REDOUBLING THE FIGHT AGAINST TORTURE

Amnesty International's Brief to the UN Committee against Torture with respect to the Committee's Consideration of the Fourth Periodic Report From Canada

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Zahra Kazemi, who had been arrested on 23 June in connection with taking photos outside Tehran's Evin Prison, died from a blow to her skull while in police custody.

- Amnesty International, August 1, 2003.[1]

The worst that I endured of it at the time was being hung upside down and beaten across the backside, the feet, the scrotum. The pain from that is just incredible. I just felt like my entire body was about to explode out of my ears and my eyes… The pain stays and it only builds for the next session, and even when they stop the beating and chain you back to the door, then you have the next few hours standing on your feet, in my case which are swollen and bloody, which are in agony but you can't do anything to relieve them, so they're actually getting more sensitive by the minute, and you know you've only got this to go back to the next day or the day after.

- William Sampson, Interview on CBC TV, September 30, 2003

The next day I was taken upstairs again. The beating started that day and was very intense for a week, and then less intense for another week. That second and the third days were the worst... They used the cable on the second and third day, and after that mostly beat me with their hands, hitting me in the stomach and on the back of my neck, and slapping me on the face. Where they hit me with the cables, my skin turned blue for two or three weeks, but there was no bleeding. At the end of the day they told me tomorrow would be worse. So I could not sleep.

- Maher Arar, Statement at Press Conference, November 3, 2003

INTRODUCTION

There is credible and detailed evidence that the three Canadian citizens highlighted above, Maher Arar, William Sampson, and Zahra Kazemi, were subjected to torture while in detention abroad in Syria, Saudi Arabia and Iran respectively. Zahra Kazemi died as a result. Those cases garnered intense public concern, extensive media coverage and continue to be the subject of substantial political debate. Other cases have arisen since these three as well; including Muayyed Nurredin who has also provided detailed testimony as to torture in detention in Syria.[2] The result has been an unprecedented amount of attention in Canada to the issue of torture, since the Committee's last review of Canada's record of compliance with the United Nations Convention against Torture.

Amnesty International welcomes Canada's submission of its fourth periodic report to this Committee. Cases such as the three referred to above illustrate that it comes at a time when a vigorous response from the Canadian government to the global phenomenon of torture is very much required. This brief highlights concerns and makes

[1] Amnesty International, *Iran: Only an independent investigative body can serve justice and human rights*, August 1, 2003, AI Index: MDE 13/026/2003.
[2] Amnesty International, Letter to Prime Minister Paul Martin, 17 February 2004.

recommendations as to steps the government should take to better protect Canadian citizens from the risk of torture abroad. However, Amnesty International is also of the view that Canada can and must do more to improve the country's own domestic record with respect to obligations under the Convention against Torture. Canadian leadership in fulfilling those obligations would make an important contribution to the global campaign to eradicate torture.[3]

This brief outlines concerns and offers recommendations in seven different areas: justice; return to torture; torture abroad; Indigenous peoples; the use of taser guns; federally-sentenced women prisoners and ratification of the Optional Protocol.

1. JUSTICE IN THE FACE OF TORTURE; (ARTICLES 5, 14)

Torturers thrive because of the impunity they enjoy. The UN Special Rapporteur on Torture has stated that "the single most important factor in the proliferation and continuation of torture is the persistence of impunity, be it of a de jure or de facto nature."[4] The provisions in the Convention against Torture requiring states to bring torturers to justice and also obligating states to ensure that survivors of torture are able to obtain redress, provide a critical framework for combating this culture of impunity. Amnesty International is concerned that Canada's laws and practice are not in conformity with these obligations. In particular, Amnesty International is concerned that Canada fails to exercise universal jurisdiction with respect to alleged torturers who are or have been present in Canada and that survivors of torture are not able to access Canadian courts to obtain compensation for torture suffered abroad.

When it is alleged that a torturer is physically present in Canada, article 5 of the Convention requires the government to either extradite him or her to a country that would be willing and able to launch a prosecution or, failing that possibility, to launch a prosecution in Canada. Section 7(3.7) of the Canadian Criminal Code[5] properly provides for jurisdiction.

