



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

Forty-eighth session

7 May–1 June 2012

### Consideration of reports submitted by States parties under article 19 of the Convention

#### Concluding observations of the Committee against Torture

#### Canada

1. The Committee against Torture considered the sixth periodic report of Canada (CAT/C/CAN/6) at its 1076th and 1079th meetings, held on 21 and 22 May 2012 (CAT/C/SR.1076 and 1079), and adopted the following concluding observations at its 1087th and 1088th meetings (CAT/C/SR.1087 and 1088).

#### A. Introduction

2. The Committee welcomes the submission of the sixth periodic report by the State party, which broadly comply with the guidelines on the form and content of periodic reports, but regrets that it was submitted three years late.

3. The Committee welcomes the open dialogue with the interministerial delegation of the State party and its efforts to provide comprehensive responses to issues raised by Committee members during the dialogue. The Committee further commends the State party for the detailed written replies to the list of issues, which was however submitted three months late, just before the dialogue. Such delay prevented the Committee from conducting a careful analysis of the information provided by the State party.

4. The Committee is aware that the State party has a federal structure, but recalls that Canada is a single State under international law and has the obligation to implement the Convention in full at the domestic level.

#### B. Positive aspects

5. The Committee notes the ongoing efforts by the State party to reform its legislation, policies and procedures in areas of relevance to the Convention, including:

(a) The establishment of the Refugee Appeal Division within the independent Immigration and Refugee Board by the 2011 Balanced Refugee Reform Act;

(b) The establishment of the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin (Iacobucci Inquiry), in December 2006;

(c) The establishment of the Ipperwash Priorities and Action Committee by the Ontario Government in 2007 to work on the implementation of the Ipperwash Inquiry Report recommendations;

(d) The establishment of the Provincial Partnership Committee on Missing Persons in Saskatchewan in January 2006; and

(e) The Braidwood Inquiry, initiated by the province of British Columbia in 2008 to examine the case of Robert Dziekanski.

6. The Committee notes with satisfaction the official apology and compensation provided to Maher Arar and his family soon after the release of a report by the Commission of Inquiry into the Actions of Canadian Officials in relation to Maher Arar.

7. The Committee notes with satisfaction the official apology by Royal Canadian Mounted Police to the mother of Robert Dziekanski for the loss of her son.

## **C. Principal subjects of concern and recommendations**

### **Incorporation of the Convention in the domestic legal order**

8. While welcoming the statement made by the delegation that all levels of Canadian governments take seriously their obligations under the Convention, the Committee regrets that Canada has not incorporated all provisions of the Convention into domestic law and that those provisions cannot be argued independently as the basis for a legal claim in courts other than through domestic legal instruments. The Committee is of the view that the incorporation of the Convention into Canadian law would not only be of a symbolic nature but that it would strengthen the protection of persons allowing them to invoke the provisions of the Convention directly before the courts (art. 2).

**The Committee recommends that the State party incorporate all the provisions of the Convention into Canadian law in order to allow persons to invoke it directly in courts, give prominence to the Convention and raise awareness of its provisions among members of the judiciary and the public at large. In particular, the State party should take all necessary steps to ensure that provisions of the Convention that give rise to extraterritorial jurisdiction can be directly applied before domestic courts.**

### **Non-refoulement**

9. The Committee notes the State party's information that the law allowing deportation despite a risk of torture is merely theoretical. However, the fact remains that it is the law in force at present. Therefore, the Committee remains seriously concerned that (art. 3):

(a) Canadian law, including subsection 115(2) of the Immigration and Refugee Protection Act, continues to provide legislative exceptions to the principle of non-refoulement;

(b) The State party continues to engage in deportation, extradition or other removals, in practice, often using security certificates under the Immigration and Refugee Protection Act and occasionally resorting to diplomatic assurances, which could result in violations of the principle of non-refoulement; and

(c) Insufficient information is provided in relation to investigations into all allegations of violation of article 3 of the Convention, remedies provided to victims and measures taken to guarantee effective post-return monitoring arrangements.

**Recalling its previous recommendation (CAT/C/CR/34/CAN, paras. 5 (a) and (b)), the Committee urges the State party to amend relevant laws, including the Immigration and Refugee Protection Act, with a view to unconditionally respecting the absolute principle of non-refoulement in accordance with article 3 of the Convention, and take all necessary measures to fully implement it in practice in all circumstances. Furthermore, the State party should refrain from the use of diplomatic assurances as a means of returning a person to another country where there are substantial grounds for believing that he would be in danger of being subjected to torture.**

10. The Committee regrets the State party's failure to comply in every instance with the Committee's decisions under article 22 of the Convention and requests for interim measures of protection, particularly in cases involving deportation and extradition (with reference to communications Nos. 258/2004, *Dadar v. Canada*, and 297/2006, *Sogi v. Canada*), might undermine its commitment to the Convention. The Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the procedure of individual complaints established thereunder. Consequently, the Committee considers that, by deporting complainants despite the Committee's decisions or requests for interim measures, the State party has committed a breach of its obligations under articles 3 and 22 of the Convention (arts. 3 and 22).

