COMPLAINT CONCERNING
SULEYMAN GOVEN
TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

March 31, 2014

A. Information Concerning the Petitioner

B. State Concerned

C. Articles of the Convention Said To Be Violated

D. Factual Basis of the Petition
- D.1 Personal Background
- D.2 Arrival in Canada, Recognition as Convention Refugee, Permanent Resident Application and Community Leadership Activities
- D.3 Security Interview, Surveillance by Government and Alienation from Community
- D.4 Official Complaint Regarding Security Interview and Delay in Processing Permanent Resident Application
- D.5 Canada Ignores Findings from Official Complaint and Rejects Permanent Resident Application
- D.6 Canada Ignores Judicial Review of Negative Decision on Permanent Residence
- D.7 Civil Suit Against Canada for Damages in Negligence Barred By Decision in *Haj Khalil* Case
- D.8 Permanent Residence Granted, Political Writings and Continuing Alienation from Community
- D.9 Statutory Scheme and Departmental Protocol – Security Inadmissibility
- D.10 Statutory Scheme – Oversight of Canadian Security and Intelligence Service and Reception of Individual Complaints

E. Exhaustion of Domestic Remedies

F. Breach of the *International Covenant on Civil and Political Rights*
- F.1. Equality and Non-Discrimination (Article 26)
  - F.1.a. Denied Access to Post-Secondary Education
    - F.1.a.i. Imposition of International Student Fees
    - F.1.a.ii. Exclusion from Student Loan Programs
  - F.1.b. Prevented from Seeking Reunification with Family
    - F.1.b.i. Ineligibility to Sponsor Family Members
    - F.1.b.ii. Ineligibility to Access Travel Papers
- F.2. Freedom of Expression (Article 19(2))
- F.3. Freedom of Association (Article 22)
- F.4. Fair Trial (Article 14)

F.4.a. Access to Court
F.4.b. Access to Court and Effective Remedy (Article 2(3)(a))
F.4.c. Prompt Determination of Civil Rights (Article 14(1))
F.5. Privacy, Honour and Reputation (Article 17)

G. Relief Sought
G.1. Compensation
G.2. Duty of Care on Minister
G.3. Policy Change
G.3.a SIRC Findings Should Be Binding on CSIS
G.3.b Allowing Access to Civil Remedies
G.4. Investigation by Canada

PETITION CONCERNING
SULEYMAN GOVEN

TO: The United Nations Human Rights Committee

A. INFORMATION CONCERNING THE PETITIONER

1. ***Name:*** Suleyman Goven

2. ***Date of Birth***: [redacted]

3. Place of Birth: Turkey

4. ***Nationality***: Canadian

5. ***Profession***: Engineer

6. ***Address***: Address of Counsel

7. ***Legal Representatives***:

Renu J. Mandhane
Carmen K. Cheung
International Human Rights Program
University of Toronto, Faculty of Law
39 Queen's Park, Room 106
Toronto, Ontario M5S 2C3
Phone: 416-946-8730
Fax: 416-978-8894
E-mail: renu.mandhane@utoronto.ca
ckcheung@post.hardvard.edu

Andrew Brouwer
Refugee Law Office
202-20 Dundas Street, West
Toronto, Ontario M5G 2H1
Phone: 416-977-8111
Fax: 416-977-5567
E-mail: brouwea@lao.on.ca

B. STATE CONCERNED

8. This Petition is directed against Canada.

9. Mr. Suleyman Goven has not sought a remedy before any other international or regional human rights treaty body.

C. ARTICLES OF THE CONVENTION SAID TO BE VIOLATED

10. The Petitioner claims that Canada is in violation of Articles 2 (remedy), , 14 (fair trial norms), 17 (privacy, honour and reputation), 19 (freedom of expression), 22 (freedom of association) and 26 (equality and non-discrimination) of the *International Covenant on Civil and Political Rights*.

D. FACTUAL BASIS OF THE COMPLAINT

D.1. Personal Background

11. The Petitioner is an Alevi Kurd born in Turkey on [redacted] *(Affidavit of Suleyman Goven at para 2)*

12. Turkish state authorities detained and tortured Goven because of his membership in a union and because of his Kurdish ethnicity in 1981 and imprisoned him again in 1990. After Kurdish guerillas threatened his life in 1990, Goven fled Turkey. *(Affidavit of Suleyman Goven at paras 8, 11-12)*

D.2. Arrival in Canada, Recognition as Convention Refugee, Permanent Resident Application and Community Leadership Activities

13. Goven entered Canada as a visitor on April 8, 1991. He claimed protection as a Convention refugee on April 10, 1991. In March 1993, the Refugee Division of the Immigration and Refugee Board recognized Goven as a Convention refugee. Goven then applied to Citizenship and Immigration Canada (CIC) for landed immigrant (now called permanent resident) status in Canada. *(Affidavit of Suleyman Goven at paras 14, 17-18)*

14. Soon after his arrival in Canada, in August 1992, Goven co-founded the Toronto Kurdish Community and Information Centre (TKCIC). The TKCIC is a cultural organization that helps Turkish Kurds in the Toronto area with settlement in Canada. Goven was active in establishing the TKCIC because he wanted to help foster a sense of community among Kurds arriving in Toronto and because he wished to expose the human rights violations of the Turkish government against Kurds. *(Affidavit of Suleyman Goven at paras 15-16)*

D.3. Security Interview, Surveillance by Government and Alienation from Community

15. On October 13, 1994, two Canadian Security and Intelligence Service (CSIS) agents interviewed Goven to assess whether he posed any risk to Canada's public safety. Ms. Mary Jo Leddy, the director of Romero House, a settlement centre for refugees, attended with him at this interview and took detailed notes. The interview lasted approximately seven hours with only one break of approximately ten minutes and no opportunity to obtain food or water. *(Affidavit of Suleyman Goven at paras 21-22)*

16. During the interview, CSIS agents asked Goven whether he was a member of the Kurdish Workers Party (PKK). Goven advised CSIS that he was not and had never been a member of the PKK. The CSIS agents informed Goven that they had been monitoring his telephone calls. CSIS told Goven that if he gave them the names of PKK members from the Kurdish community in Toronto, they would recommend that CIC grant his application for permanent residence. Goven refused to do so because he did not know any PKK members. *(Affidavit of Suleyman Goven at paras 23-25)*

17. While Goven's permanent residence application was still pending, he was accepted into engineering programs at both the University of Toronto and McGill University. He was unable to enroll into either program because he was unable to afford the foreign student fees and, as a non-citizen, he was unable to access student loans. As a result, Goven could not practice his profession of engineer in Ontario and was unable to find meaningful employment. *(Affidavit of Suleyman Goven at paras 4, 31)*

18. Goven left the executive of the TKCIC and cut off ties with the centre in May 1997. He believed that CSIS suspected the TKCIC of being a front for the PKK. He therefore wished to demonstrate clearly to CSIS that he had no connection to the PKK. Goven found this alienation from his community depressing. *(Affidavit of Suleyman Goven at para 28)*

D.4. Official Complaint regarding Security Interview and Delay in Processing Permanent Resident Application

19. Goven had still not received a decision on his application for landed immigrant status by August 1997. *(Affidavit of Suleyman Goven at para 29)* During the period 1998 to 2006, Leddy therefore made significant advocacy efforts on Goven's behalf to obtain a decision on his application for permanent residence. In particular, Leddy wrote letters to, met in person with, or spoke on the telephone with the following members of Parliament, senators and Immigration Ministers *(Affidavit of Mary Jo Leddy at para 4)*:
    - Sarmite Bulte, MP
    - Elinor Caplan, MP, Immigration Minister (1999-2002)
    - Denis Coderre, MP, Immigration Minister (2002-2003)
    - Stan Dromisky, MP
    - Raymonde Falco, MP
    - Edward Goldenberg, Chief of Staff to Prime Minister Jean Chrétien (2003)
    - Steve Mahoney, MP
    - John McKay, MP
    - Lucienne Robillard, MP, Immigration Minister (1996-1999)
    - Senator Douglas Roche

20. Goven and Leddy also initiated a formal complaint to the Security Intelligence Review Committee (SIRC), an independent, external review body that reports to the Canadian Parliament on the activities of CSIS. Excessive delay in processing

Goven's application and pressure to act as an informer for CSIS formed the principal grounds for the complaint. *(Affidavit of Suleyman Goven at paras 30-33)*

21. The Honourable Robert Keith Rae, P.C., Q.C. reviewed Goven's complaint. Rae chaired the SIRC hearings held over 15 days – September 15, 16, 23, 24, 25; October 9; November 10, 23; December 2, 21, and 22, 1998; and January 26, 27, and February 1 and 2, 1999. *(Affidavit of Suleyman Goven at para 35)*

22. At the SIRC hearing, CSIS lawyers presented a forged CIC call-in notice allegedly for Goven's October 13, 1994 security assessment interview. The document, however, showed a different start time and had Goven's current address, not his address in 1994. Rae found that this document was forged. *(Affidavit of Suleyman Goven at para 41)*

23. CSIS presented confidential information to SIRC in Goven's absence and in the absence of his counsel. CSIS relied on the information provided by an anonymous person who purportedly told CSIS that Goven was a member of the PKK. To respond to these allegations, Goven swore an affidavit in which he confirmed that he never stated or communicated in any way to anyone that he was a member of the PKK. *(Affidavit of Suleyman Goven at paras 36-38)*

24. In its report of April 3, 2000, SIRC concluded that the facts presented did not support the conclusion that Goven was a member of the PKK and that CSIS should advise CIC that he be granted permanent residence. *(Affidavit of Suleyman Goven at para 42)*