However, Amnesty International is not aware of any criminal prosecution having yet been launched in Canada under this provision, despite the fact that many cases have been brought to the government's attention. For instance, Amnesty International has, for several years, pressed Canadian officials to take action with respect to a number of cases of Lebanese nationals, resident in Canada. Serious allegations have been made that these individuals, former members of the South Lebanon Army, were responsible for torture and other human rights violations, including at the notorious Khiam Detention Centre. According to reports received by Amnesty International, many of the former guards, and

[3] In a recent letter to Prime Minister Paul Martin (May 12, 2004), Amnesty International reiterated the importance of Canada taking "the lead in launching a concerted effort to finally eradicate the vicious plague of torture from this planet."
[4] Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/56/156, 3 July 2001, para. 26.
[5] R.S. 1985, c. C-46, as amended.

at least one former director of Khiam, have taken refuge in Canada over the years. Some are now Canadian citizens.
Amnesty International has frequently expressed concern that Canada's preferred route appears to be to pursue immigration remedies, such as deportation, rather than securing extradition or launching a prosecution.[6] In 2000 the Committee urged Canada to "prosecute every case of an alleged torturer in a territory under its jurisdiction where it does not extradite that person and the evidence warrants it, and prior to any deportation."[7] Amnesty International is concerned that Canadian practice continues to be to consider deportation as a remedy prior to extradition or prosecution and that this does not comply with Canada's obligations under the Convention.

Recommendation 1

Canada should adopt a clear policy preferring extradition or prosecution over deportation in every case of an alleged torturer who is present in a territory under the jurisdiction of Canada, where the evidence warrants it.

Accountability and justice in the face of torture is not only a criminal law issue. The Special Rapporteur on Torture has highlighted as well the critical importance of the right of survivors of torture to obtain reparations for what they have suffered. He notes that:

> …reparation, beyond the purpose of relieving the suffering of and affording justice to victims by removing or redressing to the extent possible the consequences of the wrongful acts, has an inherent preventive and deterrent aspect.[8]

The Canadian government has taken the position in recent litigation that the concept of state immunity prevents torture victims from obtaining redress in Canadian courts against governments responsible for the torture they have experienced. They have also asserted that universal jurisdiction, which applies to the criminal prosecution of torture, does not extend to civil suits for redress.

Houshang Bouzari is a Canadian citizen who is suing the government of Iran for torturing him in 1993, prior to his arrival in Canada. His attempt to obtain redress has encountered an obstacle in Canada's *State Immunity Act*, which limits lawsuits against foreign

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[6] Amnesty International Canada, *New Millennium, Third Term: A Human Rights Agenda for the Canadian Government*, December 10, 2000. Amnesty International Canada, *Real Security: A Human Rights Agenda for Canada*, May 7, 2002. Amnesty International Canada, *At Home and Abroad: Amnesty International's human rights agenda for Canada*, October 2003. Individual cases that have been brought to Canada's attention have included José Barrera Martínez, a Honduran national deported from Canada to Honduras in 2001, despite evidence that he may have been implicated in the torture and death in custody of José Eduardo López. Amnesty International is not aware of any investigation or judicial proceeding that has subsequently been launched in Honduras: see, Amnesty International, *Honduras: José Eduardo López – 20 years later, it is time for justice*, 1 April 2001, AI Index: 37/002/2001.

[7] Conclusions and Recommendations of the Committee against Torture: Canada, U.N. Doc. CAT/C/XXV/Concl.4, 22 November 2000, para. 6(c).

[8] Interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/55/290, 11 August, 2000, para. 28.

governments except in very narrow circumstances, such as lawsuits based on commercial activities, criminal activities, or injuries and losses occurring in Canada.

Mr. Bouzari has challenged this restriction on his ability to seek compensation by arguing that Canada's *State Immunity Act* does not accord with the Canadian *Charter of Rights and Freedoms* or with Canada's international obligations. He relies in particular on Article 14(1) of the Convention against Torture, which states:

> 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, including the means for as full rehabilitation as possible…

The Canadian government has argued that article 14 is restricted to acts of torture that occur within a state's jurisdiction, despite the absence of any language in the article requiring this territorial limitation. Amnesty International notes, by contrast, that territorial limitations are present in articles 11 and 13 of the Convention. The drafting history of the Convention also supports the view that there is no territorial limitation to this article. An earlier draft of article 14 contained the phrase "committed in any territory under its jurisdiction", however this was dropped without an explanation.

Amnesty International takes the position that the absence of a territorial limitation in article 14 of the Convention should be interpreted to provide torture victims with the widest possible opportunity to obtain redress for torture. This would be consistent with the Convention's goal of bringing torturers to justice. Amnesty International considers it to be unreasonable to interpret the Convention so as to allow states to prosecute torturers for torture committed abroad, but not allow reparation for torture committed abroad.

