

**Addendum to Joint Report by the Ontario Council of Agencies Serving Immigrants (OCASI), the Metro Toronto Chinese and Southeast Asian Legal Clinic (MTCSALC) and the South Asian Legal Clinic of Ontario (SALCO)**

**On the Status of Compliance by the Canadian Government with respect to the International Convention on the Elimination of all forms of Racial Discrimination**

**A Community Response to the Seventeenth and Eighteenth Reports of Canada  
February 2007**

Contacts: OCASI - Debbie Douglas [ddouglas@ocasi.org](mailto:ddouglas@ocasi.org)  
MTCSALC – Avvy Go [goa@lao.on.ca](mailto:goa@lao.on.ca)  
SALCO – Uzma Shakir [uzma.shakir@salc.net](mailto:uzma.shakir@salc.net)

---

**Addendum to Chapter IV: National Security and Racial Profiling**

**ITAR**

Provisions in the International Traffic Arms Regulations (ITAR) of the United States have seriously affected Canadians from racialized communities. ITAR restrictions are applied to Canadian companies with contracts with those in the United States. Under ITAR, these companies may be asked or required, not to employ persons born in and/or holding dual citizenship with certain countries.

The ITAR list of proscribed countries currently includes: Afghanistan, Belarus, Burma, China, Cuba, Democratic Republic of the Congo, Haiti, Iran, Iraq, Lebanon, Liberia, Libya, North Korea, Rwanda, Somalia, Sudan, Syria, Venezuela and Vietnam. Canadian residents, including citizens, born in those countries are denied access to all data, products and services regulated by ITAR.

The Centre for Research-Action on Race Relations (CRARR) based in Montreal is filing a civil rights complaint in Quebec on behalf of a student of Arab descent, and on behalf of Jaime Vargas, a Venezuelan-born student at the École des métiers aérospatiale de Montréal. Both were denied access to certain work-related resources because of ITAR requirements. Mr. Vargas' internship at Bell Helicopter was terminated last September on the grounds of poor performance despite positive evaluation from his line supervisor and colleagues, and after Venezuela was added to the ITAR list. CRARR has said the following about the impact of ITAR on racialized communities in Canada<sup>1</sup>:

*As a result of ITAR, there have been reports of Canadian engineers and technicians who have worked for years with dedication to their professions and employers, who are now subject to practices of segregation, isolation and increased surveillance simply because*

---

<sup>1</sup> Centre for Research-Action on Race Relations. *ITAR Promotes Racism in the Canadian Aerospace Industry: CRARR Calls for Inquiries and Asks Government and Unions to Protect Canadian Civil Rights (Communiqué)*. Montreal. February 2006.

*of where they were born – one of the “proscribed countries”. Some of the reported acts of institutionalized racial profiling and discrimination include:*

- *Many employees have, since December 2006, seen their access to the different sections of the plant terminated because it is “ITAR-restricted”;*
- *Some employees are being physically displaced from their usual workplaces so that they are away from the area where the ITAR-related contract is being performed;*
- *Some employees are being told that there will be deals for early departures, transfer to other companies and layoffs, although these “deals” have not yet been put in writing and no written details have been given to employees;*

*In addition to current industry employees, students in local educational institutions such as McGill, Concordia, École de technologie supérieure and École Polytechnique who were born in the “proscribed countries”, have also experienced difficulty finding internships, accessing curriculum information in their classes and obtaining employment upon graduation.*

Bell Helicopter had previously tried to obtain ITAR exemptions for 24 foreign-born employees, and when that attempt failed, reportedly reassigned them to other work.<sup>2</sup> This could mean that employees would be moved away from their area of specialization, leading to gradual de-skilling, loss of promotion and loss of other employment opportunities.