25. The SIRC report also recommended that CSIS record all security interviews in the event of disputes over the content of the interviews. The SIRC report further recommended that immigration officials develop a more sophisticated analysis framework for making assessments with respect to the definitions of "membership" and "terrorist organization." To date, CSIS has implemented none of these general recommendations. *(Affidavit of Suleyman Goven at paras 43-44)*

D.5. Canada Ignores Findings from Official Complaint and Rejects Permanent Resident Application

26. Some six months after the SIRC decision, on October 25, 2000, CIC called Goven for another interview regarding his permanent residency application. Ms. Ann Dello, an immigration officer with CIC, conducted the interview. She indicated that she had not read the SIRC findings and did not consider herself obligated to consider them. *(Affidavit of Suleyman Goven at paras 48-49)*

27. At this interview, Dello questioned Goven about his views of the PKK and his involvement with the TKCIC. Goven told Dello that he was not a member of the PKK, as he had indicated throughout the investigation of him. He also told her that

his involvement with the TKCIC had ended when he left its executive in May 1997. *(Affidavit of Suleyman Goven at paras 49-50)*

28. Goven received a letter from Dello dated March 20, 2001, advising him that CIC had refused his application for permanent residence. Despite the SIRC finding to the contrary, Dello determined that there were reasonable grounds to believe that Goven was a member of the PKK, an organization that engaged in terrorism. She based this conclusion on his involvement with the TKCIC. She found that there were reasonable grounds to believe that the TKCIC supported the PKK. Therefore, Dello found that there were reasonable grounds to believe that Goven was a member of the PKK because of his membership of the TKCIC executive. *(Affidavit of Suleyman Goven at paras 56-57)*

D.6. Canada Ignores Judicial Review of Negative Decision on Permanent Residence

29. In 2001, Goven sought judicial review by the Federal Court of Canada of Dello's decision to deny him permanent residence in Canada. On November 12, 2002, Justice Pinard allowed his application, ruling that Dello had failed to consider relevant evidence when she ignored the SIRC report. *(Affidavit of Suleyman Goven at para 58)*

30. Ms. Brenda Benson, another immigration officer, then took over Goven's file. Benson attempted to overcome the SIRC findings and the judicial review decision, despite being advised in December 2003 by Mr. Gary Wallace, a security review analyst, that the intelligence unit had completed its investigation of Goven and that no charges had been laid against him. Benson contacted at least eight individuals within CIC and Canada Border Services Agency (CBSA) for advice in her efforts to reach a negative decision on Goven's application for permanent residence. *(Affidavit of Suleyman Goven at paras 59-60)*

D.7. Civil Suit Against Canada for Damages in Negligence Barred By Decision in Haj Khalil Case

31. On November 8, 2005, Goven filed a civil suit for damages against the Attorney General of Canada in the Federal Court (IMM-6730-05). He claimed that CIC officials negligently failed to process his application in a timely fashion, and that they continued to investigate him on security grounds despite the lack of evidence to support such an investigation. CIC officials acted with the knowledge that Goven would be harmed by their conduct, because of the negative impact on him of the ongoing unreasonable delay in processing his application for permanent residency. Goven also claimed damages pursuant to the *Canadian Charter of Rights and Freedoms* (*Charter*) for violations of his constitutional rights. *(Affidavit of Suleyman Goven at para 64)*

32. In 2007, Goven's action against the Attorney General of Canada in the Federal Court was stayed pending a decision in a similar case, *Haj Khalil v Canada*. This case

involved another refugee whose application for permanent residence was subject to unreasonable delay because of alleged security concerns. The Federal Court of Appeal dismissed Haj Khalil's claim on March 6, 2009, on the grounds that Canada owed no duty of care to permanent resident applicants to process their applications in a timely fashion. The Supreme Court of Canada rejected Haj Khalil's application for leave to appeal on April 14, 2011. As a result of these decisons, Goven cannot proceed with his lawsuit and is effectively barred access to an effective remedy for the violations of his rights. *(Affidavit of Suleyman Goven at paras 65)*

D.8. Permanent Residence Granted, Political Writings and Continuing Alienation from Community

33. Goven was finally granted permanent resident status on September 7, 2006, over 13 years after his initial application for landing. *(Affidavit of Suleyman Goven at para 66)* Goven became a Canadian citizen in November 2012.

34. In 2007, Goven started a newspaper, Yeni Hayat, of which he is the editor-in-chief. He also began to write editorials for Yeni Hayat in Turkish and English for publication on-line and for print distribution in various Canadian cities. As of the date of this complaint, Goven continues to write articles, some of which are critical of the Turkish government for its treatment of Kurdish political prisoners. Other articles are critical of the Canadian government's immigration policy. While Goven was under investigation by CSIS, he felt completely restricted from speaking out about human rights. *(Affidavit of Suleyman Goven at para 4)*

35. In a meeting in the autumn of 2009, four members of the TKCIC executive stated to the TKCIC membership that Goven was opposed to the centre and was speaking to Turkish Kurds in Toronto and telling them not to go to TKCIC events or to attend the centre. Goven believes that at least some of the members of the TKCIC executive were either collaborating with CSIS or felt pressure from CSIS to further marginalize him from his community. He believes that CSIS intensified its efforts to discredit him because of the civil suit. To be betrayed by a group he had helped to found was very distressing and hurtful to Goven. He felt he had to explain himself yet again to his community. This was a difficult process. During this period, he became depressed and sought counseling from a clinical psychologist. *(Affidavit of Suleyman Goven at para 67)*

D.9. Statutory Scheme and Departmental Protocol – Security Inadmissibility

36. Goven was determined to be a Convention refugee under the provisions of the *Immigration Act*, R.S.C. 1985, c. 1-2 (the former Act). He filed his application for permanent residence under the former Act. On June 28, 2002, while Goven's permanent resident application was still pending, the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) came into force.

37. While section 190 of the IRPA stipulates that the new legislation would govern all applications for permanent residence then in progress, the legislative provisions relevant to Goven's application for permanent residence remained substantially the same in the IRPA as under the former Act. Therefore, this petition will refer only to the provisions of the IRPA.

38. Subsection 21(2) of the IRPA provides that Convention refugees who apply for permanent residence become permanent residents if they apply within 180 days of their Convention refugee determination and they are not inadmissible based on the grounds detailed in Division 4 of the IRPA.

39. Goven was found to be inadmissible on security grounds under subsections 34(1)(c) and (f) of the IRPA. These subsections together provide that a permanent resident is inadmissible for being or having been a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in terrorism.

40. Subsection 72 of the IRPA [as amended by S.C. 2002, c. 8, s. 194] permits judicial review by the Federal Court with respect to any matter under the legislation, with leave of the Court. Therefore, as a protected person, Goven was able to request judicial review of the inadmissibility decision on his application for permanent residence.

41. In 2003, one year after the IRPA came into force, the Prime Minister created the portfolio of Public Safety Canada. Under subsection 4(2) of the IRPA [as amended by S.C. 2005, c. 38, s. 118], the Minister of Public Safety and Emergency Preparedness was authorized to advise the Minister of Citizenship and Immigration on issues relating to admissibility on security grounds.

42. At the time of Goven's application for permanent residence in 1993, CSIS conducted security screening and forwarded its reports to CIC Security Review. CIC security analysts then reviewed the CSIS reports, but made their own independent recommendations on inadmissibility in a memo to the Director of Security Review at CIC. Once approved by the Director, the CIC Security Review memo, together with the CSIS report was sent to the CIC local office. A local CIC immigration officer made the final admissibility determination.

43. In December 2003, CBSA obtained jurisdiction over the former CIC Security Review, which thereafter reported to the Minister of Public Safety. In early 2005, CBSA Security Review was renamed "Counter-Terrorism." Immigration officials in both CIC and CBSA Counter-Terrorism therefore reviewed Goven's file following his successful application for judicial review in 2002.

D.10. Statutory Scheme – Oversight of Canadian Security and Intelligence Service and Reception of Individual Complaints

44. Subsection 34(1) of the *Canadian Security Intelligence Service Act*, R.S.C. 1984, c. 21, s.1 (CSIS Act) established SIRC as an independent, external review body that reports to the Parliament of Canada on the activities of CSIS. Under subsection 41(1) of the CSIS Act, any person may make a complaint to SIRC "with respect to any act or thing done by" CSIS. Subsection 41(1)(a) provides that SIRC will investigate the complaint if the complainant has made a complaint to the Director of CSIS and has not received a response within a reasonable time period or is dissatisfied with the response given. In order to investigate a complaint, SIRC must be satisfied that it is not "trivial, frivolous, vexatious or made in bad faith" (CSIS Act, s. 41(1)(b)).

45. On completion of an investigation under section 41, SIRC provides the Director of CSIS with a report detailing its findings and any recommendations (CSIS Act, s. 52(1)(a)). However, CSIS is not bound to follow any of these recommendations.

E. EXHAUSTION OF DOMESTIC REMEDIES

46. Goven has exhausted domestic remedies, including those available in administrative law, in negligence and under the Charter.

47. In 2001, after his application for permanent residence was refused following a delay of almost eight years, he sought and was successful in his application for judicial review of the immigration officer's refusal to grant him permanent residence (*Suleyman Goven v. Minister of Citizenship and Immigration*, 2002 FCT 1161).

48. More than three years later, with the Court-ordered redetermination mired in further delays, Goven launched a civil suit against the Attorney General of Canada on November 8, 2005 (IMM-6730-05), claiming damages in negligence for the delay in processing his permanent residence application. He also claimed *Charter* damages under s. 24(2) for violations of his s. 7 (security of the person) and s. 15 (equality) rights.

