

**SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL
FOURTH UNIVERSAL PERIODIC REVIEW
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**SUBMISSION OF
CANADIAN COALITION FOR PEACE AND JUSTICE**

A. BACKGROUND AND SCOPE OF SUBMISSIONS

The Canadian Coalition for Peace and Justice (CCPJ) came into existence on or about December, 2006 with mandate of protecting the rights of Canadians consistent with the Canadian *Charter of Rights and Freedoms* and International law. Given the correlation of the timing of its inception and the infamous Toronto 18 arrests, the organization launched a campaign to ensure that these alleged terror suspects were granted their full rights under Canadian law, including without limiting the generality of the foregoing, the presumption of innocence which was seriously undermined as a result of some of the issues raised in this submission. Given our focus and intimate understanding of this particular case, we have limited the scope of our submission to this case. Notwithstanding the foregoing, we have worked closely with other civil society and civil rights groups on broader issues of national significance and hereby endorse in full the submissions made by Amnesty International and the Canadian Council on American Islamic Relations/Canadian Muslim Civil Liberties Association.

We provide some background and context before we begin to address the issues we have with the case and how it has unfolded from the perspective of Canada's international obligations.

B. BACKGROUND AND CONTEXT OF ARRESTS

June 2, 2006 is etched in the minds of Canadians as a day when 18 alleged terrorists were arrested in an unprecedented and coordinated effort by various Canadian intelligence and law enforcement agencies.¹ It was heralded as a great success for the anti-terror initiatives hastily enacted post the tragic events of 9/11. Since then, the case has unravelled and even a member of Canada's National Security Advisory Council has commented on the overblown an exaggerated characterization of the alleged plot.² Seven

¹ The Canadian Security Intelligence Service (CSIS), the Royal Canadian Mounted Police (RCMP), the Ontario Provincial Police (OPP), the Integrated National Security Enforcement Team (INSET) and local police forces in a number of jurisdictions.

² Ian MacLeod, "Toronto terrorism suspects 'wannabe jihadists': Group no major threat, but case still a concern, security expert says," *The Ottawa Citizen*, March 7, 2008; John Mueller "Terrorist threat is overblown" *Montreal Gazette*. April 29, 2008, accessed online on September 08, 2008 at <http://www.canada.com/montrealgazette/news/editorial/story.html?id=3a7a1e93-5ac2-4187-aba4-085e980edd7b>.

of the accused have had their charges dropped or stayed and the case has lost much of its steam.³

Within months of 9/11, the Canadian government enacted the *Anti-Terrorism Act*; agreed to start working on implementing the Smart Border Declaration; enacted policies and practices to tackle the alleged new breed of terrorists; began working on the Security and Prosperity Partnership; and in 2004 Ottawa even adopted its first ever National Security Policy.⁴ As a number of legal commentators have pointed out, none of these addressed the issue of potential human rights violations in any meaningful way.⁵ Moreover, it did not address the concern with the potential targeting of Muslims and Arabs. In fact, there is growing evidence that Muslims are bearing the brunt of the anti-terror legislative initiatives, policies, and practices.⁶

We hereby respectfully submit that the shift from liberty to security, the growing Islamophobia,⁷ the pressure from special interest groups⁸, and the pressure coming from the United States⁹ has contributed to a climate where Muslims and Arabs are disproportionately and discriminatorily impacted by all of these initiatives. It is our further submission that the plight of the Toronto 18 is part and parcel of this overzealous and overbroad use of the new powers by intelligence and law enforcement.

We remain cautiously optimistic that the legal system will salvage Canada's reputation. We remain hopeful that the judiciary will take a closer look at some of the political motivations and climate of fear that has fueled much of this case.

C. AREAS OF CONCERN

We hereby submit the following concerns with reference to Canada's international commitments and obligations pursuant to the *Universal Declaration of Human Rights*; the *International Covenant on Civil and Political Rights*; the *International Covenant on*

³ Thomas Walkom, "The incredible shrinking terror case," *The Toronto Star*, April 16, 2008; Thomas Walkom, "Terror case begins to emit ripe aroma," *The Toronto Star*, May 31, 2008.

⁴ Wesley K. Wark, "National Security and Human Rights Concerns in Canada: A Survey of Eight Critical Issues in the Post-9/11 Environment" (Canadian Human Rights Commission, October 2006) accessed online on September 8, 2008 at http://www.chrc-ccdp.ca/pdf/ns_sn_en.pdf.

⁵ Ibid. and Cara Wilkie, Nicole Chrolavicius, David Baker and Faisal Bhabha, "Human Rights Issues in National Security: An Inventory of Agency Consideration," (Canadian Human Rights Commission, June 2008) accessed online on September 8, 2008 at http://www.chrc-ccdp.ca/pdf/hrins_en.pdf.