Several Canadian residents lost their jobs at General Motors Defence, a division of General Motors of Canada Limited in August 2002 as a result of ITAR restrictions and filed a human rights complaint with the Ontario Human Rights Commission. The Commission in turn is pursuing public interest remedies before the Human Rights Tribunal. Commission public interest concerns are noted in an interim Tribunal decision as follows<sup>3</sup>:

*a) an Order declaring that GMD’s conduct in calling the complainants to meetings and sending them home on August 19, 2002, in failing to seek security clearances for them, and in subsequently altering their terms and conditions of employment (for the unionized complainants) or refusing to continue to provide work (for the non-unionized complainants), was prima facie discriminatory on the basis of citizenship, contrary to subsection 5(1) of the Code;*

*(b) an Order declaring that GMD and/or GMCL ought to have (i) made best efforts to apply for and obtain the requisite security clearances for all complainants in as prompt a fashion as possible, (ii) kept the complainants apprised of their efforts in this regard, and (iii) accommodated the complainants in positions that were not security-sensitive until such clearances could be obtained, and on an ongoing basis if such clearances could not be obtained, all subject only to the principle of undue hardship within the meaning of the Code;*

---

<sup>2</sup> *Give U.S. Allies a Break.* Toronto Star Editorial. Toronto, January 17, 2007

<sup>3</sup> Human Rights Tribunal of Ontario. Interim Decision - *Between Ontario Human Rights Commission (Commission) and Thomas Sinclair, Roland Craig, Barry Fawcett, Donald Coubrough, Lloyd Gordon and Elie Faysal (Complainants) and General Motors Defence, a division of General Motors of Canada Limited (Respondent).* Toronto, November 15, 2006

CRARR Counsel Nancy Gross notes that “*ITAR compels local companies and institutions in the aerospace industry to exclude entire communities from jobs and training programs*”<sup>4</sup>.

In October 2006, a Montreal-based multinational company that produces flight simulators had specified in job postings that several positions are restricted only to those individuals who qualify under ITAR, in essence that anyone born in a “proscribed country” on the ITAR list need not bother to apply for those jobs. Other companies are reportedly handling the ITAR requirements by refusing to hire certain people or transferring them to other positions.<sup>5</sup>

The Canadian government had previously expressed concerns about ITAR restrictions. We believe that stronger action is needed from the government to completely eliminate the racial discrimination practices that have resulted from the ITAR, such as denial of employment possibilities as well as other impacts already noted, to prevent potential future discrimination, and to uphold the Charter Rights (Canadian Charter of Rights and Freedoms) of all Canadian residents.

We submit that the Government of Canada has failed to meet its obligations under Articles 2 and 5 of ICERD.

### **No Fly List**

Despite concerns expressed by community groups, civil liberties watch organizations and the Privacy Commissioner of Canada, the Canadian Government appears to be prepared to proceed with a Canadian “No-Fly” list that would bar specific individuals from traveling on domestic or international flights.

In 2005, the British Columbia Civil Liberties Association in a letter to the Minister of Public Safety and Emergency Preparedness, pointed out that “No-Fly” lists have not demonstrably improved public safety. In opposing a proposed list for Canada, the BCCLA identified the following concerns<sup>6</sup>:

*No-fly lists seriously impair the rights of ordinary citizens. The U.S. experience has shown that persons are pre-selected for flight refusal or enhanced scrutiny on the basis of secret and undiscernable criteria. Listed persons are unable to effectively challenge their inclusion on the list. Regardless of how the criteria for listing persons is chosen, the system will of necessity be over-inclusive. People will be denied access to basic transportation and subject to enhanced scrutiny on what appears from the outside to be an arbitrary basis. The system itself is a model for abuse and discrimination.*

---

<sup>4</sup> Centre for Research-Action on Race Relations. *ITAR Promotes Racism in the Canadian Aerospace Industry: CRARR Calls for Inquiries and Asks Government and Unions to Protect Canadian Civil Rights (Communiqué)*. Montreal. February 2006.