49. CIC brought a motion to strike, arguing that the statement of claim failed to disclose a reasonable cause of action. On February 28, 2007, prior to a decision on the motion to strike, Goven's civil action was stayed pending the determination of *Haj Khalil v. Canada* (2007 FC 923) or *Canada (Citizenship and Immigration) v. Samimifar* (2007 FCA 248), on the basis that the outcomes of those cases could be determinative of his own action.

50. The Federal Court dismissed Haj Khalil's claim on September 17, 2007 on the grounds that Canada owed no duty of care to permanent resident applicants to process their applications in a timely fashion. The Court also rejected Haj Khalil's *Charter* ss. 7 and 15 claims. Justice Layden-Stevenson awarded costs of $305,000 against Haj Khalil. Goven's civil suit then remained in abeyance until the Federal

Court of Apeal dismissed Haj Khalil's appeal on March 6, 2009. When the Supreme Court of Canada refused Haj Khalil's application for leave to appeal on April 14, 2011, Goven filed a notice of discontinuance of his action. *Samimifar* also concerned excessive delay in processing an application for permanent residence and was a motion for summary judgment by CIC that was dismissed but not pursued by the respondent because of the decision in *Haj Khalil*.

51. The decision in *Haj Khalil* forecloses Goven's ability to advance a claim in negligence as well as his *Charter* ss. 7 and 15 claims. Furthermore, the substantial costs award of $305,000 in *Haj Khalil* exposes Goven to an unacceptable level of liability should he elect to proceed with his claim regardless. In awarding costs in *Haj Khalil*, the Federal Court of Appeal had no regard for the fact that the suit was being pursued in the public interest, as it would also be in Goven's case. This is too high a price to pay merely to demonstrate exhaustion of domestic remedies when the case law is clear that Canadian courts are not prepared to hear a case like Goven's on its merits.

F. BREACH OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

52. As noted above, Goven claims a violation of Articles 2.3 (remedy), , 14 (fair trial norms), 17 (privacy, honour and reputation), 19 (freedom of expression), 22 (freedom of association) and 26 (equality and non-discrimination) of the *International Covenant on Civil and Political Rights*.

F.1. Equality and Non-Discrimination (Article 26)

53. Goven's right to equality and non-discrimination under Article 26 of the *ICCPR* was breached when Canada denied him equal access to post-secondary education and the ability to reunite with his family on the basis of his Convention refugee status. In particular, as a Convention refugee, Goven was subject to a discriminatory regime that unjustifiably distinguished between Convention refugees and permanent residents with respect to education and family reunification.

54. This committee has stated that national origin or "other status" may constitute a prohibited ground of discrimination under Article 26 where it forms the basis for "any distinction, exclusion, restriction or preference" and where it "has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms." (*Human Rights Committee, General Comment 18, UN CCPR, 37th Sess at para 7*).

55. With respect to equality and non-discrimination of non-citizens in particular, the Special Rapporteur on the Rights of Non-Citizens, David Weissbrodt, has emphasized that international human rights law "requires the equal treatment of citizens and non-citizens." (*Commission on Human Rights, The Rights of Non-Citizens: Final Report of the Special Rapporteur, Mr. David Weissbrodt, UN*

ESOSOC, 55th Sess, UN Doc E/CN.4/Sub.2/2003/23 at para 1).

56. Under the *ICCPR*, states are permitted to discriminate between citizens and non-citizens only with respect to political rights (under article 25) and freedom of movement (under article 12), neither of which are at issue here. Any other restrictions or exceptions to the principle of non-discrimination "may be made only if they are to serve a legitimate State objective and are proportional to the achievement of that objective." (*Commission on Human Rights, The Rights of Non-Citizens: Final Report of the Special Rapporteur, Mr. David Weissbrodt, UN ESOSOC, 55th Sess, UN Doc E/CN.4/Sub.2/2003/23 at paras 1 and 18*).

57. As further detailed below, the restrictions on education and family reunification faced by Goven as a Convention refugee were disproportionate and served no legitimate state objective. Moreover, this discriminatory regime cannot be upheld under the test stated in *Klain and Klain v Czech Republic*. In *Klain and Klain*, this committee affirmed that if a state party cannot demonstrate to the committee's satisfaction that a distinction between citizens and non-citizens is based on objective and reasonable grounds, the state would be in violation of Article 26. (*Klain and Klain v Czech Republic, Merits, UN Doc CCPR/C/103/D/1847/2008; IHRL 1675 (UNHRC 2011) at para 8.2*). As set out in section F.1.a.i below, Canada's distinction between Convention refugees and permanent residents for the purposes of determining post-secondary tuition has already been criticized by the Committee on Economic, Social and Cultural Rights.

58. Both Convention refugees and permanent residents are entitled to remain in Canada indefinitely and it is expected that both classes of individuals will pursue education, employment and self-fulfilment. Any distinctions between these two immigration statuses with respect to accessing education, family reunification, and travel are neither objectively reasonable nor could they serve a legitimate state objective. These distinctions therefore constitute a violation of Article 26.

59. Other international human rights bodies have developed similar tests to that articulated in *Klain and Klain* to evaluate discrimination between citizens and non-citizens. The European Court of Human Rights, for example, held that discrimination means "treating differently, without an objective and reasonable justification, persons in similar situations." Furthermore, a distinction has no objective and reasonable justification when it "does not pursue a 'legitimate aim' or [there] is not a 'reasonable relationship of proportionality between the means employed and the aim sought to be realized.'" (*Adrejeva v Lativa, Admissibility, merits and just satisfaction, App no 55707/00; IHRL 3372 (ECHR 2009) at para 81*).

60. The Inter-American Court of Human Rights has likewise held that "…[n]o discrimination exists if the difference in treatment has a legitimate purpose… when classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review." (*Judicial Condition and the Rights of the*

Undocumented Migrants, Advisory Opinion OC-18/03, IACtHR Series A no 18; IHRL 3237 (IACtHR 2003) at para 91. See also Miranda v Chile (2010), Inter-Am Comm HR, No 56/10, Annual Report of the Inter-American Commission on Human Rights 2010, Case 12.469).

F.1.a. Denied Access to Post-Secondary Education

61. Goven's Convention refugee status prevented him from accessing post-secondary education. Canada violated Goven's right under Article 26 of the *ICCPR* when it discriminated between Convention refugees and permanent residents for the purposes of providing post-secondary education benefits without reasonable and objective criteria for making such a distinction.

62. There is no right to post-secondary education in Canada under domestic law or under the *ICCPR*. Notwithstanding this fact, Canada has undertaken several programs to assist certain classes of individuals to access post-secondary education. Article 26 of the *ICCPR* prohibits Canada from implementing those programs in a discriminatory manner.

63. Canada has chosen to subsidize the cost of post-secondary education for some classes of individuals.

64. Canada has also undertaken to provide financial assistance to students through the *Canada Student Loans Program*. This program allows Canada to enter into loan agreements with students attending a part- or full-time program of study at an approved post-secondary education institution in Canada. This program is governed by the *Canada Student Financial Assistance Act* (SC 1994, c 28, s 6.1). Until 2003, students who qualified for this program were limited to citizens and permanent residents (*Immigration and Refugee Protection Act*, SC 2001, c 27, s 219). Convention refugees were unable to access student loans under the governing statute.

65. This committee stated in *Oulajin and Kaiss v Netherlands* that states party may not discriminate when providing a discretionary benefit. That is, when a state party is not under an obligation under the *ICCPR* to provide social and economic benefits to those in their jurisdiction, if it chooses to do so, it must exercise its discretion without discrimination. Any distinctions in the provision of such services or benefits have to be based on "reasonable and objective criteria." (*Oulajin and Kaiss v Netherlands, Merits, UN Doc CCPR/C/46/D/406/1990; IHRL 2342 (UNHRC 1992) at para 7.3*).

F.1.a.i. Imposition of International Student Fees

66. Requiring Convention refugees to pay international student rates for post-secondary education, while allowing permanent residents to pay domestic student rates, entailed a distinction between two groups that was not based on "reasonable and objective criteria," contrary to this committee's rulings in *Klain and Klain v Czech Republic*

and *Oulajin and Kaiss v Netherlands*.

67. When Goven arrived in Canada and was granted Convention refugee status, he sought to pursue post-secondary education in order to qualify for employment in his profession as an engineer. Despite being admitted to McGill University and the University of Toronto, he was unable to attend either institution because he could not afford to pay the international student fees, which were substantially higher than domestic student fees at the time. Therefore, as a direct result of his status as a Convention refugee, Goven was "unable to pursue meaningful employment," which in turn caused him significant financial and personal hardship. (*Affidavit of Suleyman Goven, at paras 4 and 68*).

68. The Committee on Economic, Social and Cultural Rights criticized this distinction in 1998 when it considered "the plight of thousands of 'Convention refugees' in Canada, who cannot be given permanent resident status for a number of reasons…" In particular, the CESCR was concerned about the barring of Convention refugees from paying domestic tuition rates for post-secondary education. The CESCR urged Canada to "develop and expand adequate programs to address the financial obstacles to post-secondary education for low-income students, without any discrimination on the basis of citizenship status." (*Committee on Economic, Social and Cultural Rights, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada, UNESC, 19th Sess, UN Doc E/1994/103/Add 14 at paras 37, 39 and 46.*)

69. Until 2003, Convention refugees were required to pay international student fees for post-secondary education. These fees were substantially higher than domestic student fees (compare *Immigration and Refugee Protection Act*, SC 2001, c 27, s 219 with *Budget Implementation Act*, SC 2003, c 15, s 9).