⁶ See for instance, Faisal Bhabha, "The Chill Sets in: National Security and the Decline of Equality in Canada" (2005), 54 U.N.B.L.J. 191; Roach, Kent, "Stop in the Name of the Law: What Law? Racial Profiling and Police Practice in Canada, Making Progress on Understanding and Remediating Racial Profiling," 41 *Alberta L. Rev.* 895; Bahdi, Reem, "No Exit: Racial Profiling and Canada's War Against Terrorism," 41 *Osgoode Hall L. J.* 293.

⁷ Gordon Conway, *Islamophobia: A Challenge to Us All* (Runnymede Trust, 1994).

⁸ See for instance, the submission of CAIR-CAN to the Air India Inquiry and the fact that various pro-Israeli groups made submissions to the Air India Inquiry and the Iacobucci Inquiry calling for harsher anti-terror measures which would primarily target Muslims and their institutions.

⁹ Numerous congressional and senate hearings have targeted Canada and called on Canada to tighten anti-terror measures. In the aftermath of the arrests, four members of the House Homeland Security Subcommittee on Intelligence, Information Sharing and Terrorism Risk Assessment visited Toronto to congratulate and get briefed by Canadian officials, see for instance "U.S. gets lesson on fighting terror," *Toronto Star*, July 18, 2006, pg. A04.

Economic, Social and Cultural Rights; the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress in 1955; and the Basic Principles for the Treatment of Prisoners adopted by the United Nations General Assembly in 1990.¹⁰

Investigations and Targeting of Muslims:

The climate of fear and distrust of the Muslim community post 9/11 discussed above has significantly impacted the case of the Toronto 18 from its very inception.¹¹ The investigation itself was tainted by political pressure on the various investigative agencies. As a former senior government bureaucrat, Gar Pardy, pointed out, it is the political climate that fuels the abuse by intelligence and law enforcement.¹² This is confirmed by a recent book by a former CSIS agent, J. Michael Cole, who has written about the poor training on Islam/Muslims, culture of Islamophobia and targeting of Muslims and Islamic institutions, which pervades CSIS.¹³

It is our submission that as a result of the ignorance, misinformation and lack of training the investigators may have jumped to conclusions that were not necessarily substantiated by the facts.¹⁴ For years the community had been complaining about CSIS and RCMP harassment and inappropriate investigative tactics including profiling and focusing on the religiosity of individuals.¹⁵ In fact, guilt by association and presumption of guilt has been a constant theme.

We respectfully submit that the conduct of CSIS, RCMP and the various other agencies contributes to the erosion of fundamental rights to freedom of thought and religion and opinions enshrined in the ICCPR and the UDHR. We do not make this assertion lightly, but from cases in the community and the investigations leading up to these arrests, where unpopular religious and political views are sufficient grounds to target someone for investigation.

Solitary Confinement:

Canadian prison officials are aware that solitary confinement is “the most individually destructive, psychologically crippling and socially alienating experience.”¹⁶ Despite this, all eighteen were initially held in solitary confinement. Eleven spent fourteen months in solitary and three continue to be held in this inhuman state to this date. These individuals have not been convicted of any crime and yet are kept in this state. We hereby

¹⁰ Unfortunately, the scope and length limitations do not allow for detailed discussions of any of the issues raised.

¹¹ Robert Fisk, “How racism has invaded Canada,” *The Independent*, Saturday, June 10, 2006.

¹² Kerry Pither, *Dark Days* (Toronto: Penguin Canada, 2008) at pg. 399.

¹³ J. Michael Cole, *Smokescreen: Canadian Security Intelligence After September 11, 2001* (New York: iUniverse, Inc., 2008); see also Andrew Mitrovica, “Homegrown intelligence gap” *Toronto Star*, April 17, 2008 accessed online on September 8, 2008 at <http://www.thestar.com/comment/article/415289>.

¹⁴ Thomas Walkom, “Evidence in Toronto terror case not quite 'sensational',” *Toronto Star*, March 27, 2008. Accessed online at <http://www.thestar.com/article/356883>; Isabel Teotonio, “Campers not terrorists: Lawyer”, *Toronto Star*, March 27, 2008. Accessed online at <http://www.thestar.com/Article/357014>.

