**A Liberal Human Rights Agenda**

(*Remarks prepared for the Western Liberal Youth Meeting, University of Manitoba, Winnipeg, 18 July, 2015*)

by David Matas

It is easy to talk about the value of human rights in the abstract. However, governing is not a theoretical exercise. Governments must address hard issues. I want to suggest a practical ten point human rights agenda which a Liberal government could pursue.

**1. Promote democracy abroad**

Canada needs an agency directed to promoting democracy abroad. We used to have one, Rights and Democracy, and I was on its board. The agency had a number of structural problems. The Board Chair Aurel Braun and I recommended to the Government, both by meeting and in writing, that the agency be ended, something which, in fact, happened. However, something needs to be created to take place.

Democracy means rule by the people, the local people. Rule by the people means not just choosing the government; it also means choosing the framework within which the government is chosen. Unless democracy is indigenous, it is not truly democracy. A democratic structure established from outside is a democratic colonial hybrid, rather than a true democracy. The choice of strategies, techniques, personnel and timing should be the choice of the people in or from the country where democracy is to be developed.

While, by the very nature of the problem we are addressing - countries governed by tyrannies - those choices cannot be made through democratic elections, the citizens of these countries, nonetheless, do have a voice, through expatriate communities and their own democracy promotion activities. That voice should be the first and best source informing Canadian choices.

As for which countries we should address, there are various criteria one can use - for instance, language affinity, geographical proximity, economic ties, historical links, or likelihood of influence. The criterion which accords most with human rights principles is giving first priority to the worst cases. The most grave violators of democratic principles deserve our attention first.

Suppose we were to accept the criterion of picking the worst cases. Obviously, we could not send Canadians into those countries to hold public consultations on democracy promotion. Yet, there are many expatriates from those countries who would have a lot of advice to give.

We need a consultative model. Expatriates from a repressive country do not speak with one voice. Consultations with expatriates would generate a cacophony. Listening to an expatriate community requires assessment, to sort out good advice from bad, the principled from the self-serving. When we consult, we have to know what to make of the consultations. We can do that by relying on Canadians with experience ideally both in the country of interest and in the Canadian democratic experience.

Canadians can and should work in consort with democracy promotion agencies in other countries. The sheer value of avoiding duplication would counsel that. As well, actors in other countries have insights from which we should be doing everything to gain.

As well, as we go about this work, we need to be democratic ourselves. That means that our efforts must be transparent. Our actors must be accountable. Our initiatives should reflect the will of the Canadian people.

Democracy promotion abroad is far from gone for Canada with the ending of Rights and Democracy. There are over two dozen agencies within the Government of Canada or

funded by the Government of Canada operating bits and pieces of democracy promotion abroad, even now that Rights and Democracy has become defunct. Yet, there needs to be an overall agency which can coordinate, cooperate, and set strategies.

## 2. Protect refugees

The legislative provisions allowing for the designation of foreign nationals should be repealed. The law for the non-designated requires for those detained a review after 48 hours, then seven days, then every thirty days. With detention review, an independent tribunal, the Immigration Division of the Immigration and Refugee Board, determines if the detention meets legal standards. Detainees are to be released unless they are a danger to the public, are unlikely to appear for further proceedings or their identity is unknown.

For designated nationals, detention review is less frequent. The first detention review follows 14 days after arrest, and every six months after that. The grounds of release are more restrictive.

The detention provisions apply to children aged sixteen and seventeen as well as to parents of younger children, who can remain in detention even though their children are free.

The law provides for a five year delay from the making of a refugee protection claim to eligibility to apply for permanent residence, as well as the denial of refugee travel documents once granted refugee protection status. The combination of these two provisions means that reunion of designated foreign nationals with non-accompany immediate family members will be impossible for many years whether inside or outside of Canada.

The law also denies to designated foreign nationals an appeal from a rejection of a refugee

protection claim. Error correction offered others by the law becomes impossible for this group.

The law, since its enactment has been applied only once in December, 2012 to thirty individuals who arrived Stanstead Quebec. However, that was one time too many. The law itself should not exist.