70. Other international human rights bodies have considered the issue of differential funding formulas for education based on immigration status. In *Ponomaryovi v Bulgaria*, the European Court of Human Rights held that charging individuals for secondary education on the sole basis of their nationality and immigration status was discriminatory, since citizens and other categories of non-citizens were entitled to primary and secondary education without charge. The Court, like this committee, held that while the state party was under no obligation to provide a particular level of education, any benefit scheme must be undertaken without discrimination. (*Ponomaryovi v Bulgaria, Merits and just satisfaction, App no 5335/05; IHRL 1655 (ECHR 2011) at paras 49 - 52*).

71. The European Court of Human Rights went on to consider the precise nature of the distinction between certain categories of non-citizens for the purposes of education fees, and held that the distinction was not made on the basis of reasonable or objective criteria. The court pointed out that Bulgaria did not seem to object to the petitioner's presence in Bulgaria and was not seeking to have them deported. There was no reason, therefore, not to provide them with the same level of benefits as other

classes of non-citizens. (*Ponomaryovi v Bulgaria, Merits and just satisfaction, App no 5335/05; IHRL 1655 (ECHR 2011) at paras 61-63*).

72. Goven submits that Canada's distinction between Convention refugees and permanent residents for the purposes of post-secondary tuition was likewise arbitrary and unreasonable. Both Convention refugees and permanent residents are entitled to remain in Canada indefinitely and it is expected that both classes of individuals will pursue education, employment and self-fulfilment.

73. Furthermore, economic considerations are irrelevant to whether Canada was justified in excluding Convention refugees. As stated above, Canada is not obligated to provide any level of subsidization for education. However, once a program of subsidization is established, Canada is obligated to provide the program to all, without discrimination, unless such distinctions are based on reasonable and objective criteria. There is no reasonable or objective basis for distinguishing between Convention refugees and permanent residents, and excluding either for purely economic purposes constitutes an arbitrary distinction.

74. Goven therefore submits that his exclusion from domestic tuition rates from the period of 1995 to 2003 constituted a violation of his right to non-discrimination under Article 26 of the *ICCPR*.

F.1.a.ii. Exclusion from Student Loan Programs

75. Excluding Convention refugees from the state student loan program for post-secondary education while allowing permanent residents access the program also entails a distinction between two groups that was not based on "reasonable and objective criteria," contrary to this committee's rulings in *Klain and Klain v Czech Republic* and *Oulajin and Kaiss v Netherlands*.

76. When Goven was admitted to the faculties of engineering at McGill University and the University of Toronto, he was ineligible to access the state student loan program. This program assessed the need of each student, and provided interest-free loans to students while they were in school. After graduation, if students found employment, they would begin to pay back their loans, and only then would the loans begin to accrue interest (*Canada Student Financial Assistance Act*, SC 1994, c 28, s 7).

77. Contrasted with this program, private loans or lines of credit with financial institutions began to accrue interest at the moment the loan was made. The interest rates were higher, and non-citizens had difficulty getting approval for such loans.

78. As a Convention refugee ineligible for the state student loan program available to citizens and permanent residents, Goven was effectively barred from post-secondary education. This ineligibility cannot be justified by Canada on the basis of reasonable or objective criteria. The only objective distinction between Convention refugees and permanent residents is process by which their presence in Canada is regularized.

Economic policy decisions based on this distinction constitute arbitrary discrimination, and therefore violate the right to non-discrimination under Article 26 (compare *Immigration and Refugee Protection Act*, SC 2001, c 27, s 219 with *Budget Implementation Act*, SC 2003, c 15, s 9).

79. Goven's exclusion from the state student loan program constituted a violation of his right to non-discrimination under Article 26. There was no principled distinction between his status in Canada and the status of a permanent resident, except by virtue of title and regularization procedure. The violation, therefore, cannot be justified.

F.1.b. Prevented from seeking reunification with Family

80. Goven's status as a Convention refugee also violated his right to non-discrimination under Article 26 of the *ICCPR* in conjunction with his right to be free of arbitrary or unlawful interference with his family under Article 17 of the same Convention.

81. This committee has treated Article 17 as creating at least two distinct rights: the right to privacy including correspondence, honour and reputation, and the right to family. (This complaint will address the right to privacy in section F.5. below.) This committee has noted that, given the range of possible cultural norms and family structures, "family" should be given the widest possible interpretation when considering violations to family life. (*Human Rights Committee, General Comment 16, UN CCPR, 32nd Sess at para 5*).

82. Goven has been separated from his mother and nine siblings since he left Turkey in December 1990. His youngest sibling was just seven years old at the time. Prior to fleeing Turkey, Goven had a close relationship with his family and supported his mother financially. (*Affidavit of Suleyman Goven, at paras 4, 11*)

83. Until 2002, however, Canada did not issue travel documents to Convention refugees, although it did issue them to permanent residents (*Immigration and Refugee Protection Regulations, SOR/2002-227, s 39(c)*). Goven's Convention refugee status therefore meant that until 2002 he was unable to acquire travel papers that would enable him to meet family members in third countries. Unfortunately, he was unaware of this change in law, and did not know to apply for such travel papers. Therefore, for over 17 years he was unable to visit with his family. Their relationship has consequently weakened, and this damage is irreparable.

84. Goven's ineligibility for travel papers constituted a violation of his right to non-discrimination under Article 26. As with the distinction made for the purposes of family sponsorship, the distinction between Convention refugees and permanent residents for the purposes of travel documents was neither objective nor reasonable, contrary to this committee's holding in *Klain and Klain v Czech Republic*.

85. The delay in processing Goven's application for permanent residence may have also impacted his mother's ability to obtain a visa to visit him in Canada. In 2005, Goven

invited her to visit him, but her visa was refused. Approximately two months after he was granted permanent residence, Goven again submitted a letter in support of her application, this time appending documentation of his permanent residence. Her application was granted and she visited him in early 2007. It was the first time Goven was able to see her since leaving Turkey in 1990. (*Affidavit of Suleyman Goven, at para\ 4*).

86. Canada's immigration and security officials effectively barred Goven from reuniting with his family and led to a loss of family life. This was the direct result of arbitrary distinctions between Convention refugees and permanent residents, and constitutes a violation of Goven's right to non-discrimination under Article 26 of the *ICCPR.*

F.2. Freedom of Expression (Article 19(2))

87. Canada violated Goven's freedom of expression under Article 19(2) of the *ICCPR* when its extreme delay in processing his application for permanent residency and its hostile investigatory practices created an uncertain and intimidating climate for Goven. This climate had a chilling effect on Goven's expression such that his freedom of expression was unjustifiably violated.

88. Article 19(2) states that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." This committee has stated that freedom of expression is "integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote." (*Human Rights Committee, General Comment 34, UN CCPR, 102nd Sess at para 4*).

89. Expression and political engagement were two ways in which Goven sought justice and to build a community in Canada. Goven arrived in Canada fleeing from persecution on the basis of ethnicity in his native Turkey. In Canada, he saw an opportunity to raise awareness about the plight of Alevi Kurds, and to speak openly about what he had experienced. He and other Kurds founded the TKCIC, and he envisioned an expressly political role for the new centre, as well as community-building and support functions. (*Affidavit of Suleyman Goven, at paras 15 and 16*).

90. Canada's actions significantly restricted Goven's ability to engage in political expression and activity. After Goven's initial security interview with CSIS, he became aware that the agents viewed his involvement in the TKCIC as suspicious. As a result of this protracted interview, in which CSIS indicated to Goven that the agency was monitoring his phone calls, and the subsequent revelation that CSIS was interviewing other members of the Kurdish community about Goven's involvement with the TKCIC, Goven withdrew from his involvement with the TKCIC and ceased to speak about Turkish politics. He did this because he feared that his public engagement on these issues would jeopardize his application for permanent residency. (*Affidavit of Suleyman Goven, at paras 20-23, 25, and 28*).

91. The length of time it took Canada to process Goven's application for permanent residency intensified his concern that any political action with respect to Turkey and Kurdish issues would lead to more scrutiny by CSIS agents, and further delay or endanger his application. He also had heard that Canada had sought to deport refugees who were vocal about the political situation in their home countries, and he feared that CSIS would take such action against him. He therefore censored his own political engagement, believing that he would not be safe to resume his human rights advocacy until he received his permanent residence. (*Affidavit of Suleyman Goven, at paras 62 and 63*).

92. An *effective* restriction on freedom of expression is sufficient to engage the right under Article 19(2) of the *ICCPR*. This committee has found that hostile government treatment of an individual, including unduly delayed adjudicative proceedings, can place an individual in a position of "uncertainty and intimidation," thereby creating a "chilling effect" on the exercise of freedom of expression. This chilling effect can impact an individual to a point where they are unable to exercise their freedom of expression for fear of government reprisal or sanction. Such an effect constitutes an unjustifiable violation of the right to freedom of expression under Article 19(2). (*Kankanamge v Sri Lanka, Merits, UN Doc CCPR/C/59/D/560/1993; IHRL 1852 (UNHRC 2004) at para 9.4*).

93. Under Article 19(3), state restrictions on freedom of expression will only be upheld if they have a basis in law, and are necessary to respect the rights and reputations of others or to protect national security. Furthermore, this committee has affirmed that the "freedom of expression is of paramount importance in any society, and any restrictions on its exercise must meet a strict test of justification." The restriction must be necessary for a legitimate purpose, such that there is no lesser restriction that could achieve the same purpose, and it must be proportionate to the objective being pursued. (*See Kungurov v Uzbekistan, Merits, UN Doc CCPR/C/102/D/1378/2006; IHRL 1827 (UNHRC 2011) at para 8.8 and Human Rights Committee, General Comment 34, UN CCPR, 102nd Sess at paras 33 and 34*).