¹⁵ Canadian Council on American Islamic Relations, “Presumption of Guilt: A National Survey of Security Visitation of Canadian Muslims,” accessed on September 8, 2008 at <http://www.caircan.ca/downloads/POG-08062005.pdf>

¹⁶ I. Zinger & C. Wichmann “The Psychological Effects of 60 days in Administrative Segregation” Research Branch Correctional Service of Canada. March 1999 Accessed online at September 8, 2008 http://www.csc-cc.gc.ca/text/rsrch/reports/r85/r85_e.pdf

respectfully submit that Canada is in breach of its obligations to work to abolish the use of solitary confinement as per the Basic Principles. We respectfully submit that this is also contrary to Article 5 of the UDHR and Article 7 of ICCPR. Moreover, despite the serious psychiatric concerns raised by solitary confinement, none of the accused have been assessed.¹⁷ The accused and family members have also alleged sensory deprivation such as keeping lights on 24/7, prevented from sleep, etc. which is part of the law enforcement strategy to breakdown the accused.¹⁸

The two levels of government have both shirked responsibility to address this issue when it was brought to their attention. In fact, when a member of the opposition, Peter Tabuns, asked about the plight of those in solitary confinement, the Minister responsible, the Honourable Rick Bartolucci, dismissed him by saying that this was a federal matter.¹⁹ The federal minister in turn, the Honourable Stockwell Day, pointed the finger directly back at the provincial minister.²⁰

Treatment of Accused:

A number of disturbing allegations have surfaced with respect to the treatment of the accused both at the Maplehurst Correctional Center and the Don Jail.²¹ In fact, to highlight some of these issues, the accused have gone on a hunger strike. Moreover, their family members and civil society groups launched rallies and campaigns.²² We hereby catalogue a number of violations of the Standard Minimum Rules, which every UN member should strive to uphold:

- 1) Medical services have been withheld or delayed;²³
- 2) The Educational needs of the detainees have not been upheld. Despite the fact that convicted prisoners in Canada enjoy full educational rights and access to libraries, these detainees do not enjoy similar rights;
- 3) None of the accused have been provided with the recommended minimum of one hour of suitable exercise in the open air daily. In fact, they are not even permitted sufficient time to do indoor exercises;

¹⁷ Reported to CCPJ by accused and family members.

¹⁸ Ibid. See for instance Shara Sand, "The Development of Psychological Torture: A Modern History of Coercive Interrogation and its Effectiveness", paper presented at conference titled "War, Torture & Terror: The Role of Psychology" June 22, 2007 New York, NY for the effects of sensory deprivation on suspects.

¹⁹ Ontario Provincial Legislature Hansard dated June 2, 2008.

²⁰ Letter dated May 2, 2008 sent on behalf of the Honourable Stockwell Day, Minister of Public Safety Canada to the CCPJ.

²¹ Some of these allegations have been reported in the press. See for instance Isabel Teotonio, "Terror suspect persecuted in jail, lawyer says" *Toronto Star*, May 08, 2008 accessed online on Sept. 8, 2008 at <http://www.thestar.com/article/422800>; "Terror suspect's lawyer says he was unjustly put in solitary confinement" Canadian Press. May 08, 2008, accessed online on September 2008 at http://cnews.canoe.ca/CNEWS/War_Terror/2008/05/08/5510111-cp.html.

²² "Investigate Alleged Prisoner Abuse at Maplehurst: Human Rights Groups" Council on American Islamic Relations Canada, May 08, 2008, accessed online on September 08, 2008 at http://www.caircan.ca/itn_more.php?id=A2978_0_2_0_M.

²³ Jamal James has been suffering from neck pain and breathing problems and both have not been adequately dealt with; Saad Gaya has been waiting for an optometrist since June 2008; Amin Durani had to wait for excessive periods for dental attention; Faheem Ahmad had to wait 42 days for a dentist to deal with an emergency; Faheem Ahmad passed a kidney stone without medical supervision and was only provided with a Doctor after numerous requests; Faheem Ahmad suffers from vitamin D deficiency due to lack of sunlight; Zacharia Amara had to wait for two months for a dentist for tooth pain;

- 4) Contrary to Canadian human rights legislation, the three accused at the Don Jail have been deprived of their religious rights to pray in congregation. The inconsistent and incoherent religious diet rules has resulted in unnecessary restrictions on the available foods;
- 5) They have been exposed to harassment, abuse and insensitive comments about the religious views and beliefs;²⁴
- 6) The accused do not have access to any social programs;
- 7) Visits have been restricted to behind glass doors and in some cases friends who have visited with the accused have been harassed and intimidated by intelligence agencies;²⁵
- 8) Excessive force in restraining and disciplining the accused at Maplehurst. In some cases accused have alleged degrading punishment such as making them crawl around the facility, pointing weapons at their privates, hair being pulled, etc.;²⁶
- 9) In the beginning they were deprived of personal hygiene items (no soap, no towel, no toothbrush, no toothpaste, etc.);²⁷

The accused, acting through family members and community organizations have attempted to raise all of these issues with government officials without any real success. In fact, various community organizations even wrote a letter and did not receive a satisfactory response from the Minister.²⁸

Fair and Impartial Trial, Due process:

The judicial process has also raised a number of concerns as a result of the media circus, the political climate, the lack of accurate information on Islam and Muslims, and the unequal resources available to the accused. Legal commentators have questioned whether the accused can get a fair and impartial trial given the media circus which essentially convicted the accused and their families in the press even before the trials began.²⁹ The specific concerns revolve around the following: 1) limited legal aid funding of accused hinders a full defence;³⁰ 2) abuse of process by the prosecution when they abruptly cancelled the preliminary inquiry and moved the matter to trial;³¹ and 3) denial

²⁴ Reported to CCPJ by accused and family members. These include allegedly throwing the Quran; swearing and insults directed at the Islamic faith and practices; interference with worship, etc. See also *supra* note 21.