### 3. Protect Sri Lankan Tamil refugees

Sri Lanka Tamil refugees have fled from human rights violations in Sri Lanka to countries in the Asia region. The countries in the region to which they have fled are almost entirely not signatories to the Refugee Convention. The Office of the United Nations High Commissioner for Refugees makes refugee determinations. However, refugees, once determined, are left till resettlement in the host states. Mostly those hosts treat refugees poorly. The economic and social rights set out in the Refugee Convention for refugees are mostly not respected.

This mistreatment causes a secondary flight, from countries of proximate refugee to countries of traditional resettlement, with the aid of smugglers. This in turn has created a multilateral effort, through the Bali Process, to coordinate police efforts to stop this smuggling. There needs to be a different multilateral process joining countries of proximate refuge and countries of traditional resettlement to work together to provide protection to the Sri Lankan Tamil refugee population.

The Office of the United Nations High Commissioner for Refugees has been attempting to use the Bali process for that purpose. Using an existing multilateral process is, in some ways, preferable to establishing a new process, because the infrastructure for the existing process is already in place. The trouble though with using the Bali process for refugee

protection is that, while it brings together the relevant governments, the focus of the meetings is policing against smuggling and not protection of refugees. NGOs, civil society, are not part of the process.

Canadian Immigration Minister Jason Kenney said in Parliament in October 2010:

> "we have begun preliminary discussions with our international partners, including Australia, which obviously has a great stake in this issue, and with the United Nations High Commissioner for Refugees to pursue the possibility of some form of regional protection framework in the Southeast Asian region. In part that would entail encouraging the countries now being used as transit points for smuggling and trafficking to offer at least temporary protection to those deemed by the UN in need of protection and then for countries such as Canada to provide, to some extent, reasonable resettlement opportunities for those deemed to be bona fide refugees, which is something we are pursuing."

This effort, to all appearances, in the intervening years, has gone nowhere. Canada is a potential ally of the UNHCR in using the Bali process to create the regional protection framework to which Minister Kenney referred.

To encourage countries in the region to participate in such an effort, traditional resettlement countries are going to have to offer more than just the prospect of more resettlement places. Traditional resettlement countries could and should finance allowances for basic needs for refugees throughout the region.

To stop smuggling, countries of traditional resettlement must foster incentives as well as disincentives. Refugees must be given hope. With hope, they may remain where they are until the hope materializes. Without hope where they are to regularize their situation, either through local integration or resettlement abroad, they all too easily fall prey to

smugglers. Giving hope means in part trying to make the situation for refugees in countries of proximate refuge more palatable.

**4. Protect Iranian refugees in Iraq**

Canada should be offering at least some resettlement places to members of the People's Mujaheedeen of Iran, now located in Camp Liberty Iraq. The PMOI were part of the original revolutionary opposition which deposed the regime of the Shah in 1979. A Bolshevik type takeover of the revolutionary forces by the mullahs under Ayatollah Khomenei led to repression of the PMOI. The organization members fled Iran in 1981 and set up headquarters in Paris, the former haven of the Ayatollah. The French expelled them in 1986; they relocated to Iraq, where Saddam Hussein, in the midst of war with Iran, was happy to offer them refuge.

The Iraqi Al Maliki government which took over after the American invasion had a strong pro-Irani coloration, making Iraq a decidedly less friendly environment for the PMOI. The US led forces in Iraq declared the group protected persons under the Geneva Conventions on the Law of War, and, for their own safety, collected them together in one place, Camp Ashraf, under American protection. At the time, they numbered 3,400. After the Americans forces withdrew from Iraq, the Camp Ashraf residents were left to the tender mercies of the Iraqi forces and their Iranian friends. They became subject to sustained harassment, deprivation of necessities and murderous armed attacks.

The army set up loudspeakers around Camp Ashraf, in the hundreds, on poles, blaring in Farsi threats of imminent death 24/7. The Iraqi government then in 2012 arbitrarily and forcibly relocated the residents from Camp Ashraf, where they had a developed infrastructure, to Camp Liberty a former US military base near the Baghdad airport. The Camp has become, in effect, a poorly maintained prison.