94. Goven submits that the extreme delay in processing his application for permanent residence placed him in a similar position of uncertainty and intimidation. In particular, the emphasis CSIS agents placed on his involvement with TKCIC and on allegations that he was a member of the political organization PKK caused him to believe that any expression of criticism of the Turkish government would jeopardize his application.

95. Furthermore, Goven submits that Canada's actions cannot be justified under the test articulated in Article 19(3) and in *Kungurov v Uzbekistan*. While CSIS's investigation of Goven in the interest of national security is a legitimate state objective, the hostile investigation and undue delay in completing that investigation are not proportionate to that aim.

96. The actions of CSIS and Canada had the effect of restricting Goven's freedom of expression. This action is not proportionate to the aim of national security, and therefore constituted an unjustifiable infringement of his right under Article 19(2) of the *ICCPR*.

F.3. Freedom of Association (Article 22)

97. Canada's actions isolated Goven from his community, interfered with his personal and political relationships, and caused him to withdraw from his position with the TKCIC. This constituted a violation of Goven's right to freedom of association under Article 22 of the *ICCPR*.

98. Article 22 states that "(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests" and "(2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedom s of others."

99. Canada's actions caused Goven to believe his association with the TKCIC would jeopardize his application for permanent residency. At the first CSIS security interview in October 1994, much of the questioning focused on the PKK and on Goven's involvement in the Turkish community. He became worried that his involvement in the TKCIC would negatively impact his application for permanent residency. Thus, in addition to causing Goven to curtail his freedom of expression, the high level of suspicion cast by immigration officers upon his involvement with the TKCIC prompted him to cut ties with the organization. (*Affidavit of Suleyman Goven, at para 21, 23-25*).

100. Canada's aggressive investigation created an atmosphere of intimidation in which Goven felt he could not continue his association with the TKCIC. After Goven discovered that CSIS agents were interviewing other Kurds and asking about his involvement with the TKCIC and the PKK, he became concerned. He stated that he felt he "was being criminalized for anything [he] did there" and that by leaving the TKCIC he wanted "to clearly demonstrate to CSIS that [he] was willing to cut off ties." As a direct result of the actions of Canada's agents, Goven decided to withdraw from his executive position in the organization in May 1997 and distance himself from the community. (*Affidavit of Suleyman Goven, at para 28*).

101. This committee has found that government action may create an environment sufficient to "chill" individual freedoms under the *ICCPR*. (*Kankanamge v Sri Lanka, Merits, UN Doc CCPR/C/59/D/560/1993; IHRL 1852 (UNHRC 2004) at para 9.4*).

102. In *Lee v Republic of Korea,* this committee found that if there is a *prima facie*

violation of an individual's freedom of association, the state party must meet a strict test to justify that restriction as articulated in Article 22(2). It went on to clarify that "[t]he existence of any reasonable and objective justification for limiting the freedom of association is not sufficient. The state party must further demonstrate that the prohibition on the association and the criminal prosecution of individuals for membership in such organizations are in fact necessary to avert a real, and not only hypothetical danger to the national security or democratic order that less intrusive measures would be insufficient to achieve this purpose." (*Lee v Republic of Korea, Merits, UN Doc CCPR/C/84/D/1119/2002; IHRL 1619 (UNHRC 2005) at para 7.2*).

103. Canada was not justified in pursuing such an aggressive investigation of Goven and the TKCIC. While the government action in the instant case are not so severe as to criminalize membership in the TKCIC, Canada's agents were clear that they believed the TKCIC was connected to the PKK, which they claimed was a terrorist organization. At the time, the PKK was not listed as a terrorist organization by Canada, and Canada's agents offered no evidence for their belief that there was a relationship between the PKK and the TKCIC. The undue aggression and extreme delay that Canada took in processing Goven's application for permanent residence did not, therefore, address a "real, and not only hypothetical danger to the national security" of Canada (*Lee v Republic of Korea, Merits, UN Doc CCPR/C/84/D/1119/2002; IHRL 1619 (UNHRC 2005) at para 7.2*).

104. Goven submits that Canada's actions created a chilling climate in which he felt that he could not reasonably carry on an association with the TKCIC and succeed with his application for permanent residence. Furthermore, Canada's actions in this regard cannot be justified under Article 22(2) since they did not satisfy the strict test set by this committee in *Lee v Republic of Korea*. Therefore, Goven submits that Canada violated his right to freedom of association under Article 22(1) of the *ICCPR.*

F.4. Fair trial (Article 14 and Article 2)

F.4.a. Access to Court

105. Goven submits that Canada has violated Article 14(1) of the Covenant. Article 14(1) guarantees that "in the determination of…rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

106. This Committee's jurisprudence recognizes that Article 14(1) "encompasses the right to access to court for the determination of rights and obligations in a suit at law." This jurisprudence has also indicated "in certain circumstances the failure of a state party to establish a competent court to determine rights and obligations may amount to a violation of article 14(1)." (*See Mahuika v New Zealand, Merits, UN Doc CCPR/C/70/D/547/1993; IHRL 1733 (UNHRC 2000), para. 9.11*).

107. Goven claims that Canada has violated his Article 14(1) right of access to the court because Canada has, in effect, granted CIC complete immunity from civil liability for delay. The Federal Court deemed in *Haj Khalil* on September 18, 2007, that Canada owes no duty of care to permanent resident applicants to process their applications in a timely manner, thereby precluding any cause of action for the determination of civil rights and obligations in this area. This granting of immunity from civil liability constitutes a *disproportionate* restriction on the right of access to court, because it precludes any determination of a case on its merits. (*See Haj Khalil v Canada (2007) FC 923; aff'd in Haj Khalil v Canada (2009) FCA 66; leave to appeal to SCC refused on April 14, 2011*.)

108. In its decision in *Haj Khalil*, the Federal Court accepted that CIC had a statutory duty to determine a Convention refugee's application for permanent residence, and that a failure to do so might result in foreseeable harm to the applicant. However, the Court dismissed the claim because it found no proximity between the parties, given that the defendant-officials were under a conflicting statutory duty to protect the health, safety, and security of Canadian society. Moreover, the Court held that even if a *prima facie* duty of care were made out, the claim would still fail because of competing policy considerations. These considerations include the availability of an alternative remedy in the form of an order for *mandamus* (compelling the performance of a statutory duty), the cost to society of allowing similar litigation (typically funded by taxpayers through legal aid), the potential for indeterminate liability, and the hampering of the effective performance of the system of immigration control. (*See Haj Khalil v Canada (2007) FC 923 at paras 170 and 181*).

109. Goven submits that the decision in *Haj Khalil* precludes *all* future Convention refugees, including the Petitioner, from holding CIC accountable for civil damages incurred as a result of the negligent processing of applications. As stated above, the decision in *Haj Khalil* was made on the basis of: a) a failure to find proximity between the parties because it would constitute an alleged conflict of statutory duties; and b) policy considerations. Neither of these generalized rationales permits a determination of subsequent civil claims, such as Goven's, on the merits.

110. Other claims, for instance, Goven's claim, may be more favourable to a finding of proximity, and may present competing policy considerations that militate in favour of imposing liability. Yet the blanket immunity afforded to CIC officials in *Haj Khalil* has prevented Goven from advancing to a stage of the litigation where he can demonstrate these distinctions. Therefore, Goven suffers a disproportionate restriction of his right of access to court.

111. With regard to proximity, Goven submits that there was a more direct relationship between the parties in his case than in Haj Khalil's. Goven's file was singled out for investigation by SIRC. During this investigation, SIRC conducted an in-depth examination into the way in which Goven's case was being handled by CIC and CSIS. Subsequent to a fifteen-day hearing in 2000, SIRC issued a report finding that

Goven was *not* a threat to Canada. Furthermore, in its report, SIRC advised CIC that Goven should be granted permanent residency, and recommended that CSIS be held accountable for delays caused by its own process. Goven submits that the SIRC investigation placed him in a more direct relationship with CIC and CSIS, particularly as SIRC's report called for direct action and accountability in relation to the handling of Goven's file. In light of SIRC's findings and recommendations, it was reasonable for Goven to expect that CIC would promptly render a favourable determination on his application. The subsequent negative finding by CIC in 2001 and further six year delay in determining Goven's status, occasioned in part by the refusal of CIC to read or take SIRC's report findings into account, constituted an unreasonable delay amounting to negligence on the part of CIC.

112. Furthermore, Goven submits that proximity is not negated by the fact that CIC holds conflicting statutory duties to protect the health and safety of the Canadian public. Canadian courts are adept at calibrating the standard of care required in different situations, and do not hold public bodies to the same standard of care as other individuals. (*Just v British Columbia [1989] 64 DLR (4th) 689*). Recognition of a duty of care would not require CIC to compromise its conflicting statutory duties to the public, as these duties would be factored in when assessing the alleged negligence.

113. Goven claims that CIC's negligence occurred *irrespective* of any potential conflict with its statutory duty to protect public safety. Goven acknowledges that CIC has a statutory duty to conduct security investigations into the backgrounds of permanent residence applicants in order to fulfil its legislative mandate of protecting public safety and maintaining the security of Canadian society (*IRPA s. 3(1)(h)*). However, Goven objects to the negligent manner in which CIC conducted its security investigation of him – unreasonably delaying the process, and failing (or refusing) to take relevant information from the SIRC hearing into account when making its decision. This conduct, Goven submits, was *not* occasioned by CIC's statutory duty to the public.

