

**Securing a Commitment to Human Rights
In Canada's Security Laws and Practices**

**Opening Submissions of
Amnesty International Canada**

***To the Commission of Inquiry into the
Actions of Canadian Officials in
relation to Maher Arar***

June 14, 2004

**Global Context and Global Opportunity:
The Inquiry Should Strive to Strengthen International Human Rights Protection**

The *Commission of Inquiry into the Actions of Canadian Officials in relation to Maher Arar* (hereafter “the Inquiry”) opens at a time when the international community faces some stark and troubling realities about human rights. Over the course of the close to three years since the devastating attacks of September 11th the world has grappled with the impact and consequences of a new security paradigm. Without a doubt the attacks that day, and other violent incidents of terrorism such as the bombings in Bali and Madrid, and ongoing suicide attacks in Israel, the Occupied Territories and the Palestinian Authority, constitute grave assaults on basic human rights. At the same time, Amnesty International is deeply concerned that the counter-terrorism response of governments around the world has further imperiled fundamental human rights and freedoms. Governments have directly asserted or indirectly implied that the imperative of fighting against “terrorism” requires a new understanding of human rights, and that it should be considered legitimate to infringe some rights in the name of bolstering security.

In this climate, some governments have exploited the rhetoric of security as an excuse for intensifying campaigns of persecution directed at political opponents, minority groups and civil society. Amnesty International has pointed to this concern in countries on every continent, from China to Colombia, and Israel to Zimbabwe. Some governments have willingly set aside universal human rights protections and the rule of law in the course of adopting new security laws and practices. That concern has received considerable attention, for example, with regard to the United States, including the failure to comply with international law at Guantánamo Bay and the systematic torture that has taken place at the Abu Ghraib detention center in Iraq. Millions of individuals around the world have spoken out about these very worrying developments and demanded that human rights not be sold short. At the same time, much of the general public has been complacent, as hard-won universal human rights safeguards have been eroded.

Maher Arar’s case dramatically illustrates that there is a very real and very heavy potential human cost at the centre of this debate about security and human rights. It is not about abstraction and theoretical possibilities. Amnesty International, United Nations human rights experts and countless international and national-level human rights organizations have sought to remind governments and the public that human rights do not stand in the way of achieving real global security. Rather, human rights stand at the very heart of doing so. If anything, the insecurity that has preoccupied the international geo-political agenda over the past three years must become a catalyst for reinforcing and strengthening the global human rights system like never before. .

The international human rights system was developed by governments in the wake of the shock and horror of World War II. Those governments were only too aware of the fragile state of their own citizens’ security and the devastating degree to which that security could be suddenly and brutally shattered. The declarations and treaties that have been elaborated in the decades since that time therefore carefully consider and incorporate recognition of the responsibility governments bear to provide security. The human rights

system itself relies upon there being a foundation of security, without which the enjoyment of those rights will inevitably remain a fragile illusion.

Some rights, therefore, are expressly formulated in terms that allow for some restriction. This is the case, for example, with the right to freedom of expression, which can be narrowly limited if necessary “for the protection of national security.”¹ Other rights are formulated in absolute terms but may be subject to a more general provision allowing for exceptional, time-limited derogation in times of an officially proclaimed “public emergency which threatens the life of the nation.”² That is so, for instance, with the right to liberty and security of the person. And there are a number of human rights which governments have recognized to be so central to the notion of human dignity that lies at the core of universal human rights that they can never be restricted or subjected to derogation. The prohibition of torture is one such right.³

This is a framework that understands security and lays out the means of achieving it. Undermining and ignoring these safeguards, be it in countenancing torture, promoting discrimination, or locking people up without trial, is not about strengthening security, it is simply about weakening human rights.⁴

This Commission of Inquiry must examine closely the human rights consequences of Canada’s security laws and practices, on their own terms and the manner in which those laws and practices intersect with and rely upon the laws and practices of other countries. In Mr. Arar’s situation, and more generally, have those laws or practices in any way facilitated the commission of human rights violations? While the evidence and legal provisions under consideration clearly arise in a Canadian context, Amnesty International highlights that the work of this Commission of Inquiry will be of tremendous significance around the world. To our knowledge, this is the first time that a government has launched an independent review that examines the concern about post-September 11th security practices leading to human rights abuses. The lessons learned could go far in addressing that issue in many other countries and may provide recommendations that should be taken up in multilateral fora as well. Amnesty International urges you, Commissioner O’Connor, to approach your work with this wider global perspective in mind.