The Ontario Court of Appeal accepted the Canadian government's position, stating:

> A full textual analysis of the provisions for the Convention shows that the absence of explicit territorial language does not necessarily mean the absence of territorial limitation. The text of the Convention itself simply provides no answer to the question.[9]

The matter is currently being appealed to the Supreme Court of Canada.

Recommendation 2

The Canadian government should enact the necessary legal provisions to recognize universal jurisdiction with respect to civil suits brought in Canadian courts seeking reparation for torture suffered abroad at the hands of foreign governments and to ensure that any such suits cannot be defended on the basis of state immunity.

[9] *Bouzari v. Iran*, Quicklaw cite: [2004] O.J. No. 2800 (Quick Law), Docket C38295, para.76, June 30, 2004.

2. RETURN TO TORTURE; (ARTICLE 3)

Article 3 of the Convention states that "[n]o State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. Amnesty International is concerned that Canadian law and practice does not conform to this obligation.

In June 2002, Canada passed new legislation, the *Immigration and Refugee Protection Act*[10] ("IRPA"), which directly impacts on this country's obligations under Article 3 of the Convention.

Although a number of the new provisions provide greater protection against return to torture, the law still allows for such removals in some circumstances. Among the improvements is a provision stipulating that IRPA "is to be construed and applied in a manner that complies with international human rights instruments to which Canada is a signatory."[11]

Another significant change in the new legislation is an expanded category of persons who are entitled to refugee protection. In addition to finding persons to be Convention refugees, Canada's Immigration and Refugee Board ("IRB") can now determine claimants to be "persons in need of protection".[12] Included in the definition of "person in need of protection" are those "whose removal to their country… would subject them personally to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture."[13] Persons facing a risk of torture may be recognized, and given protection, at either a refugee determination hearing, or in the course of a pre-removal risk assessment ("PRRA")[14], an evaluation that did not exist prior to IRPA.

All of these are positive measures, improvements over the former *Immigration Act*. However, in Amnesty International's view, they do not go far enough, as there are *exceptions* to the general rule that persons facing a risk of torture will not be removed from Canada.

Although article 3 of the Convention provides for absolutely no exceptions to the prohibition against return to torture, the IRPA does set out circumstances where this may indeed occur. The exceptions concern persons who are inadmissible to Canada on grounds of security, violating human or international rights, serious criminality or organized criminality. Such persons, although ineligible to have their asylum claims determined by the IRB, may be granted a stay of removal from Canada through a PRRA application. Stays, however, will *not* be granted where the dangers posed to the public or to the security of Canada are found to outweigh the risk faced by such applicants if

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[10] S.C. 2001, c. 27, in force June 28, 2002.
[11] *Immigration and Refugee Protection Act*, s. 3 (3) (f).
[12] *Immigration and Refugee Protection Act*, s. 95 (1) (b).
[13] *Immigration and Refugee Protection Act*, s. 97 (1) (a).
[14] *Immigration and Refugee Protection Act*, sections 112 (1), 113 (c).

returned to their country.[15] In such cases, IRPA allows Canada to remove persons to countries where they would be in danger of being subjected to torture.

Similarly, persons alleged to have committed serious crimes, who are subject to an authority to proceed under Canada's *Extradition Act,* are ineligible for refugee determination by the IRB or for PRRA .[16] If ordered surrendered for extradition, the legislation allows for the possibility that such persons could also be removed from Canada to face a risk of torture.

Article 3 of the Convention clearly establishes an absolute prohibition on removal to torture, from which no derogation is permitted under any circumstances. By allowing for the possibility of such removals in its legislation, Canada is in contravention of its obligations under the Convention.[17]

In January 2002, the Supreme Court of Canada decided the case of *Suresh v. Canada (Minister of Citizenship and Immigration)*[18] that considered, among other issues, Canada's obligations under Article 3 of the Convention. The case involved a Sri Lankan refugee, Manickavasagam Suresh, whom Canada had determined to be inadmissible to Canada on grounds of security. Mr. Suresh argued that, if removed from Canada to Sri Lanka, he would be subjected to torture.

