guidelines form operational manual IP 10 – Refusal of National Security Cases / Processing of National Interest Requests.

<sup>8</sup> According to statistics released through Access to Information, from 2002 to 2011, only 24 applications for ministerial relief were granted for inadmissibility under s. 34. In the same period there were 247 applications.

In 2008, officials recommended that the Minister not exempt O.A., a past member of the Eritrean Liberation Front (ELF). They acknowledged that their recommendation would mean that O.A. would not be able to reunite with his wife and child in Canada, and that he would remain with his other children in Egypt, where they do not have legal status. They did not argue that he was personally involved in any violent activities: he was a teacher at a school affiliated to the ELF and was a member of the Secretariat for the Education Syndicate of the ELF. They stated that he must have known that the ELF “was involved in terrorist activities and violence against the Ethiopian government.”<sup>9</sup>

### 3. Most wanted list

In July 2011, the Canadian government published a list of 30 individuals described as “suspected war criminals”, asking the public for help in tracking them down so that they could be deported. Originally called the “Most Wanted” list, it was later renamed the “Wanted by the CBSA” program, with expanded criteria and new names added.

The CCR had several grave concerns about the CBSA’s use of this strategy to remove inadmissible individuals. In particular, the CCR considered the label “suspected war criminals” to be wrong and unfair. Jointly with several other organizations, the CCR published a ‘Statement on publication of the “most wanted” list’ in September 2011.<sup>10</sup>

Among the individuals on the CBSA list were several who were excluded from refugee protection on the basis of war crimes. In July 2013 the Supreme Court ruled that Canada had been incorrectly extending the interpretation of exclusion based on war crimes, resulting in innocent people being denied protection and wrongly labelled “war criminals”.<sup>11</sup> This decision means that, far from being “war criminals”, some of the individuals on the list might in fact have been refugees wrongly denied Canada’s protection.

The CCR also submitted a complaint to the Privacy Commissioner of Canada on behalf of one of the individuals on the list. In 2013 the Privacy Commissioner found the CCR’s complaint well-founded in regard to the use of the label “war crimes”, determining it “potentially misleading and not adequately justified by the CBSA”. While the Commissioner found that overall the program is consistent with the Privacy Act, she was “deeply concerned by the CBSA’s failure to conduct a Privacy Impact Assessment” of the program. The Commissioner also found that the program released more private information than necessary.<sup>12</sup>

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<sup>9</sup> Extract from CCR, *From Liberation to Limbo*.

<sup>10</sup> <http://ccrweb.ca/en/statement-publication-most-wanted-list>. See also text in Appendix.

<sup>11</sup> *Ezokola v. Canada (Citizenship and Immigration)*, 2013 SCC 40.

<sup>12</sup> The Privacy Commissioner’s Report of Findings is available at <http://ccrweb.ca/files/most-wanted-privacy-complaint-findings.pdf>

#### 4. Removals to dangerous places

The CCR is concerned about removals of individuals to countries where there is generalized violence. Under the regulations, the Minister of Public Safety can declare a temporary suspension of removals to such a country, but no such suspensions have been declared since 2004 (when removals to Haiti were suspended).

The CCR has repeatedly called for a suspension of removals to Somalia.<sup>13</sup> While the USA offers Somalis “Temporary Protected Status”, an equivalent measure, Canada has not imposed a temporary suspension of removals, despite the chaos and insecurity that have prevailed in Somalis for decades. Finally, in December 2011, Canada Border Services Agency declared an “Administrative Deferral of Removals” for the regions of Middle Shabelle, Afgoye, and Mogadishu, on account of the famine. This is an internal measure only, which is not publicly announced.

The CCR has also recommended a suspension of removals to Eritrea, a country in the grips of massive human rights violations.<sup>14</sup> Those who flee the country may be regarded as traitors or deserters, meaning that anyone forcibly returned is at risk.<sup>15</sup> Despite the gravity of the situation in Eritrea, there is no suspension of removals to Eritrea. As a result, refused refugee claimants who have committed no crimes face removal to Eritrea, despite the generalized risk.