<sup>5</sup> Leblanc, Daniel. *U.S. rules limit hiring at Montreal firm: Dual citizens barred from certain positions at aerospace services provider CAE Inc.* In the *Globe and Mail*. Toronto, October 25, 2006

<sup>6</sup> B.C. Civil Liberties Association. *Letter to Anne McLellan, Minister of Pulic Safety and Emergency Preparedness and Jean-C Lapierre, Minister of Transport - Re: Opposition to no-fly list.* Vancouver, June 10, 2005

*The U.S. experience shows that no-fly lists are fraught with problems, as you are no doubt aware. The U.S. no-fly list, originally intended to be quite small, has grown monstrous in more ways than one. Reports on the current size of the list range from 30,000 names to 120,000 names. The serious and persistent rights abuses generated by no-fly lists in the United States to date include:*

- *Denial of due process rights*

*Thousands of non-dangerous passengers have either been mistakenly put on the lists or are detained for having the same or similar name as someone on the list and these people have no meaningful opportunity to remedy these errors or appeal their status. Most critically, there are no clear criteria for inclusion or exclusion and no actual appeal process.*

- *Subjection to unreasonable search or detention*

*Thousands of non-dangerous passengers have been subjected to stigma and detention, and prevented from traveling.*

- *Discrimination*

*These measures have been severely criticized for reliance not only on racial and religious profiling, but also for targeting political beliefs. The seven named plaintiffs in the American Civil Liberties Association constitutional challenge to no-fly lists include staff members of the ACLU and the Nobel Peace Prize winning pacifist organization the American Friends Service Committee.*

The Government of Canada published draft regulations on a “No-Fly” list in October 2006, giving the public 75 days to respond. Below is Transport Canada’s response to a question from the Privacy Commissioner, on the criteria that would be used to include a name on the list. The response is based on draft regulations published in the Gazette<sup>7</sup>:

**4. Q: What will be the specific selection criteria for adding names to the "no-fly" list?**

*A: Under the Passenger Protect Program, an Advisory Group created by the Minister, will assess information on individuals and provide recommendations to the Minister, or an authorized officer of the Minister, for decision-making on threats to aviation security.*

*Transport Canada proposes to adopt Guidelines to inform the work of the Advisory Group that reflects its focus on aviation security.*

*A person will be added to the specified persons list if the person’s actions lead to a determination that the individual may pose an immediate threat to aviation security, including:*

- *An individual who is or has been involved in a terrorist group, and who, it can reasonably be suspected, will endanger the security of any aircraft or aerodrome or the safety of the public, passengers or crew members;*

---

<sup>7</sup> Transport Canada website. *Passenger Protect – Questions and Answers*. Updated 2006-10-26

- *An individual who has been convicted of one or more serious and life-threatening crimes against aviation security;*
- *An individual who has been convicted of one or more serious and life-threatening offences and who may attack or harm an air carrier, passengers or crew members.*

*There is no automatic inclusion or exclusion to the list based on a single factor or combination of factors. The information on each individual would be considered on its own merits, and the recommendation of the Advisory Group would be subject to the opinion of the Minister of Transport, Infrastructure and Communities concerning designation as a specified person.*

Essentially according to the regulations, the Minister has final say regarding who goes on the list, and would base that decision on secret information provided by the Royal Canadian Mounted Police (RCMP) and Canadian Security Intelligence Service (CSIS). It is extremely troubling that the draft regulations do not provide clear criteria and makes it possible to include individuals on the list without due process, without notifying them, without being charged, without an appeals mechanism or judicial review<sup>8</sup>. While there is some provision for removing a name from the list, no process is provided for the individual on the list to initiate that proceeding. Further, the lack of transparency in disclosing the information that put the person on the list in the first place would mean that this measure could be ineffective in providing relief to innocent persons.

