



Amnesty International's  
Reply Submissions to the  
Commission of Inquiry into the Actions of Canadian Officials  
in Relation to Maher Arar

November 2, 2005

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These reply submissions, provided by Amnesty International, address three key points.

**1. The government's invitation to the Commissioner to reach findings with respect to the cases of Abdullah Almalki and Ahmad El Maati, based on the evidence heard about their cases, the bulk of which clearly has been heard *in camera*.**

Amnesty International, along with all Intervening organizations at the inquiry, has frequently urged the Commissioner to go as far as the evidence allows in reaching findings about the cases of Abdullah Almalki, Ahmad El Maati and Muayyed Nureddin. We have advanced that position as we are of the view that an examination of the circumstances of their cases is directly relevant to the crucial question as to whether Mr. Arar's case was an isolated exception, or part of a broader pattern.

We would strongly urge, however, that findings about these other cases can only be based on evidence that has been disclosed publicly and to which these other men have had an opportunity to respond. It would clearly be unfair to reach findings on the basis of evidence that remains *in camera*. Amnesty International endorses and relies upon the joint reply submissions from intervening organizations, which addresses this point in greater detail.

Amnesty International does note and draw to the Commissioner's attention that the United Nations' Human Rights Committee, in Concluding Observations issued following its most recent review of Canada's record of compliance with the International Covenant on Civil and Political Rights, has expressed concern about the government's failure to fully examine and review these other cases. The Committee's report, released on November 1, 2005, represents its first review of Canada's record since 1999. It is of course vital that Canada comply with recommendations made to it by UN-level human rights bodies. That the Committee has included this concern among the issues it has chosen to highlight in the report, is significant. Amnesty International submits that this is further reason why the Commissioner should go as far as he can in examining the possible concerns about pattern, and to make a suitable recommendation for a further fair, independent process of review if necessary.

While appreciating the firm denial by the delegation, the Committee is concerned by allegations that Canada may have cooperated with agencies known to resort to torture with the aim of extracting information from individuals detained in foreign countries. It notes that a public inquiry is underway regarding the role of Canadian officials in the Maher Arar case, a Canadian citizen arrested in the United States of America and deported to Syria where he was reportedly tortured. The Committee regrets however that insufficient information was provided as to whether cases of other Canadians of foreign origin detained, interrogated and allegedly tortured are the subject of that or any other inquiry. (article 7)  
The State party should ensure that a public and independent inquiry review all cases of Canadians citizens who are suspected terrorists or

suspected to be in possession of information in relation to terrorism, and who have been detained in countries where it is feared that they have undergone or may undergo torture and ill-treatment. Such inquiry should determine whether Canadian officials have directly or indirectly facilitated or tolerated their arrest and imprisonment.<sup>1</sup>

## **2. The receipt by Canadian officials of information which may have been obtained under torture.**

One of Amnesty International's paramount concerns in Mr. Arar's case, as well as the cases of other Canadian citizens detained in Syria, is the troubling possibility that Canadian officials may have directly or indirectly been complicit in torture - either by providing information that may have served as the basis for arrest and may have been used during interrogation sessions; or by willingly receiving from Syrian officials information that was obtained in the course of the interrogation sessions, information that Canadian officials should have certainly known had very likely been obtained under torture.

The government's submission implies that first, it would have been impossible and unreasonable to expect Canadian officials to assess whether the information they received had been obtained as a result of torture, absent a videotape or transcript of the interrogation session. The government further submits that there is a possibility that information obtained under torture could be true, and therefore it is appropriate for officials to receive any such information, but only make use of it if they are able to corroborate it through other sources.<sup>2</sup> The government relies on the evidence of Professor Ofshe on these points.

It is submitted that drawing these conclusions from Professor Ofshe's evidence is not warranted and such conclusions are taken out of context. Professor Ofshe's evidence does not suggest that if officials do not have access to a videotape or transcript, they should assume that the information was not obtained under torture. He simply says that some other information would be necessary to conclude there was a possibility of torture having been involved.

