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THE ELIMINATION OF RACIAL DISCRIMINATION (CERD)**

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Executive Summary

The trends in negative attitudes, attacks and discrimination against Muslims over the past decade in Canada have been referred to as the new racism¹. Within public discourse, Islamophobia is often defended and dismissed on the basis that Islam is a religion, rather than a 'race.' However, scholars have extensively argued that anti-Muslim sentiments and practices of discrimination have certain characteristics that have given rise to a 'racialization' of Muslims. Arun Kundnani, for example, in his book, "The Muslims are Coming! Islamophobia, Extremism, and the Domestic War on Terror," states the following:

*"Since all racisms are socially and politically constructed rather than reliant on the reality of any biological race, it is perfectly possible for cultural markers associated with Muslimness (forms of dress, rituals, languages, etc.) to be turned into racial signifiers. This racialization of Muslimness is analogous in important ways to anti-Semitism and inseparable from the longer history of racisms in the US and the UK."*²

The National Council of Canadian Muslims (NCCM) is a human rights and advocacy organization that has been working to protect and promote the fundamental rights and liberties of Canadian Muslims and diverse communities for over 17 years. Drawing upon the lived experiences of Canadian Muslims, the NCCM has initially identified barriers to inclusion and systemic racism in four areas: Education, Employment, Law Enforcement, and Public Policy. A thorough review of these four areas is detailed in the pages to follow.

Economic, Social and Cultural Rights

Education

The NCCM's human rights department handles complaints pertaining to religious accommodation in educational institutions, as well as complaints relating to anti-Muslim bias by educators in the public and private school settings. With global calamities such as the Syrian refugee crisis, as well as terror related attacks around the world, reports received by the NCCM suggest that educators are finding it increasingly difficult to grapple sensibly with current affairs. Consequently, they knowingly or unknowingly are perpetuating negative stereotypes about Muslims and Islam in their classrooms.

¹ Meer, Nasar; Modood, Tariq, "The Racialization of Muslims" in Sayyid S and AbdoolKarim Vakil, *Thinking Through Islamophobia: Global Perspectives*. London: Hurst and Company. 2010. Page 69-83.

² Arun Kundnani, "The Muslims Are Coming: Islamophobia, Extremism, and the Domestic War on Terror", London & New York: Verso, 2015, page 11.

Between 2015 and 2016, NCCM received a total of 11 complaints relating to alleged discrimination in educational settings. Over half of these complaints pertained to insensitive comments and anti-Muslim biases displayed by educators in the classrooms.

It is important to note that these numbers reflect *only* reports that have been officially documented with NCCM. Based on our anecdotal experience, and in speaking to community members, there are greater occurrences of anti-Muslim bias in the classroom than those reflected by official statistics. However, due to a number of reasons including the fear of repercussions, there is reluctance on part of students and families to fully share their experiences and to seek concrete remedial action. Hence, negative experiences may go un-reported and subsequently unaddressed, which can lead to harmful impacts on the overall well-being of Muslim students.

High-profile education-related complaints have included systemic racism and lack of accountability for teachers and school boards who fail to properly address these issues. To mitigate some of the above highlighted issues, the NCCM has been calling on school boards to implement strategies that apply a social justice lens to school curricula, as well as professional and student development. We are also asking ministries to ensure that adequate resources and funding are available to provide ongoing training and resources for educators on anti-racism. This would include a ministry mandated course on systemic racism at the secondary school level which would explore xenophobia, anti-Black racism, anti-Semitism, Islamophobia and their impacts on our society. In addition to this, the NCCM also recommends that school curricula is reflective of the contributions of Canadian Muslims, as well as other diverse communities, to the history and development of Canada in order to tackle stereotypes and help students appreciate diverse cultures that form the fabric of Canadian society.

The province of Ontario has made great progress by creating an Anti-Racism Directorate (ARD) to examine issues of systemic racism within the government's mandate, as well as work to create and support public education campaigns on related topics. The NCCM recommends all provinces adopt this model of governance and the best practices that issue from it.

Employment

The Universal Declaration of Human Rights, as well as Canada's constitution and provincial human rights codes protect individuals from facing discrimination based on protected grounds, and provide guidelines to ensure inclusivity in public spaces, including employment.

Despite these laws, it remains a reality that Canadian Muslims are facing growing challenges in obtaining employment that match their qualifications, as well as barriers to inclusion in the workforce. Canada's national household survey shows that despite

having a high level of education, the unemployment rate among Canadian Muslims is significantly higher at 13.9% than the national average of 7.8%.³

A study by Professor Philip Oreopoulos from the University of Toronto called "*Why do some employers prefer to interview Mathew, but not Samir?*"⁴ found that having a foreign sounding name, regardless of qualifications, makes an individual less attractive in the job market. The study found that even in diverse, multicultural cities such as Toronto, Montreal, and Vancouver, employers are 40% more likely to choose to interview a job applicant with an English sounding name than someone with an ethnic name.