The Gazette notice includes Transport Canada's response to stakeholder concerns about whether they could inform individuals included on the list. Transport Canada has responded that there are several impediments, such as not being able to locate an individual who is outside the country, and providing notice in cases where background information is classified or there is a warrant<sup>9</sup>. This lack of advance warning to a Canadian resident placed on the list is frightening, carrying with it the potential of being stranded or worse in a foreign jurisdiction.

The Canadian Council on American-Islamic Relations (CAIR-CAN) has asked the following questions about the proposed Canadian list and the active US "No-Fly" list<sup>10</sup>:

*What criteria will place individuals on the list? How reliable is the information used to add names to the list? How will the information be shared with other countries, particularly those with poor human rights records? Will Canadian airlines be permitted to continue using the U.S. no-fly list, even on flights between Canadian cities?*

The impact of the US no-fly list is far-reaching, affecting flights on Canadian airlines and within Canadian jurisdiction. CAIR-CAN has reported receiving complaints that Canadian airlines are applying the U.S. no-fly list on flights within Canada, not just those landing in the U.S.<sup>11</sup>. Further, while the *Commission of Inquiry into the Actions of Canadian Officials in Relation to*

---

<sup>8</sup> Canada Gazette. *Identity Screening Regulations*. Ottawa, October 28, 2006

<sup>9</sup> *Ibid*

<sup>10</sup> Mautbur, Halima. *Canadians must demand answers on no-fly lists*. Op-ed in *Toronto Star*. Toronto, January 2006

<sup>11</sup> *Ibid*.

*Maher Arar* had cleared Mr. Arar of any wrongdoing, he remains on the United States security watch list that would bar him entry into that country despite Canada's requests to remove him from the list.

Racialized community members have well-founded fears about the proposed "No Fly" list and related security measures. CAIR-CAN has noted that one of the biggest challenges in countering the arguments for extreme security measures lie in the difficulties of documenting the experience of Canadian residents who are subject to 'special' security scrutiny. After receiving reports of alarming tactics used by security officials when interviewing Muslims, CAIR-CAN set out in 2004 to capture the experience of Canadian Muslims who may have been subject to scrutiny by the RCMP, CSIS and local police. The majority of survey respondents were Canadian citizens and the sample included a broad representation of Muslim racialized communities.

Their findings include the following<sup>12</sup>:

Security officials questioned 8% of 467 respondents. CAIR-CAN feels that this is an under-reported number since 43% of the respondents not contacted by security officials said that they knew of at least one other Canadian Muslim who was questioned, and 62% of the respondents said that they had never reported any incident to any organization.

The majority of those visited by security officials were young, Arab men. 23% of the visits occurred at workplaces, and one of these resulted in the respondent being terminated from his job.

None of the respondents that received workplace visits were arrested or charged, and CAIR-CAN wonders what would be a concrete justification for subjecting those individuals to humiliation and potential hardship.

46% said that they felt fearful, anxious or nervous about the visit while 24% felt harassed and discriminated against.

Respondents indicated that security officials used questionable tactics such as discouraging legal representation, aggressive and threatening behaviour, threats of arrest pursuant to the *Anti-Terrorism Act*, visits at work, intrusive and irrelevant questioning, improper identification, informant solicitation and interrogation of a minor.

It is further troubling therefore that the draft regulations that would govern the "No-Fly" list would be based on information provided by the RCMP and CSIS, and which could subsequently result in an individual being placed on the list, without any judicial oversight on how that information was obtained or in assessing its accuracy and validity.

This points to the failure of the Canadian government to protect its residents from racial profiling practices by the U.S. as well as by its own officials, and in proceeding in a direction that could lead to institutionalizing the racial profiling of Canadian residents.

We submit that the Government of Canada has failed to meet its obligations under Articles 2 and 5 of ICERD.

---

<sup>12</sup> Canadian Council on Islamic Relations. *Presumption of Guilt: A National Survey on Security Visitations of Canadian Muslims*. Ottawa, June 2005