Major Themes

It is Amnesty International’s submission that in order to address the crucial contextual reality described above the Commission of Inquiry should actively explore evidence with respect to the following seven themes.

¹ International Covenant on Civil and Political Rights, article 19(3)(b).

² *Ibid*, article 4(1).

³ *Ibid*, article 4(2).

⁴ There are two major international human rights treaties of particular significance in this case. The first, the International Covenant on Civil and Political Rights (ICCPR) has been ratified by each of Canada, Jordan, Syria and the United States. The second, the Convention against Torture, has been ratified by all but Syria. Notably though Syria is still subject to the absolute ban on torture by virtue of its ratification of the ICCPR.

i) Truth and Accountability for Maher Arar

Last year, following his release from jail and return to Canada, Mr. Arar provided the nation with detailed testimony about what happened to him over the course of over one year in detention in the United States, Jordan and Syria. He described treatment that directly violated a wide range of his basic human rights, including the rights to be free from torture, cruel treatment, discrimination, arbitrary arrest and arbitrary imprisonment, as well as his right to have consular assistance while in detention. He forcefully underscored the importance for him of understanding how and why that happened. He indicated that he wants those answers because of his desire for justice for himself and his family. He also indicated he wants those answers to guard against this happening to others. Amnesty International underscores how important it is, Commissioner O'Connor, that you probe deeply in seeking the answers to Mr. Arar's fundamentally important questions. It is his right to know the truth.

Beyond uncovering the truth about what happened to Mr. Arar, Amnesty International urges the Inquiry to carry out its work in a manner that ensures justice and accountability. International and national human rights law requires governments to ensure a remedy for human rights violations.⁵ As such, recommendations as to appropriate compensation for the harm Mr. Arar has experienced, as well as advice as to whether discipline or criminal prosecution of particular individuals is warranted should be included in the final report.

There are many dimensions to the question of Canada's role in Mr. Arar's situation. Six which Amnesty International considers to be of substantial importance are described below.

ii) Canada's Role Should be Examined Widely and in Depth

The Terms of Reference for this Commission of Inquiry focus on the role of Canadian officials in Mr. Arar's case. Amnesty International submits that it is important to consider that role across government - including the Canadian Security Intelligence Service (CSIS), the Royal Canadian Mounted Police (RCMP), the Department of Foreign Affairs, and the Prime Minister's Office – and at all levels of government, from the Prime Minister through to officials who were involved in the case on an operational basis.

⁵ “[A]ny person whose rights or freedoms as herein recognized are violated shall have an effective remedy...”, International Covenant on Civil and Political Rights, article 2(3)(a); “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation...”, United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 14(1); “Every official, or every person acting at the instigation of or with the consent or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years”, Criminal Code of Canada, section 269.1.

Amnesty International also stresses that the proceedings should look at Canada's role in a wide sense. What actions were taken by Canadian officials, including by virtue of sharing information or encouraging other governments to take certain actions that may have contributed to violations of Mr. Arar's human rights? But also, were there instances in which a failure to act contributed to human rights violations, such as the possibility that some officials knew that his rendition to Syria was a likelihood yet did not intervene to forestall that from occurring?

This latter point is vitally important. This inquiry should not only look at action taken, but also the issue of knowledge. It is critical, in looking at Canada's role, to understand what information was known to Canadian officials at what time and whether it was appropriately shared across government. This is particularly so with respect to knowledge about two matters:

- the decision in the United States to detain Mr. Arar and the subsequent related decision to send him to Syria; and
- the fact that Mr. Arar was being interrogated in detention in Syria and very likely experiencing torture in the course of those interrogations.

The Inquiry has the mandate and authority to look at the actions of Canadian officials. There were of course other governments involved, namely the United States and Syria, and to a lesser extent Jordan. Amnesty International urges the Inquiry to seek as much information as possible about the role played by officials of those other governments. That is an integral part of understanding the actions taken by Canadian officials. Efforts should be made to obtain that information directly from those governments, including through witnesses and documents from those countries. In addition, Canadian witnesses and documents should be examined closely in an effort to garner as much information as possible about the role of other governments.

iii) The Importance of Examining Related and Similar Cases

Three other Canadian citizens who have also recently been detained in Syria and who allege that they were tortured while in detention, sought standing in front of this Commission of Inquiry: Muayyed Nureddin, Ahmad Abou El-Maati and Abdullah Almalki. While they were not granted standing, Amnesty International urges that they be brought before the Commission of Inquiry as witnesses and that their evidence be closely examined.⁶

Mr. El-Maati and Mr. Almalki's cases have been linked to Mr. Arar's and their evidence will obviously be of substantial probative value in developing a full understanding of what happened to Mr. Arar. Commissioner O'Connor's Ruling on Standing and Funding of May 4, 2004 indicates an intention to call them as witnesses. Amnesty International strongly encourages that that happen.