A large majority of the human rights complaints received by the NCCM pertain to alleged discrimination and accommodation issues in the workplace. In 2016, the complaints pertaining to discrimination and failure to accommodate religious practices comprised 20% of our total human rights complaints. In the past two years, 45% of all our employment cases involved Muslim women.

Below are some examples of employment related cases handled by NCCM:

In 2015, a Muslim woman in Quebec told by government employment counsellor that her job prospects would be low because of her *hijab* (headscarf). She went on to tell her that Quebec is a secular, liberal society and that the hijab would not be accepted there.

In 2016, a Muslim woman was asked intrusive questions at a job interview. At one point during the process, the hiring manager asked if she would keep the hijab on if she got the job. She was told by the employer that he understands her right to wear religious attire, but would not encourage it in the workplace. She was refused the job.

Other challenges faced by Muslim employees in the workplace include: exclusion from workplace events (Christmas parties, etc) on the assumption that they wouldn't want to attend; more burdensome workloads than colleagues; Muslim employees being denied their right to observe prayer at work; and religiously motivated harassment leading to dismissal from employment. These and other, more subtle, discriminatory practices gravely impact employees' well-being and sense of belonging. Civil and Political Rights

Police Services

Over the past three years, Canada's national statistical body and the NCCM have both noted a sharp increase in the number of hate crimes perpetuated against Muslims. Statistics Canada's most recent report found that overall hate crimes in Canada rose by

³ Statistics Canada. National Household Survey. 2011.

⁴ Oreopoulos, Philip and Dechief, Diane, "Why Do Some Employers Prefer to Interview Mathew, but Not Samir?" New Evidence from Toronto, Montreal, and Vancouver (February 2012). Available at SSRN: <https://ssrn.com/abstract=2018047> or <http://dx.doi.org/10.2139/ssrn.2018047>

5% in 2015 largely due to a 60% increase in the incidents targeting the Muslim population. The latest hate crime data available for public review is from 2015. The two year gap between when hate crimes occur, and when the data is available, poses challenges for community organizations and authorities to understand trends and identify challenges in order to respond in a timely and efficient manner.

Given recent events, including the terrorist attack at a Quebec City mosque which took the lives of six innocent Canadian Muslims, as well as discussion on an anti-Islamophobia motion at the federal level, the NCCM has noted a doubling of hate incidents against Canadian Muslims over the past four years.⁵ This, of course is the proverbial tip of the iceberg and does not illustrate the full picture of hate related crimes in Canada. As Statistics Canada also notes, up to two-thirds of hate crimes go unreported.

Among many other factors, one of the challenges facing racialized communities, including the Muslim community, is re-victimization by police services. The NCCM, as well as various police services encourage victims to report hate incidents regardless of how seemingly innocuous they may seem. However, when it comes time to report, victims are sometimes met with a contrary sentiment on first contact with frontline officers. The NCCM has received several reports of negative reporting experiences from victims. The main concerns seem to be the lack of empathy shown by the case intake officer, as well as inadequacies in fully understanding the cultural sensitivities of the reporting party. For example, at mosques where desecrated parts of the pig have been found, the police have sometimes failed to understand the offensive and sometimes threatening nature of this act and the impact it has on the Muslim community. As a result, police responses to community reporting of such incidents can be delayed and apathetic. Similarly, other symbols and actions that are significant in the Muslim community are not fully appreciated by police officers who may lack an adequate understanding of the Muslim faith.

Insufficient responses by police services, particularly to hate motivated incidents, further exacerbate the community's existing lack of trust in the institution. This in turn may deter victims from future reporting, even where a serious crime has occurred. The first interaction with the police creates a lasting impression on the victim and determines future interactions and decisions on whether or not reporting is worthwhile. For this reason, the NCCM has advocated for increased cultural and religious awareness and anti-racism training for frontline officers. Along with training to frontline officers, it is also important that barriers to reporting hate crimes are mitigated by making the report intake process more accessible. Currently, the Ottawa Police is the only police service in Canada which offers online reporting of hate crimes. Coupled with these measures, police services should implement a plan to diversify the workforce

⁵ Refer to NCCM's online hate crime map: <https://www.nccm.ca/map/#>

through greater outreach in recruiting efforts in order to better reflect the communities they serve.