The PMOI cooperated in this relocation on the understanding that it would be a prelude to refugee resettlement, which has not occurred. The residents at Liberty face appalling conditions. Delivery of food, drinking water and medical supplies as well as removal of sewage has been periodically obstructed. In both Camp Ashraf and Camp Liberty, access of residents to legal help as well as visiting family members and foreign Parliamentarians is restricted.

In July 2009, Iraqi forces attacked Camp Ashraf, killing eleven residents and abducting 36. The 36 were released after 72 days, near death. An April 2011 attack left 36 dead and more than 350 injured. In September 2013, Iraqi forces attacked Camp Ashraf, killing fifty two residents. Seven were taken hostage and remain in arbitrary detention at an undisclosed location.

Camp Liberty has also been targeted with missiles on four different occasions, the most recent in December 2013. In total, in the various raids and rocket attacks, Iraqi forces have killed 116 and wounded 1375 out of a population which is now 3,000. The Iraqi regime, after each attack, imposed obstacles to the proper treatment of the wounded. Twenty of the wounded have lost their lives because of lack of timely access to medical care.

The PMOI were at one time armed and attempted the overthrow of the Iranian regime. The PMOI renounced the use of force in 2001 and voluntarily gave up their arms to the invading Americans in 2003. The group had been listed as a terrorist organization by the United States, Canada, and the European Union. It has since been delisted in all these countries, including Canada.

It is perhaps asking too much to expect Canada to resettle all residents of Camp Liberty.

But Canada certainly should take some, if even only a few.

## 5. Combat hate on the internet

Canada needs a law combating hate on the internet. Canada had one, and it was repealed. Because of the problems that the functioning of the law posed, I endorsed its repeal. Here too, my aim and hope was to get something better, not to have no legislation at all on the subject.

The trouble with the repealed provision was that it was too easily abused to harass people who have been exercising legitimately their rights to free speech. The problem was not so much the principles of the laws as their procedures.

The Canadian human rights system prohibiting hate on the internet needs at least these changes to protect it from the abuse we have seen:

i) Human rights commissions and tribunals need to have the power to award costs to the winning side.

ii) The screening and conduct functions of human rights commissions need to be decoupled. Commissions should be screening complaints in every case. They should as well be able to have the power to take ownership of a case, its investigation and pursuit, in selected cases as they see fit. They should not be compelled to assume conduct of every case which as survived screening.

iii) A requirement of consent by the Attorney General should be necessary for commencement of civil incitement to hatred proceedings.

iv) Complaints should be heard in one forum only, not several at once.

v) The legislation should prevent anonymous complaints and require that those who make an accusation be identified to the target of the complaint.

vi) The law must provide that whenever a human rights commission engages an independent expert to advise on a complaint, the identity of the expert and the materials disclosed to the expert must be made available to the parties with an opportunity to respond before the report of the expert is written.

Retiring Liberal Member of Parliament in April 2015 introduced a private member's bill, Bill-671, proposing many of these changes.

## 6. Combat incitement to terrorism

The recent Anti-Terrorist legislation adds to the offence of instruction to carry out a terrorist activity by prohibiting advocacy and promotion of terrorism. Prosecution for this offence, like the criminal prosecution for incitement to hatred, requires the consent of the Attorney General of the province in which the act occurred.

The consent power in the past for incitement to hatred has been used arbitrarily, in the sense that consent is arbitrarily withheld when the offense is clearly made out. The power to consent needs guidelines, which the Attorney General of Canada can propose.

These are guidelines I suggest:

i) Generally consent should be forthcoming if the Office of the Attorney General is satisfied beyond a reasonable doubt that a prosecution will lead to a conviction;

ii) Given the gravity of the offence of terrorism, the exercise of the discretion not to prosecute and therefore not to consent even where the prosecution is satisfied beyond a reasonable doubt that a prosecution will lead to a conviction should be uncommon;

iii) Promotion or advocacy of terrorism includes glorification of terrorism for the purpose of emulation.

iv) For the offence of advocacy or promotion of terrorism to be committed, there need not be a direct linkage between the advocacy or promotion and any specific terrorist act.

v) For the offence to be committed, it is not necessary to establish that a person was in fact encouraged or induced to commit an act of terrorism because of the advocacy or promotion.