With respect to this issue, the Court applied section 7 of the *Canadian Charter of Rights and Freedoms*, which states that: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Although holding that "deportation to torture will generally violate the principles of fundamental justice protected by s. 7 of the Charter", the Court found that such a removal could still occur in "exceptional circumstances".[19]

The Court stated: "We do not exclude the possibility that in exceptional circumstances, deportation to face torture might be justified".[20] What those "exceptional circumstances" might be, however, the Court did not say. "The ambit of an exceptional discretion to deport to torture, if any," it stated, "must await future cases."[21]

In no decision subsequent to *Suresh* has a Court found "exceptional circumstances" to exist that would justify a person's removal from Canada to face a risk of torture. Nor has there been much jurisprudence that tries to define the ambit of "exceptional circumstances". In one decision, the Federal Court Trial Division found that "before deciding to return a refugee to torture, there must be evidence of a serious threat to

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[15] *Immigration and Refugee Protection Act*, s. 113 (d).
[16] *Immigration and Refugee Protection Act*, sections 105, 112 (2) (a).
[17] In 2000 this Committee reminded Canada that the obligation under article 3(1) prohibits *refoulement* to torture "whether or not the individual is a serious criminal or security risk." Conclusions and Recommendations of the Committee against Torture: Canada, Supra, footnote 7, para. 6(a).
[18] *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3.
[19] *Suresh*, supra, at paragraph 76.
[20] *Suresh*, supra, at paragraph 78.
[21] *Suresh*, supra, at paragraph 78.

national security."[22] That same decision held that in the balancing exercise contemplated by the PRRA, immigration authorities must consider any alternatives to deportation to torture.[23] It is clear that in a number of decisions, Courts have taken very seriously the general prohibition against removal to a risk of torture set out in *Suresh*.[24] Still, Amnesty International has serious concerns that the highest court in Canada has left open the possibility that returning someone to torture can go ahead in "exceptional circumstances."

Amnesty International has made representations to the Canadian government with respect to a number of cases where individuals are facing deportation from Canada under the "security certificate" process of the IRPA.[25] Under that process the individuals concerned are not provided full access to the evidence being brought against them, nor an opportunity to question the witnesses who are the source of that information. Amnesty International has raised concern that these individuals face a substantial risk of torture if removed from Canada and has urged that other steps be taken to bring the individuals to justice if there is credible evidence that they may have been involved in criminal acts. The Canadian government is still proceeding toward the eventual goal of deportation.

Recommendation 3

The Canadian government should amend Canada's Immigration and Refugee Protection Act to recognize the absolute nature of the obligation under article 3 of the Convention against Torture to refrain from deporting, extraditing, surrendering or otherwise removing from Canada any person to a country where he or she faces a substantial risk of torture.

3. TORTURE ABROAD; (ARTICLES 3, 5(1)(C), 10)

As highlighted in the introduction to this brief, a number of high profile cases of Canadians who have been subjected to torture abroad has generated unprecedented public concern in Canada. It has sparked considerable discussion about Canada's role in protecting Canadians from the risk of torture in other countries. Questions about Canada's role have, in some of the cases, highlighted concerns that Canada's security and intelligence practices may directly or indirectly expose Canadian citizens and other individuals to a serious risk of torture in other countries.

When Canadians are detained abroad, Canadian consular officials seek access so that they can offer consular advice and assistance to the individual concerned. Sometimes access is granted, sometimes not. Cases in which the detainee holds multiple

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[22] *Sogi v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1080 (QL), at paragraph 20.
[23] *Sogi*, supra, at paragraph 18.
[24] For example, see *Thuraisingam v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 746 (QL), *Romans v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1941 (QL), *Liang v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 970 (QL), and *Dinita v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 290 (QL), all decisions of the Federal Court Trial Division.
[25] Amnesty International has made representations with respect to the cases of Adil Charkaoui, Mahmoud Jaballah, Hassan Almrei, and Mohamed Harkat. The concerns are summarized in the organization's letter to Deputy Prime Minister Anne McLellan, 31 March 2004.

nationalities are particularly problematic. If the government which is holding the individual also considers him or her to be a national, access is often summarily denied. The Syrian and Iranian governments took this position, for instance, with respect to Maher Arar and Zahra Kazemi, respectively.

Consular access can be a critical means of preventing or monitoring for torture, as it is likely the only external access available to the individual, if he or she is denied visits with legal counsel and family. Even when access is granted, the visits are often not private and prison guards or other local government officials may be present, meaning that a frank exchange between the detainee and the consular official is unlikely. Visits in such circumstances are complex and particular skills are needed to be able to competently assess whether the detainee has been subjected to torture. This was an issue with respect to both William Sampson and Maher Arar. Amnesty International has urged Canada to press vigorously for consular access when Canadians are detained abroad, including when the detainee carried multiple nationalities.

Recommendation 4

The Canadian government should implement a comprehensive program of training for consular officers so as to better equip them to be able to conduct interviews with and make assessments of detainees who may be at risk of torture.