The NCCM has also recommended that provincial governments provide additional resources to municipalities that require provincial support for their police budgets. This would allow municipalities to provide the necessary training and resources to address hate crimes and hate incidents. Along with this, the NCCM also recommends that all police forces be required to report on hate crimes statistics to their Police Services Board which should be made annually available for public view. Additionally, the report should include disaggregated data capturing fully the motivation behind each crime, including those motivated by intersectional identities of the victim. We further recommend that police Services and municipalities, in cooperation with other levels of government, fund education campaigns regarding hate crimes to encourage hate crime reporting and to promote values of diversity and tolerance.

Furthermore, several reports have suggested that racial profiling in policing continues to be an issue. A recent report by the Ottawa Police showed that black and Arab men were the most frequent targets of traffic stops by Police.⁶ The prevalence of racial profiling experiences in various public spheres has been further highlighted in the Ontario Human Rights Commission's (OHRC) report: "*Under Suspicion: Research and consultation report on racial profiling in Ontario.*"⁷ Both the OHRC and the NCCM have called on police services to continue collecting disaggregated race based data in order to understand the scope of this harmful practice, and implement measures such as training, increased community engagement, an employment diversity plan, and accountability measures in order to eliminate the practice of racial profiling.

Online Hate Crimes

Under Article 20 of the International Covenant on Civil and Political Rights (ICCPR), hatred on the basis of nationality or religion is criminalised and states are expected to prohibit expression that amounts to the incitement to discrimination, hostility and violence. While the free flow of information and ideas is paramount to a healthy democracy, the challenge presented by online criminal activity has been inevitable with the shift of mass communication to the internet, where anonymity of users is inevitable. In recent years, as is noted in NCCM's 2016 Hate Crimes Report, right wing extremist groups have found a large following on social media - empowering them to create

⁶ Lorne Foster, Les Jacobs, Bobby Siu, "Race Data and Traffic Stops in Ottawa, 2013-2015: A Report on Ottawa and the Police Districts", York University (October 2016). Available at: https://www.ottawapolice.ca/en/about-us/resources/.TSRDCP_York_Research_Report.pdf

⁷ Ontario Human Rights Commission, "Under Suspicion: Research and consultation report on Racial Profiling in Ontario", April 2017. Accessible at: http://ohrc.on.ca/sites/default/files/Under%20suspicion_research%20and%20consultation%20report%20on%20racial%20profiling%20in%20Ontario_2017.pdf

tangible groups bent on spreading hate propaganda and inciting violence against minorities, including racially diverse members of the Canadian Muslim community.

In its work with law enforcement agencies and diverse communities, the NCCM has identified the following challenges unique to online spaces that hinder an effective response to online hate crimes:

- A lack of understanding of what constitutes hate speech
- A lack of adequate understanding of online hate speech and its connection to offline actions.
- A lack of clarity on the jurisdiction of online hate crimes.
- Under-resourced hate crime departments.
- A lack of awareness on how different marginalized groups are impacted by hate speech online.
- A lack of awareness on the ability of online hate speech to lead to hate propaganda and offline violence. This subsequently leads to a poor application, or lack thereof, of hate crime legislation.

To mitigate some of the above highlighted challenges unique to online spaces, the NCCM recommends a cross-municipality strategy on addressing online hate crimes, clear directives to police forces on investigating and responding to reports of online hate, and increases in funding to police services for the purpose of studying best practices in other jurisdictions and effectively addressing online hate crimes. The NCCM further recommends that the federal government amend the *Criminal Code of Canada* to reflect the unique experiences of the 21st century, including more clarity and provisions around regulating online criminal activity.

Correctional Services

The rehabilitative model of Canada's penitentiary system is theoretically in consonance with international laws, including article 10 of the *International Covenant on Civil and Political Rights* which affirms that the focus of prisons should be reform and rehabilitation, rather than punishment, and that the human rights of inmates, as with all citizens, should be protected. In practice however, there are many gaps in Canada's correctional system which fall far short of meeting the standards mandated by national and international legislation, treaties and organizations. Below, the NCCM highlights in brief the shortcomings in Canada's treatment of prisoners, and recommends measures to ensure that the human rights of federal and provincial inmates are fully protected.

In 2012, the then-federal government of Canada cut funding for part-time chaplains of non-Christian faiths and outsourced chaplaincy services to a third party. This privatization of vital services, proved to be an important factor in decreasing the

successful rehabilitation of inmates, and posed many challenges for religious minorities in correctional facilities.