## 7. Combat Anti-Zionism

The Government of Canada needs to be more forthright in combating anti-Zionism than it has been. It should change its policy statement posted on the Department of Foreign Affairs and International Trade (DFAIT) website under the heading "Canadian Policy on Key Issues in the Israeli-Palestinian Conflict".

I propose several policy changes:

i) The characterization of the conflict on the DFAIT website as "Israeli-Palestinian conflict" needs changing. The conflict is Israeli-anti-Zionist and not Israeli-Palestinian. Palestinians as much as Jews are victims of this anti-Zionism.

Anti-Zionists incite Palestinians to attack Israel. Israel defends itself. The Palestinians suffer the effects of this effort in self defense.

Anti-Zionists refuse to contemplate resettlement or local integration of Palestinian refugees. Palestinians lead a life of enforced misery, enforced not by Israel but by their anti-Zionist leadership. what Canadian policy needs to say and does not say, is that the road to peace in the Middle East, the key to ending the conflict, is the acceptance of the existence of the State of Israel as the expression of the right to self determination of the Jewish people.

ii) The policy on the DFAIT website that "Canada ... supports the creation of a ... territorially contiguous Palestinian state, as part of a comprehensive, just and lasting peace settlement" should be dropped.

For a Palestinian state to be territorially contiguous, the West Bank and Gaza would have to be territorially contiguous. For the West Bank and Gaza to be territorially contiguous, Israel would have to be territorially discontiguous. There would have to be a corridor consisting of territory now within Israel between the West Bank and Gaza.

The policy of support for territorial contiguity, even in it is amended to refer to Gaza and the West Bank separately, should be abandoned for a second reason: this is not a principle that Canada respects itself. The very existence of Canada, with its present territory, requires violation of the territorial contiguity of the United States, because Canada sits in between Alaska and the rest of the continental United States. Canada should not be calling on others to respect a principle which Canada opposes for itself.

iii) The policy that "Canada also recognizes the Palestine Liberation Organization (PLO) as the principal representative of the Palestinian people" should be dropped. It is inconsistent with democracy to support one particular political party as the principal representative of a

people.

iv) Someone born in Jerusalem, at the very least West Jerusalem, should be allowed to have Jerusalem, Israel as the place of birth in his or her passport. Canada used to allow this before April 1976, for West Jerusalem, but does not any more. Canada should revert to its former policy to allow this to happen and expand that former policy to encompass all of Jerusalem.

v) The DFAIT view that "The settlements ... constitute a serious obstacle to achieving a comprehensive, just and lasting peace" is problematic. This policy should be dropped.

The settlements are not an obstacle to peace, let alone a serious obstacle. It is the objection to the settlements that is a serious obstacle to peace.

The very word "settlements" is an invidious label for what is in reality just Israeli Jews in the neighbourhood. Having Jewish neighbours should not be an obstacle to peace. Refusing to have Jewish neighbours is an obstacle to peace.

There are more Arabs within Israel proper both in absolute numbers and as a percentage of the population than there are Jews in the West Bank. Neither the presence of Arabs in Israel nor the presence of Jews in the West bank in principle should be labelled by the Government of Canada as an obstacle to peace.

vi) The policy that "Canada opposes Israel's construction of the barrier inside the West Bank and East Jerusalem which are occupied territories" is out of touch with both law and reality and needs rewording.

The notion that Israel has no security concerns in the West Bank is farfetched. Jewish

residents in the West Bank are under attack simply because they are Jewish. Their safety is a legitimate concern of the Jewish state.

vii) The website statement that "Every year, resolutions addressing the Arab-Israeli conflict are tabled in the United Nations, such as at the United Nations General Assembly and the Human Rights Council. Canada assesses each resolution on its merits and consistency with our principles" should be changed.

It is blinkered to look at resolutions about Israel at the UN in isolation, divorced from the context in which they are found. Canada should not vote in favour of a resolution merely because the resolution, decontextualized, is meritorious and consistent with Canadian principles.

At the United Nation, resolutions about Israel have become an alternative to negotiations. They are attempts to delegitimize the existence of Israel, to demonize the Jewish state. They manifest a double standard, imposing standards on Israel not imposed on other states. They consume time which would be more properly used to focus on gross human rights violator states. Gross human rights violators vote and speak against Israel as a strategy for avoiding scrutiny for their own behaviour.