A number of the recent cases of Canadians who have experienced torture abroad have arisen in a national security context. Unspecified and classified allegations exist that the individuals concerned may be involved in or support "terrorist" activities of some description. However, the individuals have not been charged with any offence in Canada. Instead, they have, in varying circumstances, found themselves detained outside Canada where they have been held without charge or trial and subjected to torture.

Amnesty International has made extensive representations to the government about a number of such cases. In two instances the organization's representations to the government have been made public: Maher Arar and Muayyed Nureddin. Both were held in detention in Syria, Maher Arar for one year and Muayyed Nureddin for one month. Both have provided detailed and credible evidence as to torture they experienced while detained. Maher Arar was clandestinely rendered[26] to Syria by U.S. authorities, who had arrested him in New York City while Mr. Arar was in transit to his home in Canada following an extended family vacation in Tunisia. Muayyed Nureddin was arrested at the Syria/Iraq border while he was traveling to Damascus to catch a flight back to Canada after visiting his family in northern Iraq.

[26] Amnesty International has repeatedly expressed concern about the U.S. practice of "rendition", often termed extra-legal or extraordinary rendition, through which detainees are transferred secretly to or from U.S. custody, bypassing formal legal and human rights protections. Amnesty International has called on U.S. authorities to cease this practice, which the organization is concerned has led to serious human rights violations, including torture. Amnesty International, *United States of America – The threat of a bad example: Undermining international standards as "war on terror" detentions continue*, 19 August 2003.

Among the questions that arise in these cases are concerns that Canada may be either directly or indirectly putting individuals, including Canadian citizens, at risk of torture abroad through the sharing of security and intelligence information with other governments. With respect to the case of Maher Arar Amnesty International highlighted that the concerns were of sufficiently grave importance that a public inquiry was needed to ensure a full and independent investigation. The government agreed to convene such an inquiry in January 2004 and hearings began in June 2004. Amnesty International is an intervening party to that inquiry.

Amnesty International has urged that Canada take steps to ensure that Canada's human rights obligations, including the protection against torture, are at the heart of the country's security laws, policies and practices. The sharing of intelligence and information plays a critical role in ensuring security, fighting crime, and protecting human rights. Shared intelligence can play an important role in identifying and forestalling human rights abuses before they take place. Shared intelligence can play a role in apprehending individuals who have committed human rights abuses and ensuring they face justice. But shared intelligence, be it reliable or wholly lacking in credibility, can also lead to serious human rights violations, particularly when that information is further shared with security agencies in countries which regularly practice torture.

Amnesty International believes that it is time for governments around the world to look closely at this issue. Canada should take the lead, by putting in place a human rights protocol that will govern the country's intelligence-sharing relationships. Such a protocol should address, *inter alia*, the following points:

- Given that it is difficult to know where information will end up and who will make use of it once it is shared, extra care should be taken to ensure reliability before allowing information to be passed to officials in another country.
- Information that is shared should be clearly identified according to the degree to which it is considered trustworthy and has been corroborated.
- Mechanisms should be put in place to monitor the subsequent use of shared information.
- There should be a binding means for Canada to object to any intended further use of the information that is likely to lead to torture or other serious human rights violations.
- Specific and obligatory assurances should be obtained from the other government, by Canada, that shared information will not serve as the basis for or be used in any way that causes serious human rights violations, including torture.
- Canada should obtain a clear commitment from any country with which it shares information that Canadian consular officials will be granted immediate and unhindered access when a Canadian national (including a Canadian national who may hold multiple nationalities) is taken into detention.
- Canada should obtain a clear commitment from any country with which it shares information that that the practice of "extra-legal renditions" will cease, and that the procedures used and decisions taken to deport or exclude anyone from either country will be in full accord with applicable national and international legal

standards, including the prohibition on sending anyone to a serious risk of being tortured.

Recommendation 5

The Canadian government should implement a Human Rights Protocol that would be applied in all security and intelligence sharing agreements and arrangements. The Protocol should specifically implement Canada's obligation to refrain from committing or being complicit in committing torture as well as the obligation to actively prevent torture from occurring.

4. INDIGENOUS PEOPLES; (ARTICLES 1, 11, 12, 16)

In Amnesty International's submission to the Committee in 2000 the organization noted that "the way in which Canada's [Indigenous] people are dealt with in the justice and policing system often gives rise to human rights concerns. Some of those concerns involve provisions of the Convention against Torture."[27] The submission highlighted a number of cases in Canada in which Amnesty International was concerned that allegations of human rights violations against Indigenous peoples by police and other law enforcement officials, including possible instances of torture or ill-treatment, had not been impartially and fully investigated. In response to these and other concerns, the Committee recommended that Canada:

> Consider the creation of a new investigative body for receiving and investigating complaints regarding the Convention … including allegations related to members of the indigenous population.[28]

Amnesty International is concerned that Canada has not taken steps toward implementing this recommendation, which the organization believes would strengthen accountability and oversight within Canada with respect to allegations of torture and ill-treatment, but could also serve as a model to the rest of the world.