**The State party should fully cooperate with the Committee, in particular by respecting in every instance its decisions and requests for interim measures. The Committee recommends the State party review its policy in this respect, by considering requests for interim measures in good faith and in accordance with its obligations under articles 3 and 22 of the Convention.**

11. While noting the State party's statement that the Canadian Forces assessed the risk of torture or ill-treatment before transferring a detainee into Afghan custody (CAT/C/CAN/Q/6/Add.1, para. 155), the Committee is concerned about several reports that some prisoners transferred by Canadian Forces in Afghanistan into the custody of other countries have experienced torture and ill-treatment (art. 3).

**The State party should adopt a policy for future military operations that clearly prohibits the prisoner transfers to another country when there are substantial grounds for believing that he or she would be in danger of being subjected to torture and recognizes that diplomatic assurances and monitoring arrangements will not be relied upon to justify transfers when such substantial risk of torture exists.**

#### **Security certificates under the Immigration and Refugee Protection Act**

12. While taking note of the system of special advocates introduced by the amended Immigration and Refugee Protection Act in response to concerns raised by different actors and the judgement by the Supreme Court in the case of *Charkaoui v. Canada*, the Committee remains concerned that (arts. 2, 3, 15 and 16):

- (a) Special advocates have very limited ability to conduct cross-examinations or to seek evidence independently;
- (b) Individuals subject to security certificates have access to a summary of confidential materials concerning them and cannot directly discuss full content with the special advocates. Accordingly, the advocates cannot properly know the case against them or make full answer or defence in violation of the fundamental principles of justice and due process;
- (c) The length of this detention without charge is indeterminate and some individuals are detained for prolonged periods; and

(d) Information obtained by torture has been reportedly used to form the basis of security certificates, as evidenced by the case of Hassan Almrei.

**The Committee recommends that the State party reconsider its policy of using administrative detention and immigration legislation to detain and remove non-citizens on the ground of national security, inter alia, by extensively reviewing the use of the security certificates and ensuring the prohibition of the use of information obtained by torture, in line with relevant domestic and international law. In that regard, the State party should implement the outstanding recommendations made by the Working Group on Arbitrary Detention following its mission to Canada in 2005, in particular that detention of terrorism suspects be imposed in the framework of criminal procedure and in accordance with the corresponding safeguards enshrined in the relevant international law (E/CN.4/2006/7/Add.2, para. 92).**

#### **Immigration detention**

13. While noting the State party's need for a legal reform to combat human smuggling, the Committee is deeply concerned about Bill C-31 (the Protecting Canada's Immigration System Act), given that, with its excessive Ministerial discretion, this Act would (arts. 2, 3, 11 and 16):

- (a) Introduce mandatory detention for individuals who enter irregularly the State party's territory; and
- (b) Exclude "irregular arrivals" and individuals who are nationals of designated "safe" countries from having an appeal hearing of a rejected refugee claim. This increases the risk that those individuals will be subject to refoulement.

**The Committee recommends the State party to modify Bill C-31, in particular its provisions regulating mandatory detention and denial of appeal rights, given the potential violation of rights protected by the Convention. Furthermore, the State party should ensure that:**

- (a) Detention is used as a measure of last resort, a reasonable time limit for detention is set, and non-custodial measures and alternatives to detention are made available to persons in immigration detention; and
- (b) All refugee claimants are provided with access to a full appeal hearing before the Refugee Appeal Division.

#### **Universal jurisdiction**

14. The Committee notes with interest that any person present in the State party's territory who is suspected of having committed acts of torture may be prosecuted and tried in the State party under the Criminal Code and the Crimes against Humanity and War Crimes Act. However, the very low number of prosecutions for war crimes and crimes against humanity, including torture offences, under the aforementioned laws raises issues with respect to the State party's policy in exercising universal jurisdiction. The Committee is also concerned about numerous and continuous reports that the State party's policy of resorting to immigration processes to remove or expel perpetrators from its territory rather than subjecting them to the criminal process creates actual or potential loopholes for impunity. According to reports before the Committee, a number of individuals who are allegedly responsible for torture and other crimes under international law have been expelled and not faced justice in their countries of origin. In that regard, the Committee notes with regret the recent initiative to publicize the names and faces of 30 individuals living in Canada who had been found inadmissible to Canada on grounds they may have been responsible for war crimes or crimes against humanity. If they are apprehended and deported, they may escape justice and remain unpunished (arts. 5, 7 and 8).