It is submitted that there were a number of reasons why Canadian officials should have considered it likely that information obtained from Mr. Arar's interrogation sessions was a result of torture:

- Syria's well documented and well known use of torture.
- The fact that Ahmad El Maati, in an August 2002 visit with Canadian consular officials in Egypt, had indicated that he had been tortured in Syria.

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<sup>1</sup> Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee, Canada, CCPR/CO/85/CAN, page 7, paragraph 16, November 1, 2005, advanced unedited version.

<sup>2</sup> Submissions on behalf of the Attorney General, Chapter 4, Paragraphs 239 and 240.

- The fact that Mr. Arar was held in incommunicado detention in Syria for two weeks, something that should have become clear to Canadian officials at the time of their first visit with him. In Syria and elsewhere, the risk of torture and mistreatment is greatest during times of incommunicado detention.
- The circumstances of Mr. Arar's consular visits, particularly those during the early stages of his detention, such as the refusal to allow a private visit, the fact that Mr. Arar was made to sit at a distance from the consular officer, and the fact that he was required to conduct the interview in Arabic, through an interpreter.

Professor Ofshe did indicate that while individuals frequently make false confessions under torture, they may also tell the truth. Common sense would suggest that to be the case. He goes on to indicate that corroborating evidence would be needed to determine whether the confession was in fact true or false. Again that is common sense.

With respect, it is submitted that Professor Ofshe was not being asked about international law with respect to the prohibition on torture, and the related prohibition on using information obtained under torture. He was simply being asked about human behaviour and how to verify information. He was describing how an official would know whether a confession obtained under torture was true or false.

Amnesty International underscores, as we have in earlier submissions, that international law clearly prohibits torture. It clearly bars authorities from making use of information obtained under torture as well. There is nothing conditional about that ban. International law does not say that information obtained under torture can be used if it is subsequently corroborated.

The reason the ban on torture and the use of information obtained under torture is absolute, is clear. Allowing any opening for torture is to invite its rapid spread. A position that allows governments to use such information if they are able to subsequently corroborate its accuracy is to invite torturers to go fishing for information, some of which will be false, some of which will be true. But the end result is to encourage more torture, and to even reward torturers when information they obtain through means that are universally and absolutely banned under international law proves later to have been true.

The entire rationale for the ban on using information obtained under torture is to discourage the practice of torture. By taking away one possible reason for torture – by barring the possibility that information obtained can be put to use – is to hopefully partially reduce the incidence of torture in the first place. Amnesty International strongly urges the Commissioner to firmly and unequivocally affirm that it is illegal for Canadian officials to receive and in any way make use of information that was likely obtained under torture. Any other position would dramatically compromise Canada's commitment to ending torture worldwide.

**3. The legal standards which should govern a Canadian consular officer's review of the prison conditions and treatment of a detainee in a foreign prison.**

In his testimony, Canadian consular officer Leo Martel indicated that when he was conducting visits to Mr. Arar, the standard he was using to measure the propriety of Mr. Arar's treatment and conditions was whether he was being dealt with any more harshly than other detainees, or whether his treatment was comparable to others. The implication was that as long as Mr. Arar was treated equally to other prisoners – be it equally well or equally abysmally – Canada would not make representations about his treatment.<sup>3</sup>

In oral submissions Amnesty International stressed that the appropriate standard during such visits must be what is required under international human rights law, regardless of the comparison to other prisoners. If all or most prisoners in Syria are being subjected to torture, that would not make it okay to torture Mr. Arar. International law prohibits it. International standards have developed that govern prison conditions as well. Most notably, the Commissioner's Fact Finder, Stephen Toope, has concluded that the conditions that Mr. Arar endured were of such a severe, painful and degrading nature as to constitute torture. That would not and cannot be excused simply because other prisoners were enduring the same fate. International law is clear that no such prisoner, be he or she a Canadian national, dual national, or Syrian national, should be subjected to conditions of that nature.

Amnesty International urges the Commissioner to reject any suggestion that comparability to other prisoners should be the governing standard for consular officials during prison visits. Consular officers must be instructed, at all times, to ensure that detainees are being treated in a manner consistent with applicable international standards.

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<sup>3</sup> Submissions on behalf of the Attorney General, Chapter 7, Paragraph 27.