Developments in Canada since 2000 highlight continued need for greater independent oversight of police and other state agents.

In its brief to the Committee in 2000 Amnesty International highlighted the case of Dudley George, killed by an Ontario Provincial Police officer in the midst of a land claims protest on September 6, 1995.[29] Dudley George himself was killed. However there are concerns that his brother, Bernard George and other protesters were beaten by police in circumstances that may amount to torture or to ill-treatment. On 12 November 2003, the province of Ontario announced that a full public inquiry would be held into the events surrounding the death of Dudley George. The inquiry is also tasked to make

[27] Amnesty International Canada, *It's Time: Amnesty International's Briefing to the United Nations Committee against Torture with respect to the Third Report of Canada*, November 2000, p. 8.
[28] Footnote 7, para. 6(e).
[29] Footnote 27, p.9.

recommendations directed to the avoidance of violence in similar circumstances. That inquiry is currently underway.

Amnesty International remains concerned that -- despite public outcry and a call by the UN Human Rights Committee in 1999 to establish such an inquiry -- it took eight years and a change of government in Ontario to call an inquiry that all along has been obviously and urgently needed. Amnesty International also notes that the province of Ontario already has an independent civilian body, the Special Investigations Unit ("SIU"), mandated to investigate all cases of civilian deaths or serious injuries possibly resulting from criminal offences committed by police officers. However, the organization's review of the events of September 6, 1995 and the subsequent investigation raises questions about whether the SIU has sufficient powers to do its job effectively.

In investigating the severe beating of Bernard George and other protestors during the confrontation in which Dudley George was shot, the SIU initially attempted to gain access to photographs of the officers who were on scene to show to Bernard George and other witnesses. However, the Ontario Province Police Association objected and sought a court injunction to prevent the release of the photographs. The SIU then dropped its attempts to get the photographs. There were never any charges laid in connection with these beatings.[30]

On October 4, 2001 the British Columbia Provincial Police Complaint Commissioner called for a coroner's inquest into the death of Frank Joseph Paul, a Mi'Kmaq man who was found dead in an alley in Vancouver's Downtown Eastside early in the morning on December 6, 1998, after twice being arrested by city police.[31] On January 16, 2004, a new Provincial Police Complaint Commissioner called for a public inquiry into Mr. Paul's death, noting that "the troubling circumstances of Mr. Paul's death are... in need of full public examination to determine what factors led to his death and how a similar tragedy might be avoided in the future."[32] Amnesty International is concerned that the allegations about how Mr. Paul was treated before his death raise concerns about possible torture or ill-treatment.

Both the Vancouver Police and the government of British Columbia have indicated they do not agree with the Complaint Commissioner's recommendation. The government has therefore failed to convene the inquiry.[33]

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[30] Amnesty International, *Canada: Why there must be a public inquiry into the police killing of Dudley George*, 4 September 2003, AI Index: 20/002/2003, p.8.
[31] Letter to Don Morrison, Police Complaint Commissioner from the Honourable R.T. Coleman, Solicitor General, 20 December 2001.
[32] Office of the Police Complaint Commissioner, *Frank Joseph Paul: Reasons for Decision*, 16 January 2004, p.1.
[33] Vancouver Police Department, Office of the Chief Constable, Media Release, *Death of Frank Paul*, 28 April 2004, p.3, CBC News, *No inquiry into death of Frank Paul*, 18 March 2004, http://vancouver.cbc.ca/regional/servlet/View?filename=bc_coleman_two20040318.

A postmortem examination had determined that Mr. Paul had died of hypothermia, accelerated by rain soaked clothing. Police had arrested Mr. Paul on the previous evening for public intoxication and taken him to a police jail where he was held just over 6½ hours and then released. Two hours later he was placed in custody a second time after police found him again intoxicated and unable to walk or take care of himself. According to the Provincial Police Complaint Commissioner, five minutes after he was brought in for the second time, "the jail surveillance video depicts the [police] wagon driver and a Provincial Correctional Guard dragging a still rain-soaked, motionless Frank Paul from the elevator to the police wagon along the floor of the wagon bay area...Mr. Paul was placed in a nearby alley. Mr. Paul's lifeless body was found at 2:41 early the next morning at that same location.[34]

Recommendation 6

The Canadian government should work with all provincial and territorial governments in Canada to ensure that independent, expert bodies with sufficient power to initiate and conduct thorough and impartial investigations of any allegations of grave human rights abuses by police exist in every jurisdiction in the country.