The Canadian policy statement elsewhere on the DFAIT website, rightly, expresses concern about "the polemical and repetitive nature of many of the numerous resolutions" on the Arab Israeli conflict. That concern should be reflected in declining to support at the UN even those resolutions on the Arab-Israeli conflict that Canada, in isolation from the UN context, would find meritorious and consistent with Canadian principles.

**8. Promote equal justice for Jewish and Palestinian refugees**

The DFAIT policy that "Canada believes that a just solution to the Palestinian refugee issue is central to a settlement of the Israeli-Palestinian conflict" needs to change to encompass Jewish refugees from Arab countries.

A just solution to the refugee issue, for all refugees created by the conflict, is central to a settlement of the conflict. There were more Jewish refugees from Arab countries than there were Palestinian refugees from Israel. It is one sided to mention only one refugee population.

DFAIT policy refers to "more than four million Palestinian refugees." The four million people the Palestinian Authority designates as refugees are not refugees as that term is understood in international law. The United Nations Relief and Works Agency (UNRWA) has a definition for Palestinian refugees which conflicts in a number of respects with the definition of refugees found in international law.

The number of Palestinian refugees is artificially inflated to include those who are locally integrated, those who have the substantive rights of nationality in the country in which they live, those who have dual nationality, and those who have a durable solution where they are.

The number of four million encompasses former temporary residents of British Mandate Palestine. It includes as well descendants of the original refugee population without reference to whether the descendants meet international law refugee criteria.

The number is further artificially inflated by the refusal of this population to accept resettlement. The commitment of anti-Zionists to maintaining Palestinians as refugees was highlighted when Prime Minister Jean Chrétien in April 2000 and Foreign Affairs Minister John Manley in January 2001 offered to resettle Palestinian refugees in Canada. PLO

spokesman Ahmed Abdel Rahman rejected the Prime Minister's offer. He said: "We reject any kind of settlement of refugees in Arab countries, or in Canada."

John Manley, in response to his offer, was burned in effigy near the West Bank city of Nablus. Hussum Khader, head of the largest Palestinian Fatah militia in Nablus, "If Canada is serious about resettlement you could expect military attacks in Ottawa or Montreal".

The number also, contrary to the international law of refugees, encompasses those who refuse to renounce armed activity as well as those complicit in acts of terrorism. The reference to four million or for that matter any specific number should be dropped.

The Standing Committee on Foreign Affairs and International Development held hearings on the question of recognizing Jewish refugees from the Middle East and North Africa a year ago, in May 2013. One of its recommendations was

> "that the Government of Canada encourage the direct negotiating parties to take into account all refugee populations as part of any just and comprehensive resolution to the Israeli-Palestinian and Arab-Israeli conflicts."

The Government of Canada had reservations about this recommendation on the basis that Israel is negotiating with the Palestinians and not Arab states. Yet, the issue of refugees is central to the peace negotiations with the Palestinians. The notion that there could be peace, even meaningful peace negotiations, without reference to refugees is not tenable. It is impossible to discuss one refugee population without discussing the other.

The Palestinian Authority can not settle financial claims of Jewish refugees from Libya or Egypt or the many other countries whose governments confiscated Jewish property and otherwise victimized their Jewish nationals. The Palestinian Authority can acknowledge the reality of this Jewish refugee population and set up a mechanism and standards for

compensation of both Arab refugees from Israel and Jewish refugees from the West Bank and Gaza which can then be emulated in broader later negotiations between Israel and other countries in the Middle East and North Africa.

## 9. Prevent complicity in foreign organ transplant abuse

There have been three private members bills introduced into Parliament in recent years addressing organ transplant abuse. One was proposed by Borys Wrzesnewskyj, Bill C-500 proposed in February 2008. A second was proposed by Borys Wrzesnewskyj, Bill C-381, in May 2009. A third was proposed by Irwin Cotler, Bill C-561, in December 2013. What these Bills propose should be enacted.

These private members bills propose the creation of a number of distinct offences. All the offences have extraterritorial effect. Canadian citizens and permanent residents are punishable whether the acts are committed inside or outside Canada.