114. Goven also submits that the policy considerations employed by the Federal Court to negate a duty of care are without merit, and that competing policy considerations easily outweigh them. First, judicial review was not (and is not generally) a comparable remedy, as it could not address the substantive rights violations that Goven suffered. Moreover, judicial review does not provide compensation, even where the ruling is favourable. (In contrast, in the United Kingdom, where courts have refused to recognize a cause of action in similar cases, they have done so in part because there exists alternative recourse to an Ombudsman with the authority of awarding financial compensation.)

115. Second, rather than hampering the effective performance of immigration control, the imposition of a duty of care would improve administrative decision-making and enhance public confidence in the system. Such was the reasoning for imposing a duty of care under similar circumstances by the High Court of Justice, Administrative

Court, in the United Kingdom in *Kanidagli v Secretary for the Home Department ([2004] EWHC 1585 at para 42).* Fourth, the concerns about indeterminate liability are unsubstantiated, as only a very limited category of people are potentially affected – Convention refugees deemed inadmissible on security grounds, and who have suffered losses as a result of negligence by CIC in processing their applications, and who can establish a relationship of proximity.

116. Finally, the concern over anticipated social costs of additional litigation is mitigated by the limited category of claims that might arise. Furthermore, denying redress for wrongs committed by the state on the basis of social costs is injudicious, and violates Goven's right of access to court, as well as his right to an effective remedy. As the High Court of Justice stated in *Kanidgali:* "if the claims are successful, it is only right that compensation should be paid." (*Ibid. at para 42*).

117. The Inter-American Court of Human Rights (IACHR) also guarantees, under Article 8 of the American Convention on Human Rights, the right of access to the courts "without impediments." While this right is not absolute and can be subject to limitations, those limitations have to be proportional to their aim, and must not be extraneous to the reasonable needs of the administration of justice. (*See for example Cantos v Argentina, Merits, reparations and costs, IACHR Series C no 97; IHRL 1480 (IACHR 2002), paras 50 and 54; Case of Tiu Tojín v Guatemala, Merits, reparations and costs, IACHR Series C no 190; IHRL 3302 (IACHR 2008), para 95*).

118. The European Court of Human Rights has similarly recognized, under article 6 of the European Convention of Human Rights, the right of access to court for the determination of civil rights and obligations. The European Court has declared the right of access to the courts in civil matters to be inextricably linked to the rule of law. (*Judgment, Merits and just satisfaction, App no 4451/70; Series A no 18; IHRL 9 (ECHR 1975) at para A(34)*).

119. Goven invites this Committee to consider that the European Court of Human Rights has interpreted the right of access to court under Article 6 to encompass the "right to institute proceedings before courts in civil matters". The European Court has found this right to be violated where the state has offered blanket immunity from civil liability for a government entity on the basis of public policy considerations. (*See, e.g., Golder v UK, Judgment, Merits and just satisfaction, App no 4451/70; Series A no 18; IHRL 9 (ECHR 1975), para A(36) and Osman v United Kingdom, Judgment, merits and just satisfaction, App no 23452/94; ECHR 1998-VIII; IHRL 3148 (ECHR 1998); (2000) 29 EHRR 245, 28 October 1998, paras 150, 151, 152, and 154, 158*).

120. The ECHR distinguishes between cases in which complainants have been denied access to the courts due to claims in negligence disclosing no reasonable causes of action, and cases – like Goven's – in which complainants have been denied access to court due to blanket immunity. The first type of case does not violate Article 6 because it involves the determination, on the basis of substantive tort law principles,

that no basis for the claim exists. The latter type of case, however, *does* infringe Article 6, because the immunity rules preclude any determination of the case on its merits. (*See Z. and Others v United Kingdom, Merits and just satisfaction, App No 29392/95, ECHR 2001-V, IHRL 2901(ECHR 2001), H8-H11; see also TP and KM v United Nations, Merits and Just Satisfaction, App no 28945/95; Reports 2001-V; IHRL 3072 (ECHR 2001), paras 100-102*).

121. The ECHR further recognizes that even when the immunity rule has a public policy purpose, there may be competing public policy considerations that would make the application of the rule inappropriate in some cases. By affording no cause of action at all, however, civil immunity precludes "any consideration of the justice of a particular case" thereby constituting a "disproportionate restriction on the applicant's right of access to a court."(*Osman v United Kingdom at paras 150-151 and 154*).

122. The IACHR similarly recognizes a violation of the right of access to the courts where persons are unduly protected from civil liability. The granting of an amnesty to a government body "obstructs investigation and access to the courts and prevents…victim[s]… from learning the truth and receiving the reparations to which they are entitled." (*Paez v Peru, Reparations and costs, IACHR Series C no 43; IHRL 1426 (IACHR 1998), para 105*).

F.4.b. Access to Court and Effective Remedy (Article 2(3)(a))

123. This Committee has stated that the right to an effective remedy entails the need for reparation and prevention of rights violations. This right to an effective remedy is bound up with states' positive obligations to secure the rights guaranteed under the Convention. The effectiveness of any remedy, therefore, depends on its ability to transcend victim-specific remedies and to actively prevent future violations. In this regard, the Committee has emphasized the need for "appropriate judicial and administrative mechanisms for addressing the claims of rights violations under domestic law." *(General Comment 31 UN Doc. CCPR/C/21/Rev.1/Add.13 (2004) at paras 8, 15-17. For similar statements, see also ECHR jurisprudence: Çaush Driza v. Albania, Application No. 10810/05 (Marh 2011); De Souza Ribeiro v. France, Application No. 22689/07 (June 30, 2011).)*

124. When Canada denied Goven the right to access to court, the state did not offer him any alternative mechanism for advancing his civil claims. Accordingly, Goven has been unable to seek redress for the rights violations and losses that he suffered as a result of CIC officials' negligent processing of his application. As discussed above, the rights violations include: equality and non-discrimination (Article 26); freedom of expression (Article 19(2)); and freedom of association (Article 22); privacy, honour, and reputation (Article 17). As a result, Goven was denied an effective remedy for the violation of his right to access to court.

125. Access to a court to advance Goven's civil action would have fulfilled the two

primary requirements of an effective remedy: reparation and deterrence. With regard to reparations, a civil proceeding would have been an effective means of fully and adequately assessing the harm suffered by Goven in the form of damages. These proceedings can also ensure that compensation is paid. In addition, a civil claim would have provided Goven the opportunity to tell his story and to hold those responsible accountable in a public forum. As for deterrence, the recognition of a cause of action would have helped to prevent similar violations from occurring in the future by removing a blanket immunity on CIC officers, and thereby discouraging negligence and unreasonable delay in the processing of applications for permanent residency. (*See Navi Pillar Factum, at 37*).

126. The American Convention on Human Rights (ACHR) also recognizes the relationship between the right to access to court and the right to an effective remedy. Indeed, the ACHR subsumes the right to an effective remedy under the right to have judicial recourse. Article 25 of the Convention guarantees the right to effective recourse to a competent court or tribunal to redress violations of Convention rights. This includes where persons acting in an official capacity commit the violations. Under Article 25, states must ensure that persons claiming redress have *access* to a competent authority for the determination of their rights. States are also committed to developing both judicial remedies and the processes for enforcement of such remedies. These obligations are connected to the state's obligation to guarantee the full and free exercise of Convention rights. The IACHR has held that "the right to effective recourse to a competent national court or tribunal is one of the fundamental pillars […] of the very rule of law in a democratic society […]." (*See Salvador Chiriboga v Equado*r, *Preliminary objection and merits, IACHR Series C no 179; IHRL 3053 (IACHR 2008), paras 56-58* and *Paez v Peru, Reparations and costs, at paras 27 and 82*).

127. Civil litigation represents a vitally important remedy for human rights violations. The United Nations High Commissioner for Human Rights has emphasized that civil actions provide reparations to victims, including compensation, the "satisfaction victims derive from having the responsibility of the perpetrators recognized by an independent and impartial court," and the ability of a judicial decision to "restore…the dignity, the reputation and the rights of the victim". (Supplemental Brief of Amicus Curiae Navi Pillay, the United Nations High Commissioner for Human Rights in the case of *Esther Kiobel et al v Royal Dutch Petroleum Co., et al* (Supreme Court of the United States: 2012), at 37-38).

F.4.c. Prompt Determination of Civil Rights (Article 14(1)) and Effective Remedy (Article 2(3))

128. Goven's application for permanent residency was unreasonably delayed for 13 years, in violation of his fair trial rights under Article 14(1) of the Convention. Article 14(1) guarantees the right to a fair trial in the determination of rights and obligations in a suit at law. This Committee's jurisprudence has demonstrated that article 14(1) entails the right to equality before the courts, "including the condition

that the procedure before the national tribunals must be conducted expeditiously enough so as not to compromise the principle of fairness." Successful claims must demonstrate: a) that the civil proceeding at issue constituted a suit at law; and b) that the civil proceeding has been unreasonably delayed. (*Pimentel and ors v Philippines, Merits, UN Doc CCPR/C/89/D/1320/2004; IHRL 2844 (UNHRC 2004), para 9.2; see Perterer v Austria, Merits, UN Doc CCPR/C/81/D/1015/2001; IHRL 1862 (UNHRC 2004), para 10.7*).

129. Goven's permanent residency application is a suit at law because it essentially *determines* his domestic civil rights. Goven filed an application for permanent residency in 1993 in order to ensure the full attainment of his civil right to education, work, and free movement. The processing of an application for permanent residency or citizenship constitutes a suit at law where permanent residency or citizenship is a precondition to obtaining civil rights under domestic law.

130. Under Canadian law, permanent residency and citizenship are prerequisites for the full attainment of a host of civil rights, including the right to education, work, and free movement. While refugee status does not entirely preclude an individual from the right to work or to receive an education, it does severely limit the attainability and exercise of these rights.