²⁵ Reported to CCPJ as well as the Canadian Council on American Islamic Relations and the Canadian Muslim Civil Liberties Association.

²⁶ *Ibid*, including an allegation by Shareef Abdulhaleem, who suffers from serious heart conditions, that his heart was stepped on;.

²⁷ *Ibid*.

²⁸ Letter dated May 29, 2007 written by legal counsel on behalf of the Islamic Society of North America (ISNA), the Islamic Circle of North America (ICNA), the Muslim Association of Canada (MAC), the Canadian Council on American Islamic Relations (CAIR-CAN) and the Canadian Muslim Civil Liberties Association (CMCLA).

²⁹ This has been argued by defence lawyers and has also been suggested by a number of independent legal experts. The Toronto Star Editorial Board even wrote an editorial expressing concerns about fair treatment “ 'Toronto 11' deserve fair treatment “. Toronto Star. April 24, 2008.

³⁰ Joseph Hall & Tracey Tyler “Legal aid urged for middle class” Toronto Star. July 26, 2008, accessed online on September 08, 2008 at <http://www.thestar.com/News/Ontario/article/467819>.

³¹ Professor James Stribopoulos, “14 terror accused will go directly to trial; Prosecutors suddenly end preliminary hearing” National Post, September 25, 2007, accessed online on Sept. 8, 2008 at <http://osgoode.yorku.ca/media2.nsf/viewMedia!OpenForm>.

of bail on grounds of public perception;³² 4) the use of secret evidence;³³ 5) extensive wait for their matters to proceed to trial while they wait in detention;³⁴ and 6) Serious questions about the use and abuse of informants.³⁵

The impact of the political climate and lack of knowledge of Islam can also not be underestimated. In fact, some defence lawyers have had to educate the judiciary about Islam and also convince them that certain political and religious beliefs, although possibly detestable, is not illegal or a criminal act. Without commenting on the full decision, the level of ignorance and lack of nuance is evident, for instance, in the written decisions of Justice Fragomeni in Asad Ansari's bail denial:

"The proposed plan and sureties does not give me any comfort that Ansari, if released, will not continue to pursue his deep commitment to Allah."³⁶

This speaks volumes of the level of understanding of Islam and Muslims and will clearly impact the trials of the remaining eleven.

D. CONCLUSION

It is our submission that based on the foregoing, Canada is in breach of its international commitments and obligations pursuant to various provision of the *Universal Declaration of Human Rights*; the *International Covenant on Civil and Political Rights*; the *International Covenant on Economic, Social and Cultural Rights*; the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress in 1955; and the Basic Principles for the Treatment of Prisoners adopted by the United Nations General Assembly in 1990. We respectfully request that the Human Rights Council investigate these allegations and raise these concerns with Canada in the international arena.

All of which is respectfully submitted by the Canadian Coalition for Peace and Justice on September 8, 2008.

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³² The bail decision of a number of the accused emphasized that releasing the accused would bring the administration of justice into disrepute. This highlight's how the public fear and perception of the terrorist scare fanned by political leaders and the media is weighing heavy with judges when they decide on such cases. See also "Open Letter on 'Toronto 11' to Authorities from 19 Groups" Council on American Islamic Relations Canada April 22, 2008.

³³ Tom Walkom "Secrecy an effective legal tool" Toronto Star, June 24, 2008, accessed online on September 08, 2008 at <http://www.thestar.com/comment/columnists/article/447810>.

³⁴ It has been more than 2 years since the arrests and trials on ten of them of yet to begin.

³⁵ Tom Walkom "Terror trial proceedings troubling" Toronto Star September 25, 2007, accessed online on Sept. 8, 2008 at <http://www.thestar.com/article/260191>; Michael Friscolanti "The four Million dollar rat" Macleans February 07, 2007; Colin Perkel. "Crown challenges own witness at terror trial" Canadian Press. June 18, 2008.

³⁶ Ontarior Superior Court of Justice Between her Majesty The Queen and Asad Ansari heard May 13, 14,15, 2008 Court File No. BR(F) 1198/06 Date: June 06, 2008 decision of justice Fragomeni. J.