In the past five years, the NCCM has received several complaints from Muslim inmates deprived of their constitutional right to religious freedom. Two of these complainants included the prominent cases of Nicolas Hovanesian and Mohammed Karim, inmates at a federal facility in Alberta, who, among other discriminatory practices, were denied religious dietary requirements and access to prayer space. While one of the inmates was shifted to an Ontario facility, the discriminatory actions persisted. Through NCCM's work, and the experience of former and current Muslim chaplains, it has come to light that the discrimination faced by Muslim inmates in federal prisons can be (at least in part) attributed to inadequate services to religious minority inmates, a lack of training to front-line staff on cultural sensitivity, and a complaints process fraught with challenges when it comes to issues of rights violations.

At the provincial level, the NCCM has identified similar gaps in the lack of training to correctional officers and inadequate resources for marginalized members of society. The recent case of Soleiman Faqiri, a Muslim man with a mental disability who died in a provincial facility after being placed in solitary confinement, assaulted by correctional staff, and denied access to his family for eleven days while awaiting trial, illustrates deep flaws within the system to adequately preserve and protect the rights of prisoners.

Pursuant to article 10 of the ICCPR, it is imperative that inmates in correctional facilities are afforded basic services. These include those that pertain to their human rights to ensure that they are adequately rehabilitated and reintegrated as contributing members of society, and that their risk of reoffending is minimized.

The *United Nation's Standard Minimum Rules for the Treatment of Prisoners* further outlines the importance of upholding religious freedom in prisons by any means necessary. This includes providing training to staff, in order to facilitate their reintegration into society and establish in them the will to lead law-abiding and self-supporting lives.

In light of these obligations, the NCCM recommendations include (but are not limited to) the following:

- increased federal and provincial funding for chaplaincy services to religious minorities in correctional institutions;
- mandatory mental health and cultural/religious awareness training to management and front-line workers; and
- development of a timely and effective internal complaint mechanism for inmates who have experienced violations of their human rights.

National Security/Anti-Terrorism Legislation

Bill C-51: Anti-terrorism Act, 2015

The deleterious effects of various anti-terrorism measures on civil liberties across different jurisdictions post 9-11 are well known. Academic studies, as well as individual and collective experiences of the Muslim community in the context of national security, confirm that the civil liberties and human rights of Canadian Muslims have been disproportionately affected by national security measures that have failed to protect the dignity and fundamental rights of numerous Canadian citizens. The disturbing cases of Canadians such as Maher Arar, Abdullah Almalki, Ahmad El Maati, Muayyed Nureddin, Abousfian Abdelrazik, and Benammar Benatta speak to this disproportionate cost and the extant pitfalls associated with a lack of effective oversight of security agencies.

The NCCM's human rights department notes that, on an almost daily basis, Canadian Muslims suffer from indignities ranging from being regularly targeted as suspects by Canadian Security Intelligence Service (CSIS) to facing additional scrutiny at border check points as a result of falsely being profiled as security threats. With new and broader powers given to enforcement officers and security agencies under the *Anti-Terrorism Act*, the NCCM holds that the risk of rights infringement increases not only for Canadian Muslims but also for other Canadian communities who may be subject to security scrutiny.

In June of 2017, the federal government introduced Bill C-59, *An Act Respecting National Security Matters*, to make the promised amendments to Canadian national security legislation.

In testimony prior to the introduction of Bill C-59, the NCCM made the following recommendations in its submission to the Standing Committee on Public Safety and National Security (SECU) at the House of Commons:

- Rescind the previous government's torture directives, which permit the use and sharing of information with foreign regimes that practice torture.
- Greater oversight through a Parliamentary national security committee, expanding the powers of SIRC, and the formation of a "super SIRC" to coordinate oversight of Canada's various national security agencies.
- Full statutory review of the *Act* every three years, as well as the establishment of a sunset clause on certain provisions.
- Consistent information sharing protocols between government departments and agencies, as well as the adoption of the Arar Commission recommendations.
- Increased and continued focus on community-based solutions to combat radicalization to criminal violence. This should include greater transparency in

how the government intends to address the issue of violent extremism and credibly engage with communities.

The NCCM acknowledges that important amendments have been proposed by the current government on the *Anti-terrorism Act* through Bill C-59. Examples of these amendments include a new national review agency, the establishment of an Intelligence Commissioner to provide oversight to intelligence agencies, and the rewording of vague language to include more specific offences that would not broadly criminalize constitutional rights to freedom of expression, speech, and religion.

While the aforementioned legislative changes are welcome steps, the NCCM notes that certain harmful provisions in the Act remain. As such, the NCCM will continue its analysis of the new legislation and advocate for further changes.