131. As discussed above, in 1995, because of his refugee status, Goven would have had to pay foreign student fees for his university tuition, and he was not entitled to student loans from the government. Consequently, Goven had to forgo enrollment into engineering programs at the University of Toronto and McGill University. Goven's freedom of movement was also restricted because of his refugee status. While his application was being determined, Goven was unable to travel outside of Canada, as he would not be guaranteed re-entry. Finally, Goven was prevented from gaining meaningful employment, both because of the barriers to accessing professional training and because his social insurance number made his lack of permanent status apparent to any employer in Canada. Employers are understandably reluctant to hire or promote workers they perceive as temporary.

132. In *Czernin v Czech Republic*, this Committee held that the processing of an application for retention of Czech citizenship (in that case, citizenship that was once held but lost during World War II) constituted a suit at law, because the claimant was seeking an application for retention of citizenship as a precondition to regaining his family's property confiscated during the War. In admitting the claim, the Committee declared that "the notion of 'rights and obligations in a suit at law' in article 14(1), applies to disputes related to the right to property." (*See Czernin v Czech Republic, Merits, UN Doc CCPR/C/83/D/823/1998; IHRL 1821 (UNHRC 2005) at paras 3.3 and 6.7*).

133. In *Czernin,* this Committee found that "the inaction of the administrative authorities and the excessive delays in implementing the relevant courts' decisions [to make a proper determination on the complainant's application for retention of

citizenship]" violated article 14(1) in conjunction with article 2(3), which provides for the right to an effective remedy. The delay in that case was ten years from the date of the initial filing of the application.

134. Goven's application for permanent residency was unreasonably delayed for 13 years from the date he filed his application for landing in March 1993. This delay continued despite Goven's numerous attempts to obtain a decision on his application. These attempts, described above, included: formal complaints to CSIS and SIRC in 1997; a hearing by SIRC in 1999, which concluded with a report finding that Goven was not a member of the PKK, and that CIC officials should grant him permanent residency; an application for judicial review in 2001 following CIC's refusal to consider the findings of the SIRC report; and civil suit for damages against the Attorney General of Canada filed in 2005. In addition, Goven has made various informal efforts to obtain a decision on his application, through his counsel, through direct personal efforts, through collaboration with civil society groups, through the media, and through members of Parliament.

135. The delay in rendering a decision on Goven's application for permanent residency was particularly unreasonable following the release of the SIRC report in 2000. As discussed above, CIC rejected Goven's application in 2001. As the favourable decision at Goven's judicial review indicates, CIC's explicit refusal to read or take into account SIRC's findings constituted a procedural injustice such that his application was sent back by the Federal Court for redetermination in 2001. The additional six-year delay resulted from the negligent inaction of CIC and violates his fair trial rights under the Convention.

136. To date, although Goven did eventually receive permanent residency in 2006, Canada has denied him any remedy for this violation of his fair trial rights. Therefore, Canada has also violated Goven's right to an effective remedy, in conjunction with Article 14(1).

F.5. Privacy, Honour and Reputation (Article 17)

137. Article 17 of the *ICCPR* stipulates "(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks."

138. This Committee has stated that any interference with an individual's rights under Article 17 must be in accordance with the law, the aims of the Covenant and reasonable in the circumstances. Legislation permitting interference with this right must "specify in detail the precise circumstances in which such interferences may be permitted." (*Human Rights Committee, General Comment 16, UN CCPR, 32nd Sess at para 4 and 8*).

139. Canada's investigation of Goven for the purposes of his application went beyond

"information gathering." While his application for permanent residence was pending, CSIS and other immigration officials questioned Goven's acquaintances about his involvement with the PKK. Because of these conversations, many in his community suspected that he was linked to terrorism. They feared that an association with him would negatively impact their own applications for permanent residence; he was therefore marginalized in his own community (*Affidavit of Suleyman Goven, at paras 61 and 67*).

140. Canada's agents unjustifiably damaged his honour and reputation when they incorrectly suggested to community members that Goven was a PKK member. CSIS's practice of requesting other members of the Kurdish community in Toronto to provide information on Goven in exchange for expediting their immigration applications created a false perception within that community that Goven was associated with terrorist activities. There was no evidence for CSIS to suspect that Goven was involved in terrorist activities, particularly after his file was reviewed by SIRC and SIRC suggested he be granted permanent residence. (*Affidavit of Suleyman Goven, at paras 42-44, 63*).

141. Goven's honour and reputation remain damaged, despite being granted permanent residence. In 2009, after speaking with some members of his community, Goven came to understand that some of his fellow executive members at the TKCIC may have been influenced by CSIS in actively marginalizing him from the Kurdish community. This interference has caused irreparable damage to Goven's relationships with some of those in his community, and this has caused him significant emotional distress. (*Affidavit of Suleyman Goven, at para 67*).

142. Dr. Devins assessed Goven's psychological functioning again on August 9, 2013. He diagnosed Goven as suffering from posttraumatic stress disorder with dissociative symptoms. Goven continues to experience sleep disturbances, headaches, anger and sadness. He has nightmares involving flashbacks of his October 13, 1994 CSIS interview. He has difficulty concentrating and is often distracted and forgetful. He avoids social exchanges because of his depression and experiences high levels of guilt when he speaks to his mother and brothers in Turkey every two to three months. Dr. Devins report states that Goven "feels trapped and unable to proceed with his life due to the problems he experienced in dealing with the Canadian immigration system." (*Psychological Assessment of Dr. Devins dated August 9, 2013*)

143. In *Sayadi and Vinck v Belgium,* this Committee held that the state is responsible for damage to an individual's honour and reputation when it holds an individual out publicly as a wrongdoer without evidence for that assertion. That case involved the publication of the petitioners' names on a public list of terrorists. This Committee recognized in *Sayadi and Vinck* that when the state is negligent or frivolous in its treatment of terrorism allegations, it will be responsible for the extremely negative public perception of that allegation. (*Sayadi and Vinck v Belgium, Merits, UN Doc CCPR/C/94/D/1472/2006; IHRL 3216 (UNHRC 2008) at para 10.13*).

144. Canada's agents violated Goven's right to non-interference with his honour and reputation. The manner in which the investigation was conducted raised suspicion amongst the members of his community that Goven was a terrorist. There was no evidence to support this suggestion, and he was not officially accused of any wrongdoing. This, in part, caused him to withdraw from his activities and position at the TKCIC. Furthermore, it damaged his business activities with respect to his provision of translation and facilitation services to new Kurdish refugees and immigrants.

145. Furthermore, this interference cannot be justified under the test articulated by this Committee in *General Comment 16* that interference be in accordance with the law, the aims of the Covenant and reasonable in the circumstances. There was no legislation permitting such investigation practices, and in the absence of evidence to support the theory, it was unreasonable to suggest to his community members that he was a terrorist. (*Human Rights Committee, General Comment 16, UN CCPR, 32nd Sess at para 4 and 8*).

146. Canada thus violated Goven's rights under Article 17 of the *ICCPR*. His honour and reputation were and continue to be irreparably damaged. This interference is not justified.

G. RELIEF SOUGHT

G.1. Compensation

147. Goven seeks compensation in money for the delay in processing his permanent residence application. In particular, this delay caused him to be unable to access the student loans necessary to enable him to qualify to practice his profession of engineer in Canada. During the period in which he lacked the permanent residence status necessary to access government student loans, Goven was unable to take up the offer of university places in the engineering programs to which he had applied. This resulted directly in a loss of earnings. It would be possible to calculate these money damages based on the difference between Goven's earning potential as an engineer and his actual income as a translator during the period of the delay.

148. In addition, Goven seeks damages for the mental suffering caused by the multiple breaches of his rights under the ICCPR including equality and non-discrimination (leading to loss of family life because he was precluded from family reunification); privacy, honour and reputation; freedom of expression; and freedom of association (including alienation from his ethnic community within Canada). These violations have caused Goven to suffer from chronic anxiety and depression, as attested by the psychological evidence. (*Psychological Assessment of Dr. Devins dated August 9, 2013*)

G.2. Policy Change

G.2.a Amend IRPA, s. 34(1)(f) definition of membership

149. The security inadmissibility provision based on "membership" in a "terrorist" organization in s. 34(1)(f) of IRPA is unacceptably broad. Section 34(1) of the IRPA provides that:

> A permanent resident or a foreign national is inadmissible on security grounds for:
>
> (a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;
>
> (b) engaging in or instigating the subversion by force of any government;
>
> (c) engaging in terrorism;
>
> (d) being a danger to the security of Canada;
>
> (e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or
>
> (f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).

The provision should be amended to limit "membership" to capture only those individuals whose significant and knowing contribution to violence renders them deserving of inadmissibility to Canada. This would reduce the number of Convention refugees caught in legal limbo while their permanent resident applications are delayed because of security concerns. (*Canadian Council for Refugees, Liberation to Limbo (April 2010) at 25. Online at: http://ccrweb.ca/files/from_liberation_to_limbo.pdf*).

150. To be inadmissible as a "member" of a "terrorist" organization under s. 34(1)(f), IRPA does not require that a person have been directly involved in any violent activity, or even have known that the organization of which he or she was a member committed such acts. Furthermore, there is no temporal limit in the provision so that that a person could be inadmissible on the grounds of membership in an organization even if its period of violent activity did not coincide with the time of that individual's involvement with it. IRPA, s. 34(1)(f) applies to members of "an organization that there are reasonable grounds to believe *engages, has engaged or will engage* in acts referred to in paragraphs (a), (b), or (c)" (emphasis added).