The Bills provide that everyone commits an offence who receives the transplant of an organ removed without the donor's consent and knew or ought to have known that the organ was removed without the donor's consent. A person commits an offence if the person participates in the removal of an organ without the donor's consent.

A second set of offences deals with the sale of organs. There is an offence committed when a person participates in the acquisition of an organ and knew or ought to have known that the organ was acquired as a consequence of a financial transaction.

The proposed laws set up professional reporting requirements. Doctors and nurses must report to the designated Canadian authority the identity of any person examined who has had an organ transplant.

The proposed laws also impact on immigration law. The proposal is to render inadmissible to Canada anyone whom the Minister of Public Safety has reasonable grounds to believe has committed one of the organ transplant offences set out in the proposed legislation.

This proposed legislation was prompted by compelling evidence that prisoners of conscience, primarily practitioners of the spiritually based set of exercises Falun Gong, have been killed in China in the tens of thousands for their organs. While it does not fall within the powers of Canada to prevent foreign transplant abuse in general or the killing of prisoners of conscience in China for their organs in particular, Canada must do what it can not to have any part in this abuse. Enacting the proposed legislation would serve three purposes - showing the victims that Canada is concerned about their plight, telling the perpetrators that Canada will not countenance any complicity in their crimes, and demonstrating to the public that Canada is doing what it can to combat this abuse.

**10. Pursue the investigation into the fate of Raoul Wallenberg**

The Prime Minister of Canada should raise with Russian President Vladimir Putin the case of Raoul Wallenberg. President Roosevelt asked the American Government War Refugee Board to help save the Jews of Hungary from the Holocaust. Because Sweden was neutral during World War II and had an embassy in Hungary, the War Refugee Board asked its representative in Sweden to find a Swede who could work at the Swedish embassy in Budapest to pursue that task. The Swedish representative of the American War Refugee Board, Iver Olsen, had his offices in the same building as an import export firm where Raoul Wallenberg worked, the Central European Trading Company Inc. Wallenberg's boss, Kalman Lauer, recommended Wallenberg and off he went to Budapest.

Between July 9, 1944 when Raoul Wallenberg arrived in Budapest and January 14, 1945,

when he was arrested by the Soviets, in the space of six months, he saved up to 100,000 Hungarian Jews from the Holocaust by using protective Swedish passports and every other means he could. Wallenberg was arrested by the advancing Soviet troops and taken to Moscow on the order of Deputy Defence Minister Nikolai Bulganin. He arrived in Lubianka prison in Moscow on February 6, 1945. He was never heard from again.

Raoul Wallenberg was Canada's first and for almost sixteen years its only honorary citizen. Since 2002 Canada has had a national recognition of Raoul Wallenberg day on January 17 of every year. January 17, 1945 is the day Wallenberg was arrested by the Soviets and disappeared into the gulag.

Raoul Wallenberg research is a matter of urgency because his nieces remain alive today. At some point, all files now in secret archives that shed light on the fate of Raoul Wallenberg will be disclosed. But if that disclosure is fifty or one hundred years from now, his immediate family members, those who knew him before he disappeared, will all be gone. We owe it to his family to expend every effort to determine his fate while they are still alive.

The fate of Raoul Wallenberg is knowable, but not yet known. The primary difficulty in determining the fate of Raoul Wallenberg is the inability of independent researchers to access Russian confidential archives, especially the KGB/FSB and Presidential archives.

Former Canadian Foreign Minister Bill Graham raised the matter with the Russian Minister of Foreign Affairs Igor Ivanov. Foreign Minister Ivanov, in response, offered no more than access to Russian Foreign Affairs archives. Further pursuit of this initiative requires higher level contacts. The Prime Minister of Canada should contact Russian President Vladimir Putin asking him to authorize the access of Canadian government designated researchers to Russian witnesses and closed archives to research the fate of Raoul Wallenberg.

**Conclusion**

There are many human rights issues and I am confident that other people would make other suggestions. The suggestions I offer are certainly not the only human rights issue a Liberal government should pursue. Yet, I suggest each of these recommendations I have made deserves consideration, along with the suggestions others might make.

.....

David Matas is an international human rights lawyer based in Winnipeg, Manitoba, Canada.