⁶ Which in Mr. Almalki's case will likely only be possible if and when he is able to return to Canada.

While there is no apparent link between Mr. Arar and Mr. Nureddin, it is telling that these two men, who it appears have never met, were held in the same detention centre in Damascus, Syria (not at the same time) and provide information about conditions, treatment and officials in that detention centre, including alleged torturers, that is consistent and corroborative. Amnesty International has had the opportunity to hear directly from both Mr. Arar and Mr. Nureddin about their experiences and is of the view that Mr. Nureddin's testimony is of essential importance in considering the possibility that what happened to Mr. Arar might have been part of a wider practice.

iv) Canada's Intelligence Sharing Practices

It is evident that information of some description about Mr. Arar was shared between and among a number of governments. Canadian officials almost certainly provided information to the United States and received information from Syria. The extent of the intelligence sharing and the number of governments involved remains unknown. Clearly intelligence sharing is a necessary intergovernmental function in today's world. Among other benefits, effective and reliable intelligence sharing can help to prevent human rights violations and identify the whereabouts of suspected perpetrators of human rights violations.

It is essential, though, that intelligence be shared in ways that guard against human rights violations. Amnesty International urges this Commission of Inquiry to examine the ways in which intelligence was shared by and with Canadian officials in Mr. Arar's case to determine whether there were adequate human rights safeguards in place. This should include an assessment of the nature of the information shared: for instance was uncorroborated or speculative information shared which may have led other governments to draw unwarranted conclusions about Mr. Arar which led to the human rights violations he experienced. This should also include an assessment of the human rights record of countries with which information was shared: for instance what is Canada's policy regarding intelligence sharing with a country like Syria where the prevalence of torture in detention has been well documented by Amnesty International and by the U.S. Department of State.⁷

v) The Understanding of and Commitment to Canada's Absolute Obligation to Prohibit Torture

Amnesty International considers it to be vitally important that this Commission of Inquiry serve to unequivocally remind the Canadian government of its binding obligation to

⁷ In the Amnesty International Annual Report released in May 2002 (four months before Mr. Arar was arrested in the United States and sent to Syria), the concern about torture in Syria is succinctly described: "Torture and ill-treatment continued to be inflicted routinely on political prisoners, especially during incommunicado detention at the Palestine Branch and Military Interrogation Branch detention centres." The U.S. Department of State Country Report on Human Rights Practices for Syria, released in March 2002, noted that: "Although torture occurs in prisons, torture is most likely to occur while detainees are being held at one of the many detention centers run by the various security services throughout the country, and particularly while the authorities are attempting to extract a confession or information regarding an alleged crime or alleged accomplices."

prohibit torture. In the wake of the disturbing images of torture from the Abu Ghraib detention centre, the international community's concern about the continuing prevalence of torture around the world has intensified. A timely report from this inquiry, reaffirming that governments carry a broad responsibility to combat torture, would make a valuable contribution to the ongoing global struggle to eradicate torture.

Canada's obligation is not limited to ensuring that torture does not happen in Canadian jails. It includes an obligation to prohibit complicity in torture.⁸ Complicity is the troubling unanswered question that has always lingered in Maher Arar's case. Who within the Canadian government knew what about torture and when?