151. CIC's operational manual *Evaluating Inadmissibility* states that "in general, establishing inadmissibility under paragraph s 34(1)(f) does not require that the timing of the person's membership in the organization correspond with the dates on which that organization committed acts of espionage, subversion, subversion by force or terrorism" (*Evaluating Inadmissibility (ENF 2/OP 18) (May 1, 2012) at 22. Online at http://www.cic.gc.ca/english/resources/manuals/enf/enf02-eng.pdf*).

152. The Canadian Security Intelligence Service (CSIS) and the Canada Border Services Agency (CBSA) often rely on "dubious or biased sources" when conducting research into whether an organization should be labelled as "terrorist" and whether an individual is a "member" of such an organization. This problem is particularly acute in the case of organizations involved in liberation movements, such as that of the Kurdish minority in Turkey. (*CCR, From Liberation to Limbo at 21*). The SIRC report on the matter of Goven's complaint under s. 41 of the CSIS Act particularly criticizes CSIS's reliance on "a simple assertion by a human source that someone else is a member of the PKK." The SIRC Report emphasizes that such an assertion should never be treated as "fact," but rather must be recognized to be "an expression of opinion from within a beleaguered community where rumour and gossip inevitably feed on one another." (*SIRC Report at 23*).

153. Moreover, national liberation organizations are also often multi-faceted and may play roles as quasi-states, such that an individual belonging to one such organization could play an entirely non-military or indeed humanitarian role. Indeed, as the Supreme Court of Canada recently recognized, "If the organization is multifaceted or heterogeneous, i.e. one that performs both legitimate and criminal acts, the link between the contribution and the criminal purpose will be more tenuous." (*Ezokola v. Canada (Citizenship and Immigration), 2013 SCC 40*). The SIRC Report points out, "in instances where virtually the entire ethnic community in Canada is reported to support an organization branded as 'terrorist' and its struggle for the cause, [CSIS's] representatives must be expected to distinguish between varying degrees of support for the organization . . . and the nature of [applicants'] membership in the organization." IRPA's purpose is not to exclude from Canada individuals who are politically active nationalists but who are peaceful, law-abiding and non-violent. (*CCR, Refugees and Security, at 7*; *see also SIRC Report at 18 and 23*).

154. Immigration officers have a high level of discretion in applying s. 34 because, following IRPA, s. 33, inadmissibility determinations may be made on the basis of "facts for which there are *reasonable grounds to believe* they have occurred, are occurring, or *may* occur." A more sophisticated analysis framework for decision makers assessing what constitutes membership would help avoid "arbitrary decisions and errors" that affect innocent people like Goven. (*SIRC Report at 21*).

155. Since there is no legislative definition of "member," and because of the low standard of proof required, CIC, CBSA and CSIS tend to interpret the term broadly, and thereby catch individuals such as Goven whose links with an organization may only be tenuous. CIC's operational manual *Evaluating Inadmissibility* (ENF 2) provides extremely broad elements for a definition of "member" (applicable to both security and organized criminality) that includes those "directly, indirectly and peripherally involved with an organization" (at 20). (CCR, *Refugees and Security*, at 8. *Online at http://ccrweb.ca/en/refugees-and-security*. CCR, *Bill C-43, Reducing Fairness for Refugees and permanent residents. A Submission to the House of Commons Standing Committee on Citizenship and Immigration* (26 October 2012) at

3. *Online at http://ccrweb.ca/files/c43_comments-oct-2012.pdf*)

156. Goven's case is illustrative of the problems with s. 34(1)(f): As the SIRC Report points out, CSIS has identified the PKK in Syria and Turkey as a para-military organization. And as SIRC has noted, "membership" in a para-military organization is not conferred lightly and would be "limited to a number of dedicated ideologues . . . intensified with military discipline" (SIRC Report at 23). Yet by the logic of s. 34(1)(f), Goven is captured within the ambit of "membership" because of his association with an organization (the TKCIC) that was suspected of having ties with the PKK (alleged to be funding the PKK or distributing its literature).

157. If s. 34(1)(f) were redrafted to apply more narrowly only to *bona fide* members of organizations who had a personal, direct role in the carrying out or promotion of violent acts, then the provision would be justifiable as a measure designed to protect the national security of Canada. Individuals like Goven or Haj Khalil – and thousands of others – would not spend years in security limbo because it would immediately be clear to immigration officers that the activities of such individuals do not fall within s. 34(1)(f).

158. For instance, in *Ezokola v. Canada (Citizenship and Immigration)* (2013 SCC 40), the Supreme Court of Canada has recently articulated the test to be applied when determining whether to exclude a person from refugee protection under art. 1F(a) of the *Refugee Convention* on the grounds that the individual concerned has "voluntarily made a significant and knowing contribution to a crime or criminal purpose" (at para 91). The factors to be considered include:

(i) The size and nature of the organization;
(ii) The part of the organization with which the claimant was most directly concerned;
(iii) The claimant's duties and activities within the organization;
(iv) The claimant's position or rank in the organization;
(v) The length of time the claimant was in the organization, particularly knowledge of the organization's crime or criminal purpose; and
(vi) The method by which the claimant was recruited and the claimant's opportunity to leave the organization.

IRPA, s. 34(1)(f) could be amended to incorporate these factors for evaluating the nature of membership in an organization. Only those individuals who "voluntarily" make a "significant and knowing contribution" to a terrorist organization and the nature of whose membership reflects this contribution would be rendered inadmissible.

G.2.b. Make permanent residence automatic on granting of protected person or Convention refugee status

159. Canada should grant permanent residence automatically upon a finding by the Immigration and Refugee Board (IRB) that a person is entitled to refugee protection.

The current 3-stage refugee process of assessment of eligibility to make a refugee claim, refugee determination, and application for permanent residence is unnecessary and counterproductive.

160. When a person makes a refugee claim at a Canadian port of entry, CBSA officers first conduct an in-person examination, security screening and criminality checks. At the second stage, when the Refugee Protection Division of IRB makes a determination on a refugee claim found to be eligible at the first stage, the Board member will then apply the exclusion clauses of the Refugee Convention. This is a second opportunity to screen out persons who pose a security threat to Canada. Finally, once a person is determined to be a Convention refugee, he or she can apply for permanent residence by filing a written application. IRPA, s. 21(2) provides that such individuals will become permanent residents provided they are not inadmissible on any of the grounds in s. 34 (security), s. 35 (violating human or international rights), s. 36(1) (serious criminality), s. 37 (organized criminality) or s. 38 (danger to public health). These inadmissibility grounds are virtually identical to the grounds considered at the first stage. Security concerns that have already been satisfactorily addressed at the eligibility and refugee determination stage need not be delved into again at the permanent residence stage.

161. The protracted, duplicative process of refugee determination followed by application for permanent residence is counterproductive in that it delays integration into Canada of future citizens, such as Goven, by preventing them from accessing family reunification and by setting up barriers to meaningful employment. Refugees are precluded from sponsoring their families until they obtain permanent resident status. Employers are often reluctant to hire, train or promote individuals whom they perceive as temporary because of their immigration status. Intense, repeated security questioning also makes individuals feel anxious and oppressed, and alienates them both from their immediate ethnic communities and from wider Canadian society.

162. These problems would be resolved at no risk to national security were Canada to grant permanent residence automatically upon conferral of refugee status by the IRB.

G.2. c. SIRC findings should be binding on CSIS

163. In response to the SIRC Report, CSIS issued comments rebutting each of the Committee's findings. None of the SIRC Report's general or specific recommendations were ever instituted by CSIS. The individual complaint mechanism allowed under s. 41 of the *CSIS Act* that provides for hearing by SIRC is illusory as a remedy to any misconduct on the part of the Service if its findings and recommendations cannot be enforced. In order to make SIRC truly effective as a review body, Canada should therefore make SIRC findings binding on CSIS.

G.2.d. Ombudsperson's office to hear complaints arising from immigration inadmissibility proceedings or allegations

164. Canada should establish an effective, independent ombudsperson's office to hear complaints arising from immigration inadmissibility proceedings and allegations. Such a mechanism would help ensure that the system functions properly and protects individuals whose cases are dealt with incorrectly or unfairly.

165. At present, there are no enforceable public standards for processing of refugee or permanent residence applications, nor is there a formal complaint or review mechanism when timelines become unreasonable. The immigration system has also become increasingly complex since 2003 with the establishment of the additional portfolio of Public Safety Canada and its agency CBSA that, together with Citizenship and Immigration Canada, share responsibility for administering the various provisions of IRPA. This change means that some individuals, such as Goven, whose applications present security concerns, will have their files reviewed by three separate agencies rather than one or even two. This inevitably multiplies the potential for error and delay as files are transferred between departments and between different individuals at different agencies that may have different protocols and interpretations of IRPA and its regulations.

166. The only option available to an individual who seeks to make a complaint regarding a delay in the processing of his or her case by CIC or CBSA is the administrative law remedy of seeking a writ of *mandamus* from the Federal Court to compel CIC to make a decision on the case. This option is costly for the individual concerned and requires the assistance of skilled counsel to access effectively. It may also not be practically available in many cases for the reasons discussed in section E (*Exhaustion of Domestic Remedies*) above. And it does not provide a remedy for unfair treatment.

G.2.e Allowing access to civil remedies

167. Individuals like Goven who have experienced inordinate delay in processing their permanent residence applications should have access to civil remedies and be able to sue in the courts for damages arising from government negligence and inordinate delay. The decision in *Haj Khalil* should not act as a bar against all subsequent claims being decided on their merits.

ALL OF WHICH is respectfully submitted to this Committee on 31 March 2014.

Renu J Mandhane
Barrister & Solicitor

Carmen Cheung
Barrister & Solicitor

per

Andrew Brouwer
Barrister & Solictor