**The Committee recommends that the State party take all necessary measures with a view to ensuring the exercise of the universal jurisdiction over persons responsible for acts of torture, including foreign perpetrators who are temporarily present in Canada, in accordance with article 5 of the Convention. The State party should enhance its efforts, including through increased resources, to ensure that the “no safe haven” policy prioritizes criminal or extradition proceedings over deportation and removal under immigration processes.**

#### **Civil redress and state immunity**

15. The Committee remains concerned at the lack of effective measures to provide redress, including compensation, through civil jurisdiction to all victims of torture, mainly due to the restrictions under provisions of the State Immunity Act (art. 14).

**The State party should ensure that all victims of torture are able to access remedy and obtain redress, wherever acts of torture occurred and regardless of the nationality of the perpetrator or victim. In this regard, it should consider amending the State Immunity Act to remove obstacles to redress for all victims of torture.**

#### **Torture and ill-treatment of Canadians detained abroad**

16. The Committee is seriously concerned at the apparent reluctance on part of the State party to protect rights of all Canadians detained in other countries, by comparison with the case of Maher Arar. The Committee is in particular concerned at (arts. 2, 5, 11 and 14):

(a) The State party’s refusal to offer an official apology and compensation to the three Canadians despite the findings of the Iacobucci Inquiry. Their cases are similar to the case of Arar, in the sense that all of them were subjected to torture abroad and the Canadian officials were complicit in the violation of their rights;

(b) Canadian officials’ complicity in the human rights violation of Omar Khadr while detained at Guantánamo Bay (*Canada (Prime Minister) v. Khadr*, 2010 SCC 3; and *Canada (Justice) v. Khadr*, 2008 SCC 28) and the delay in approving his request to be transferred to serve the balance of his sentence in Canada.

**In the light of the findings of the Iacobucci Inquiry, the Committee recommends that the State party take immediate steps to ensure that Abdullah Almalki, Ahmad Abou Elmaati and Muayyed Nureddin receive redress, including adequate compensation and rehabilitation. Furthermore, the Committee urges the State party to promptly approve Omar Khadr’s transfer application and ensure that he receives appropriate redress for human rights violations that the Canadian Supreme Court has ruled he experienced.**

#### **Intelligence information obtained by torture**

17. While taking note of the State party’s national security priorities, the Committee expresses its serious concern about the Ministerial Direction to the Canadian Security Intelligence Service (CSIS), which could result in violations of article 15 of the Convention in the sense that it allows intelligence information that may have been derived through mistreatment by foreign States to be used within Canada; and allows CSIS to share information with foreign agencies even when doing so poses a serious risk of torture, in exceptional cases involving threats to public safety, in contravention to recommendation 14 from the Arar Inquiry (arts. 2, 10, 15 and 16).

**The Committee recommends that the State party modify the Ministerial Direction to CSIS to bring it in line with Canada’s obligations under the Convention. The State party should strengthen its provision of training on the absolute prohibition of torture in the context of the activities of intelligence services.**

### **Oversight mechanism over security and intelligence operations**

18. The Committee is concerned about the lack of information on measures taken by the State party to implement proposals made in the Policy Report from the Arar Inquiry for a model of comprehensive review and oversight of law enforcement and security agencies involved in national security activities (arts. 2, 12, 13 and 16).

#### **The Committee recommends that the State party:**

- (a) Examine options for modernizing and strengthening national security review framework in a more timely and transparent manner;
- (b) Consider urgently implementing the model for oversight of agencies involved in national security agencies, proposed by the Arar Inquiry; and
- (c) Inform the Committee of changes made with regard to oversight mechanism over security and intelligence operations in the next periodic report.

### **Detention conditions**

19. While noting a Transformation Agenda launched by the Correctional Service of Canada with a view to improving its operations, the Committee remains concerned at (arts. 2, 11 and 16):

- (a) The inadequate infrastructure of detention facilities to deal with the rising and complex needs of prisoners, in particular those with mental illness;
- (b) Incidents of inter-prisoner violence and in-custody deaths resulting from high-risk lifestyles such as abuse of drugs and alcohol, which, as acknowledged by the delegation, still circulate in places of detention; and
- (c) The use of solitary confinement, in the forms of disciplinary and administrative segregation, often extensively prolonged, even for persons with mental illness.

**The State party should take all necessary measures to ensure that detention conditions in all places of deprivation of liberty are in conformity with the Standard Minimum Rules for the Treatment of Prisoners. It should, inter alia:**

- (a) Strengthen its efforts to adopt effective measures to improve material conditions in prisons, reduce the current overcrowding, properly meet the basic needs of all persons deprived of their liberty and eliminate drugs;
- (b) Increase the capacity of treatment centres for prisoners with intermediate and acute mental health issues;
- (c) Limit the use of solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review; and
- (d) Abolish the use of solitary confinement for persons with serious or acute mental illness.