There a number of elements related to the broad concern about complicity, all of which should be examined closely in the course of the inquiry proceedings:

- At the outset, who within the Canadian and/or U.S. government knew or ought to have known that Mr. Arar faced a serious risk of torture if sent to Syria?
- While Mr. Arar was in detention in Syria, who knew or ought to have known that he was being subjected to torture?
- If and when information from the interrogation sessions Mr. Arar underwent in Syria made its way back to Canadian law enforcement and/or security agencies, who knew or ought to have known that those sessions were tainted by torture?
- Following Mr. Arar's release and return to Canada it appears that information from his file, including information from those interrogation sessions, was leaked to the media. Who felt it was appropriate to publicly leak information that they knew or ought to have known was obtained under torture?

vi) Canada's Diplomatic and Consular Practices

While in detention in the United States and in Syria, Mr. Arar and his family relied in large part on the efforts of the Canadian government to safeguard his basic rights and secure his release. Those efforts were overseen by officials within the Department of Foreign Affairs' Consular Affairs Bureau. Throughout the year that Mr. Arar spent in custody there was considerable public debate about the approach taken by Canadian officials, often termed one of "quiet diplomacy." The public debate was often framed as being between two opposite extremes, quiet diplomacy on one end, and loud, angry diplomacy on the other. Amnesty International is of the view that the best strategy for protecting the human rights of any detainee almost always lies in the middle of these two extremes, involving a mix of quiet and public approaches to the government concerned. This inquiry should seek information from government officials as to the nature of the

⁸ The UN Convention against Torture requires Canada to criminally prohibit torture, including complicity in torture, article 4(1): "Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture."

strategy that was used in this case and should assess whether the decisions that were made about that strategy were made for the right reasons.

While Mr. Arar was still in detention, his family, Amnesty International, and many other groups and individuals frequently pressed Canada to exert pressure on the U.S. government to intervene in a positive and forceful manner with Syrian authorities. Canada appeared reluctant to press that request with U.S. officials. That is a point that should be examined more closely.

Another issue that arose while Mr. Arar was in detention was the need for the Canadian government to speak with one, unified voice about his case. It was often apparent that Foreign Affairs officials were prepared to press harder than they did, and were held back by officials within CSIS and/or the RCMP. This issue of effective coordination across government in safeguarding the rights of a Canadian detained abroad should also be examined more closely.

Finally, it was of grave concern that Canadian officials were never allowed a private consular visit with Mr. Arar while he was in detention. All of those visits were conducted with the presence of Syrian officials. This made it impossible for a conclusive assessment to be made of whether Mr. Arar was being tortured or mistreated. International law gives Canada the right to visit Canadian nationals detained in a foreign country, but is silent as to whether or not those visits are to be in private.⁹ Syrian officials stressed that they did not consider the right to consular visits to be applicable in Mr. Arar's case because he was also a Syrian citizen, by virtue of his birth in that country. They indicated that they granted permission for visits only as a favour to Canada. Amnesty International urges the Commission of Inquiry to look at Canada's efforts to press for regular access to Mr. Arar while he was in detention, including private access.

vii) Diplomacy After the Fact: Where is the Protest and Pursuit of Justice?

Lastly, Amnesty International very much hopes that the Commission of Inquiry will interpret its mandate to look at the actions of Canadian officials with respect to Maher Arar right up to the present day. Canada's role in this case did not end with Mr. Arar's release from detention. Over the course of the eight months since his release there have been dramatic and disturbing revelations about the nature of Mr. Arar's treatment in the United States, Jordan and Syria. Yet there has been very little public indication that Canadian officials have actively and forcefully raised and pursued those concerns with officials of those three governments. Amnesty International considers it important that the Commission of Inquiry consider questions such as:

⁹ The Vienna Convention on Consular Relations, article 36(1)(c): "consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation."

- Have Canadian officials continued to press for an explanation as to why U.S. officials refused to honour Mr. Arar's Canadian passport and sent him to Syria instead?
- Have Canadian officials pressed the U.S. government to launch an independent inquiry into what happened to Mr. Arar in the United States?
- Have Canadian officials pressed the Syrian government to impartially investigate Mr. Arar's detailed and credible allegations of torture leading to anyone responsible being identified and brought to justice?

If the answer to any of these questions is *no* or if Canada's ongoing efforts are minimal, Amnesty International urges the Commission of Inquiry to examine the reasons for Canada's failure to press these and related concerns.

Conclusion

Across the globe, ordinary men, women and children fall victim both to the brutality of terrorism and the insidious and growing web of counter-terrorism. They face death and they face torture, they face discrimination and they face fear. At a time when people the worldover crave and deserve both justice and security, the result, sadly, has been a double assault on both of those fundamental values. That has most certainly been Maher Arar's experience. This Commission of Inquiry can play an important role in pointing a way forward that underscores the direct relationship between security and human rights and reminds governments that one is not possible without the other.