Canada currently has in place Temporary Suspensions of Removals to Afghanistan, Democratic Republic of Congo, Haiti, Iraq and Zimbabwe.

Even where there is a Temporary Suspension of Removals, it does not apply to people who have committed a crime, even a minor crime. The CCR is very concerned about the risks for certain groups who are particularly vulnerable if removed to extremely dangerous countries. These include youth who have grown up in Canada. They may have no family or connections in the country of their origin, and not even speak the language. In a country of extreme insecurity such as Somalia, such youth are particularly at risk, as they lack the knowledge or networks to protect themselves. Individuals suffering from mental health problems are also highly vulnerable. Adequate health care may be lacking in the country of origin and people with mental health issues may be at increased risk of falling victim to violence.

These concerns are the greater since the passage in 2013 of Bill C-43, which denies permanent residents the right of appeal to the Immigration and Refugee Board if they are sentenced to imprisonment for six months or more (previously 2 years). This means that these permanent

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<sup>13</sup> The CCR made detailed submissions, showing why the situation in Somalia met the regulatory criteria for suspension of removals, in 2004, 2008 and 2010.

<sup>14</sup> The CCR made a detailed submission re. Eritrea in 2011.

<sup>15</sup> Human Rights Watch, September 2011, *Ten Long Years: A Briefing on Eritrea's Missing Political Prisoners*, <http://www.hrw.org/sites/default/files/reports/eritrea0911WebForUpload.pdf>; UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea*, 20 April 2011, HCR/EG/ERT/11/01, <http://www.refworld.org/docid/4dafa0ec2.html>.

residents will be removed without an independent decision-maker considering all the relevant circumstances of the case.<sup>16</sup>

## **5. Removal without regard to circumstances**

Recently CBSA removal practices have become significantly more aggressive. This is partly the result of CBSA interpreting legislative changes to give them less flexibility to defer removals when circumstances warrant<sup>17</sup>, and partly due to increased budgets which sometimes leave observers with the impression that CBSA officers have too much time on their hands. An example of the latter is sending CBSA officers to people's residences to check that they had received a call-in notice sent by mail.

The CCR is concerned that the aggressive measures used by CBSA lead in some cases to a lack of respect for people's rights and dignity, to an overuse of detention and to a failure to show proper consideration for the best interests of the child.

In one recent case, members of a family that had purchased their own tickets to fly home were unable to leave as scheduled due to a CBSA error. Despite the family complying with their removal, they ended up being detained. The mother was reportedly handcuffed in front of her young children, who were visibly distressed by what they experienced.<sup>18</sup>

The CCR has heard from its members that it is increasingly difficult to have a removal deferred even when there are compelling circumstances, such as a medical report advising against deportation.

A further concern relates to situations of spousal abuse and where child custody is at issue. Should CBSA be acting on denunciations of immigration violations made by a spouse when doing so may make the CBSA complicit with tactics of control and intimidation by an abusive partner? The CCR would like to see CBSA adopt a clear policy that is sensitive to issues of violence against women and commits CBSA to respecting women's rights in such situations. With regard to child custody, it is important for the custody to be fully decided before a parent is removed: the CCR is therefore disturbed by reports of CBSA making arrests, detaining (or threatening to detain), and removing a parent while a custody hearing is pending.

## **6. Investigation techniques that endanger refugees**

CBSA has broad powers under the legislation to interrogate refugee claimants. CCR members have seen claimants called in repeatedly for interviews, often carried out without the presence of a lawyer. Those in detention tend to be particularly targeted. This is another area where increased resources can lead to perhaps excessive and unnecessary interventions.

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<sup>16</sup> See CCR comments on Bill C-43, [http://ccrweb.ca/files/c43\\_comments-oct-2012.pdf](http://ccrweb.ca/files/c43_comments-oct-2012.pdf)

<sup>17</sup> IRPA s. 48(2) was amended in 2012 to say that a removal order must be enforced "as soon as possible" where previously it read "as soon as is reasonably practicable."