### **Violence against women**

20. While noting several measures taken by the federal and provincial governments to combat high violence against Aboriginal women and girls, including cases of murders and disappearances (CAT/C/CAN/Q/6/Add.1, paras. 76 ff), the Committee is concerned about ongoing reports that: (a) marginalized women, in particular Aboriginal women, experience disproportionately high levels of life-threatening forms of violence, spousal homicides and enforced disappearances; and (b) the State party failed to promptly and effectively investigate, prosecute and punish perpetrators or provide adequate protection for victims.

Furthermore, the Committee regrets the statement by the delegation that the issues on violence against women fall more squarely within other bodies' mandate and recalls that the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in acts of torture or ill-treatment committed by non-State officials or private actors (arts. 2, 12, 13 and 16).

**The State party should strengthen its efforts to exercise due diligence to intervene to stop, sanction acts of torture or ill-treatment committed by non-State officials or private actors, and provide remedies to victims. The Committee recommends that the State party enhance its efforts to end all forms of violence against aboriginal women and girls by, inter alia, developing a coordinated and comprehensive national plan of action, in close cooperation with aboriginal women's organizations, which includes measures to ensure impartial and timely investigation, prosecution, conviction and sanction of those responsible for disappearances and murder of aboriginal women, and to promptly implement relevant recommendations made by national and international bodies in that regard, including the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, and the Missing Women Working Group.**

#### **Conducted energy weapons**

21. The Committee notes the various initiatives taken by the State party to introduced greater accountability and more restricted standards to govern use of conducted energy weapons, including national guidelines issued by the Federal Government in 2010. However, it remains concerned at reports about the lack of consistent and coherent standards applicable to all policing forces at federal and provincial level and the unclear legal framework for the testing and approval for use of new forms of such weapons by police forces in Canada. Furthermore, the Committee regrets that the national guidelines are not binding and do not establish a consistent and sufficiently high threshold to govern the use of such weapons across the country (arts. 2 and 16).

**Taking into consideration the lethal and dangerous impact of conducted energy weapons on the physical and mental state of targeted persons, which may violate articles 2 and 16 of the Convention, the Committee recommends the State party to ensure that such weapons are used exclusively in extreme and limited situations. The State party should revise the regulations governing the use of such weapons, including the national guidelines, with a view to establishing a high threshold for the use of them and adopting a legislative framework to govern the testing and approval for use of all weapons used by law enforcement personnel. Furthermore, the State party should consider relinquishing the use of such conducted energy weapons as "tasers".**

#### **Police crowd-control methods**

22. The Committee is concerned about reports on the excessive use of force by law enforcement officers often in the context of crowd control at federal and provincial levels, with particular reference to indigenous land-related protests at Ipperwash and Tyendinaga as well as the G8 and G20 protests. The Committee is particularly concerned about reports of severe crowd control methods and inhumane prison conditions in the temporary detention centres (arts. 11 and 16).

**The Committee recommends that the State party strengthen its efforts to ensure that all allegations of ill-treatment and excessive use of force by the police are promptly and impartially investigated by an independent body and those responsible for such violation are prosecuted and punished with appropriate penalties. Furthermore, the State party and the government of the Province of Ontario should conduct an inquiry**

**into the Ontario Provincial Police's handling of incidents at Tyendinaga and into all aspects of the policing and security operations at the G8 and G20 Summits.**

**Data collection**

23. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill treatment by law enforcement, security, military and prison personnel, and on extrajudicial killings, enforced disappearances, trafficking and domestic and sexual violence.

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention obligations at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, detention conditions, abuse by public officials, administrative detention, trafficking and domestic and sexual violence and on means of redress, including compensation and rehabilitation, provided to the victims.**

24. The Committee recommends that the State party strengthen its cooperation with United Nations human rights mechanisms and its efforts in implementing their recommendations. The State party should take further steps in ensuring a well-coordinated, transparent and publicly accessible approach to overseeing implementation of Canadian obligations under the United Nations human rights mechanisms, including the Convention.

25. In the light of the State party's pledges to the Human Rights Council in 2006 and its acceptance of recommendations by the Working Group on the Universal Periodic Review (A/HRC/11/17, para. 86 (2)), the Committee urges the State party to accelerate the current domestic discussions and to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible.

26. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

27. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

28. The State party is invited to update its common core document (HRI/CORE/1/Add.91), in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

29. The Committee requests the State party to provide, by 1 June 2013, follow-up information in response to the Committee's recommendations related to: (a) ensuring or strengthening legal safeguards for detainees; (b) conducting, prompt, impartial and effective investigations; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 12, 13, 16 and 17 of the present document.

30. The State party is invited to submit its next report, which will be the seventh periodic report, by 1 June 2016. To that purpose, the Committee invites the State party to accept, by 1 June 2013, to report under its optional reporting procedure, consisting in the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the periodic report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.

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