A recent Amnesty International report about discrimination and violence against Indigenous women in Canada notes that there are significant gaps in the way police record and share information about the ethnicity of missing persons and victims of violent crime.

> Reports of violent crimes or missing persons may be investigated by municipal police forces, provincial forces, Indigenous police forces or the national police force, the Royal Canadian Mounted Police (RCMP). Police have said that they don't necessarily record the ethnicity of crime victims or missing persons when entering information into the Canadian Police Information Centre database, the principle mechanism for sharing information among police forces in Canada. According to the Canadian Centre for Justice Statistics, in 11 percent of homicides in 2000, Canadian police did not record or report on whether or not the victim was an Indigenous person.
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> An RCMP task force is currently investigating 40 unsolved murders and 39 long term missing persons cases in the province of Alberta. All but three of the victims are women. These cases were identified in the course of what the RCMP describes as a "comprehensive analysis" meant to identify possible links and create a profile of common risk factors. A spokesperson for the project interviewed by Amnesty International was unable to say how many of the missing women are Indigenous saying there was "not a lot of focus on this.[35]

[34] Footnote 32, p.2.

[35] Amnesty International, *Stolen Sisters: Discrimination and violence against Indigenous women in Canada*, *A Summary of Amnesty International's Concerns*, 4 October 2004, AI Index: AMR 20/001/2004, pp.2-3.

Amnesty International is concerned that the failure to systematically record such information may mask serious patterns of violence against Indigenous women and reduce the capacity of both police and social service organizations to respond effectively to prevent violence. The report does not allege that police forces themselves have committed the acts of violence against Indigenous women. It highlights however the duty of governments in Canada to demonstrate due diligence in responding to and preventing human rights abuses committed by private individuals, including acts of violence against Indigenous women which could constitute torture or ill-treatment. A failure to fulfill this duty of due diligence may raise concerns about possible "acquiescence" by the state under article 1 of the Convention. As an important component of fulfilling the duty of due diligence, Amnesty International has urged the Canadian government to ensure that adequate statistical information is gathered and analyzed so as to understand and properly respond to patterns of violence against Indigenous women in Canada.

Recommendation 7

The Canadian government should provide funding for comprehensive national research on violence against Indigenous women, including the creation of a national registry to collect and analyze statistical information from all jurisdictions.

Amnesty International has received reports regarding a number of federally sentenced Indigenous prisoners who allege that they have been unable to receive adequate access to elders and ceremonies. Amnesty International is concerned that this lack of access may either be arbitrary or may have been used as a punitive measure.

In the section of its report to this Committee dealing with article 11 of the Convention against Torture, the Canadian government highlights section 3 of the *Corrections and Conditional Release Act*[36] and its focus on rehabilitation of offenders and their reintegration in to the community as law-abiding citizens.[37] Amnesty International considers that in order for Indigenous offenders to receive the necessary support for their rehabilitation and reintegration into society they must have regular and reliable access in prison to culturally appropriate services.

Amnesty International considers that Commissioner's Directive 702: Aboriginal Programming, adopted by Correctional Service Canada, is a strong blueprint for the protection of the basic rights of Indigenous inmates. However, the reports Amnesty International has received give rise to the concern that this Directive may not be well understood within Correctional Services, may not receive adequate funding, and that staff may not be adequately trainied and actively support its implementation. Amnesty International has been informed that Correctional Services is undertaking a review of the implementation of Directive 702.[38] It is not yet clear how widely Indigenous

[36] S.C. 1992, c.20.
[37] Fourth periodic report of Canada to the Committee against Torture, U.N. Doc. CAT/C/55/Add.8, 9 January 2004, para.91.
[38] Letter to Amnesty International from Don Head, Acting Commissioner, Correctional Service Canada, 31 August 2004.

organizations and communities will be consulted in that review process. We have been informed that they will not be consulted if the changes being contemplated are technical in nature but will be consulted with respect to any "content and/or significant change." Amnesty International is of the view that the issues at stake in this Directive are not merely technical in nature and should be the subject of broad consultation with Indigenous organizations and communities.

Recommendation 8

The Canadian government must put in place a system to consistently monitor the implementation of Directive 702: Aboriginal Programming, and ensure that all staff are adequately trained in the Directive to support its full and effective implementation.