<sup>18</sup> CCR approached CBSA about this case in August 2013.

The CCR fully accepts that it is CBSA's responsibility to investigate potential inadmissibility. Investigations, however, need to be done in a way that respects the dignity of the person and takes into consideration the particular situation of refugees.

Several claimants describe extremely aggressive interrogation techniques. The CCR heard some such accounts when interviewing claimants recently about their experiences in the refugee claim process. One claimant said he had 12-15 interviews with CBSA, each one lasting 2-3 hours. The same questions were asked over and over again. The claimant acknowledged that CBSA had to check his background, but questioned the technique used, which gave him the impression that the official was waiting for him to make a mistake that he could use against him. In the end, this claimant was accepted as a refugee after a very brief hearing before the Immigration and Refugee Board. Another claimant felt that CBSA was accusing her family of lying: they were also accepted as refugees.<sup>19</sup>

Similar concerns were raised by a number of claimants interviewed in the context of an earlier research project, conducted jointly by CCR and Sojourn House. The report, *Welcome to Canada: The Experience of Refugee Claimants at Port-of-Entry Interviews*,<sup>20</sup> notes:

The research suggests that CBSA struggles with the diverse responsibilities within its mandate, namely the enforcement mandate and the duty to protect refugees. Some claimants reported that officers appeared not to believe them or even accused them of lying. In the most extreme cases, claimants seeking refugee protection felt that they were being treated like criminals. The difficulty of distinguishing between enforcement and refugee protection at the organizational level may provide some explanation for inconsistencies in conduct between officers.

One of the recommendations in that report is that all interviews conducted by CBSA officers should be audio taped. This would make possible review of the conduct of the officers, as well as providing a record of the statements made the claimant, should this be relevant in the refugee hearing and inadmissibility processes.

In the case of refugee claimants, investigation techniques must avoid any contact with the country of feared persecution or breaching privacy in a way that might put the person or others at risk.<sup>21</sup> The CCR has repeatedly asked CBSA for a clear policy on this matter, but there does not appear to be one. Instead, there are frequent reports that claimants' privacy is breached. CBSA officers are known to call numbers that they find on refugee claimants' cell phones, without

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<sup>19</sup> The report on this research project is forthcoming.

<sup>20</sup> The report was published in November 2010, <http://ccrweb.ca/files/poereport.pdf>.

<sup>21</sup> According to the UN High Commissioner for Refugees (UNHCR), "the State that receives and assesses an asylum request must refrain from sharing any information with the authorities of the country of origin and indeed from informing the authorities in the country of origin that a national has presented an asylum claim." *UNHCR Advisory Opinion on the Rules of Confidentiality Regarding Asylum Information*, 31 March 2005, <http://www.refworld.org/docid/42b9190e4.html>. In Canada, the *Immigration and Refugee Protection Act* recognizes the need to keep refugees' information confidential in matters before the Immigration and Refugee Board (s. 166). Unfortunately there is no equivalent legislative provision with respect to the communications of CBSA and CIC.

regard to the safety of the claimant or family in the country of origin. In the case of an Afghan refugee claimant (later recognized as a refugee), CBSA contacted her former employer in Afghanistan, without her consent or knowledge.<sup>22</sup>

In 2011 CCR made a complaint to the Privacy Commissioner of Canada on behalf of a refugee claimant who had similar concerns. The Privacy Commissioner's investigation confirmed that, on the instigation of CBSA, Canadian government representatives had disclosed the claimant's personal information to government authorities of the home country. Nevertheless, the Privacy Commissioner found the complaint "not well-founded" because such communication does not violate the Privacy Act (which does not provide any particular protection to refugees). This highlights the need for legislative or at least policy protection for refugees, to prevent disclosure of their personal information to the authorities of the country where they fear persecution.