Passenger Protect Program (PPP)

The *Charter of Rights and Freedoms* guarantees Canadians' mobility rights including the right to move and travel freely within the country and abroad. The NCCM regularly receives reports from Canadian Muslims who have been wrongly designated on Canada's Passenger Protect Program (PPP); also known as no-fly lists. The impact of these false designations on the lived experiences and livelihoods of Canadians have been devastating. The NCCM continues to receive reports of Canadian Muslims being turned away from the border after being intrusively questioned about their faith, their level of practice and their religious affiliation(s). In the past 2 years, the PPP has falsely flagged numerous individuals, including children of over 65 Canadian families from various faith and cultural backgrounds. The inadequacy of this system has also impacted the livelihoods of various families, causing them to be seen as suspects, barring them from seeing their relatives overseas, impeding their performance at work, and in some cases, leading to reducing employment and advancement prospects and even dismissal from employment.

Special advocates, who are security-cleared to handle such national security-sensitive information, are not given the ability to see or challenge the information on which no-fly lists are based. Too many Canadian Muslims have essentially been banned from international travel, considered, as one author put it, "Too guilty to fly, too innocent to charge".⁸

The NCCM asserts that such a system cannot stand constitutional scrutiny without, at minimum, an opportunity for meaningful review. In order to rectify those who have been subject to false-positives under the PPP security system, the federal government has recently established the Passenger Protect Inquiries Office (PPIO). The function of

⁸ Kutty, Faisal, Canada's Passenger Protect Program: Too Guilty to Fly, Too Innocent to Charge? (January 31, 2007). Available at SSRN: <https://ssrn.com/abstract=962797> or <http://dx.doi.org/10.2139/ssrn.962797>

this office is to provide advice and assistance to individuals who have experienced delays and difficulties related to aviation security lists. This program, while an important step towards a more robust solution to a flawed security system, has yet to prove its effectiveness. Community members and parents who have children on the no-fly lists have particular concerns about the lack of funding allocated for the program in the Federal 2017 budget.

Bill C-23: Preclearance Act 2016

In June of 2016, a bill that would establish a collaborative relationship between the United States and Canada allowing members of both countries to obtain a pre-clearance before travel between the two nations was introduced by Canada's Public Safety Minister. While the NCCM welcomed this announcement of an apparent facilitation and expedition of travel between the two countries, we raised concerns about what this bill, if passed as legislation, would mean for the civil liberties of Canadians.

Experts have noted that under this act, U.S. customs officials on Canadian soil would have the authority to interrogate and detain Canadians, even if a traveller decides that they want to withdraw from the process for whatever reason. The NCCM, along with the International Civil Liberties Monitoring Group (ICLMG), and the Canadian Muslim Lawyers Association (CMLA) have submitted joint recommendations to a parliamentary standing committee on how this legislation negatively impacts the civil liberties of Canadians.

The recommendations to the Bill include an oversight mechanism for US preclearance officers in Canada to ensure accountability for those who violate the human rights and civil liberties of travelers. The full recommendations can be found here:

<http://iclmg.cfswpnetwork.ca/wp-content/uploads/sites/37/2017/05/Supplementary-Brief-Bill-C-23-Final.pdf>

Conclusion

Recent milestones such as the passing of parliamentary motion M-103⁹, which condemns and mandates the study of Islamophobia and other forms of systemic discrimination, as well as the adoption of the *Anti-Racism Act* by the Ontario government¹⁰, are positive steps forward. However, as the personal and collective experiences of marginalized communities identified in this report attest, much work remains to be done. The Canadian government must accelerate and adequately resource

⁹ Canada. Parliament. House of Commons. Private Members' Motion: M-103: *Systemic Racism and Religious Discrimination*. 2017.03.23. (Online) Available at: [http://www.ourcommons.ca/Parliamentarians/en/members/Iqra-Khalid\(88849\)/Motions?documentId=8661986](http://www.ourcommons.ca/Parliamentarians/en/members/Iqra-Khalid(88849)/Motions?documentId=8661986)

¹⁰ Anti-Racism Act, 2017. S.O. 2017 C.15. Accessible at: http://ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=4694&detailPage=bills_detail_status

its efforts to meaningfully combat discrimination, and address the longstanding gaps in legislation, policies and practices, in order to ensure a more just and equitable Canada for all.

The National Council of Canadian Muslims (NCCM) continues its work with civil society members, as well as the government and other stakeholders such as educators and law enforcement, to ensure that diverse, racialized members of society are civically engaged, and that their voices are prominently heard on issues that impact them and threaten the civil liberties and human rights of all Canadians.

To learn more about NCCM's work, please visit: www.nccm.ca