The case of the Sun Sea illustrates clearly how the law can be used by CBSA inequitably against certain individuals. Before the boat had even arrived in Canada, CBSA was directing its officers to use all legal means to detain the passengers as long as possible, to try to have them declared inadmissible and to argue against them being recognized as refugees.<sup>23</sup> This directive was given even though, as the memo itself recognizes, many were likely to be refugees and there might be women and children on board. The rationale for this legal harassment of the passengers was to "ensure that a deterrent for future arrivals is created."

## 7. Cessation applications

Over the past year, the CCR has become increasingly aware of a new and troubling phenomenon: dramatically increased numbers of cessation applications, including against law-abiding and contributing members of Canadian society.<sup>24</sup>

Changes in the *Immigration and Refugee Protection Act* introduced in 2012 mean that individuals lose both their refugee status and their Permanent Residence if the Immigration and Refugee Board concludes that they accepted the protection of their home country (known as "re-availment"). CBSA set a target of 875 cessation and vacation applications for the year 2013-2014, which represents an enormous increase over past years (see CBSA OB PRG-2013-59).

Cessation applications have been launched against individuals who applied for a passport from their home country (in order to comply with instructions from CIC when applying for permanent residence) or because they visited their home country to care for a sick relative. Applications have been made against individuals who have been living in Canada for over a decade, have Canadian citizen children, have a spouse with permanent status in Canada or run a successful business in Canada. Applications for citizenship have been used as a source of information to

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<sup>22</sup> This case and a similar case are reported in greater detail in the backgrounder to the release of CCR, British Columbia Civil Liberties Association and Canadian Association of Refugee Lawyers, *Seven Years of Inaction: Rights organizations call for oversight mechanism in response to CBSA abuses*, 5 March 2014, <http://ccrweb.ca/en/oversight-mechanism-cbsa>

<sup>23</sup> CBSA memo, obtained through Access to Information, <http://ccrweb.ca/files/atip-cbsa-sun-sea-strategy-next-arrival.pdf>

<sup>24</sup> According to Immigration and Refugee Board statistics, there were 178 applications for cessation made to the Refugee Protection Division in 2013, compared with under 40 such applications in each of the four preceding years.



trigger a cessation application, and attempts made to stall the grant of citizenship to individuals with a cessation application pending.<sup>25</sup>

If a cessation application is granted by the Immigration and Refugee Board, the person loses all status in Canada and becomes inadmissible. Whereas a permanent resident who does not respect the residency requirement has the right to an appeal before the Immigration Appeal Division, where humanitarian factors and best interests of the child can be considered, no such appeal is available to a permanent resident who has lost their status because they are found to no longer need refugee protection.

The CCR has been unable to learn what policy objective is being served by stripping status from, and removing, permanent residents who have done nothing wrong. From a strictly economic perspective, these efforts are costing significant taxpayer resources. In addition to the CBSA resources in preparing and pursuing the cessation applications, there are the costs of the hearing before the Immigration and Refugee Board and in several cases the costs of litigation before the Federal Court. In one recent Federal Court case lost by the government, significant costs were awarded by the Court against the government.

One simple measure that would go some way to addressing the current problem would be for CBSA to recognize the right of affected individuals to make observations, including on humanitarian factors, before CBSA decides whether to launch a cessation application.

## **8. Lack of complaint mechanism**

The CCR has been asking for an independent oversight mechanism since the CBSA came into being a decade ago.

CBSA is one of the few agencies in Canada with the powers of arrest and detention that is not subject to any independent complaints or monitoring mechanism. In the case of CBSA, the risk of abuse is arguably even higher than with police forces, as they are dealing with non-citizens whose status in Canada is precarious. Refugee claimants and other migrants are among the most vulnerable people in Canadian society.

The CCR believes that it is crucial that there be an independent, effective, accessible and transparent oversight body for CBSA, to protect the rights of those individuals subject to CBSA's enforcement actions.

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<sup>25</sup> In January 2014, the Federal Court ordered the Minister of Citizenship and Immigration to grant citizenship within thirty days to a man whose application for citizenship had been approved by a citizenship judge, but who was kept waiting while the government pursued a cessation application.. *Stanizai v. Canada (Citizenship and Immigration)*, 2014 FC 74

## Appendix

### Statement on publication of the “most wanted” list

In July 2011, the Canadian government published a list of 30 individuals described as “suspected war criminals”, asking the public for help in tracking them down so that they can be deported.

The government is of course responsible for enforcing the laws and must constantly seek the most effective and fair ways to do so. The “most-wanted list” is a novel approach. While it appears to have some early success, we believe that it also has a number of serious disadvantages that Canadians will want to consider carefully. Underlying the lists are many complex and challenging issues that cannot necessarily be addressed by simple solutions.

The following are our main concerns:

1. Canada has legal and moral obligations to assist in bringing to justice perpetrators of war crimes and crimes against humanity. If they are deported to countries that lack the capacity or will to prosecute them in a fair trial, they may never answer for their crimes. Canada rarely looks beyond the “deport them” solution for people in Canada who may have committed war crimes or crimes against humanity. A variety of options for justice may exist in any of these cases, and Canada should help ensure that justice is served, either in another country, before an international court or tribunal, or here in Canada. Upholding this obligation allows Canada to contribute to addressing human rights abuses internationally, and making our own country and the rest of the world safer.
2. Canada is bound by important international obligations not to deport individuals to situations where they face a serious risk of being tortured or other serious human rights violations. Publishing the list of names with the label “suspected war criminals” could potentially put people at increased risk if deported to their home country. It is not clear whether the government has taken this possibility into account.
3. The label “suspected war criminals” is wrong and unfair. The cases of the people included in this list vary greatly and some are not necessarily suspected of any crime. They are caught up in the very broad inadmissibility provisions in the *Immigration and Refugee Protection Act*, which go far beyond people who have actually committed crimes to people who only have an indirect association with crimes (for example, a driver or a computer technician working for a government that committed gross human rights abuses).
4. The principle of the presumption of innocence is undermined by the publication of this list. Most, if not all, of the “suspected war criminals” have not been convicted of a crime and Canada is not proposing a trial in which they could seek to clear their name. A finding of inadmissibility under the *Immigration and Refugee Protection Act* requires significantly lower standards of proof than a criminal conviction. It is therefore unfair to publicly identify people as “suspected war criminals”.
5. The publication of the names of “suspected war criminals” may violate the individuals’ right to privacy. Under law the government is entitled to disclose personal information when it is in the public interest, but only if necessary, and it is not clear that the

government had exhausted other options (such as actively enlisting the support of local police forces). Even if it were necessary to make the names public, it has not been explained why the “war criminal” label had to be attached to them.

6. The publication of the “war criminal” list, as well as of a second list of “serious criminals”, contributes to a negative perception of non-citizens as dangerous criminals. The number of individuals on the lists represents only a tiny percentage of newcomers to Canada – the government’s intensive focus, picked up by the media, is out of all proportion. Unfortunately this is likely to reinforce existing xenophobia, hurting all newcomers, particularly in the context of repeated recent government messaging associating refugees and immigrants with criminality, fraud and abuse. We believe that the government needs to take a more balanced approach, and guard against feeding into existing xenophobic prejudices that exist in Canada as in all societies.

*Canadian Council for Refugees*

*Canadian Centre for International Justice*

*Canadian Civil Liberties Association*

*Amnesty International Canadian Section (English branch)*

*Amnistie internationale Canada francophone*

*BC Civil Liberties Association*

*Réseau d'intervention auprès des personnes ayant subi la violence organisée (RIVO)*

*Criminal Lawyers' Association*

*Canadian Association of Refugee Lawyers (CARL)*

*World Federalist Movement-Canada*

*Law Union of Ontario*

*Refugee Lawyers Association*

*Association québécoise des avocats et avocates en droit de l'immigration*

*Canadian Centre for Victims of Torture*

*Manitoba Interfaith Immigration Council*

*Table de concertation des organismes au service des personnes réfugiées et immigrantes (TCRI)*

September 2011