5. THE USE OF TASER GUNS; (ARTICLE 16)

Since April 2003, in Canada, nine people have died following the use of a taser gun by police. Inquests into those deaths have not yet been completed. There are therefore no definitive findings as to whether tasers were a primary or contributing cause of any of the nine deaths. There have also been numerous reports of use of tasers in circumstances where allegations have been made that there use was excessive or inappropriate, including against people not actively resisting arrest and nonviolent protesters.[39]

In one high profile case, a complaint was made to the Office for Public Complaints against the RCMP, involving an incident that took place during demonstrations at the Summit of the Americas in Quebec City in April 2001. The individual against whom the taser was used was "not struggling and represented no threat to the members, to himself, to the public or to property." The Commission found that in these circumstances the use of the taser was a "clear abuse of authority."[40] Official reports such as this raise the concern that if not properly regulated, tasers can be used in circumstances tantamount to ill-treatment.

Amnesty International has followed with concern the growing use of taser guns by police forces in Canada. Amnesty International does encourage police forces to make use of non-lethal means when deploying appropriate levels of force. This is in keeping with international standards with respect to the use of force by law enforcement officials. The organization is concerned, however, that the taser may be open to misuse and further that the effects of its use are not yet fully understood. In particular, Amnesty International has pointed to concerns that individuals with weakened hearts and those under the influence of drugs may be particularly susceptible to harm and even death when subdued with a taser. The organization has therefore called on police forces across Canada to temporarily suspend the use of tasers until comprehensive and independent research is conducted. On the basis of that research, governments in Canada should decide whether tasers should be used by police and if so, what rules, safeguards and oversight procedures would be put in place to prevent misuse of the weapon.

[39] Amnesty International Annual Report, *Canada*, 2004, p.104.
[40] Commission for Public Complaints against the RCMP, Chair's Interim Report, File No. PC-2001-0409, 29 October 2003, p.13.

Amnesty International does welcome the review called for by the Canadian Association of Chiefs of Police,[41] but the organization remains concerned that the review will be limited to existing research. Amnesty International is of the view that the research to date is inadequate and contradictory. New research is required, as noted above.

Recommendation 9

The Canadian government should ensure that the use of tasers in Canada is suspended pending comprehensive and independent research to determine whether they should be used and if so, what rules, safeguards and oversight procedures are required.

6. FEDERALLY-SENTENCED WOMEN PRISONERS; (ARTICLE 11)

Amnesty International has expressed concern that significant reforms are needed to ensure stronger protection of the fundamental rights of federally-sentenced women prisoners in Canada, including the right to be protected from torture and ill-treatment.[42]

Referring to a Commission of Inquiry into the situation of federally-sentenced women prisoners at the now-closed Prison for Women in Kingston, the Canadian government's report to the Committee against Torture states that "… the majority of then-Madame Justice Louise Arbour's recommendations were accepted by Correctional Services and have since been implemented."[43] Amnesty International is concerned, however, that a number of important recommendations from the Arbour Inquiry remain unimplemented.

Among the many issues of concern highlighted in the Arbour Inquiry is the practice of segregation. The report notes that: "[i]t is not surprising that the prolonged deprivation and isolation associated with the segregation of these inmates was seriously harmful to them."[44] A recent report from the Canadian Human Rights Commission outlines several areas of concern with respect to the protection of the basic rights of federally sentenced women.[45] This includes issues with respect to segregation and the support, rehabilitation and reintegration of Aboriginal federally sentenced women.

Recommendation 10

The Canadian government should put in place structures and processes to ensure that the power to segregate inmates, particularly federally sentenced women and Aboriginal inmates, is only exercised when absolutely necessary and when all other alternatives have been exhausted.

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[41] Canadian Association of Chiefs of Police, News Release, 10 August 2004.
[42] Amnesty International Canada, *Equal Rights: A brief to the United Nations Committee on the Elimination of Discrimination against Women*, December 2002, pp.5-7.
[43] Footnote 37, para.99. See also, Commission of Inquiry into certain events at the Kingston Prison for Women, 1996.
[44] Commission of Inquiry, Ibid., para. 2.8.3.5.
[45] Canadian Human Rights Commission, "Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women ," December 2003.

7. RATIFICATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Amnesty International welcomed the adoption by the United Nations in December 2002 of the Optional Protocol to the Convention against Torture. This important new instrument, which establishes a national and international level system for the inspection of places of detention, stands to make a critical contribution to efforts to prevent torture.[46]

Amnesty International has repeatedly called on the Canadian government to ratify the Optional Protocol. The organization has highlighted that this is necessary both as a means of ensuring there is a system of oversight in place for centres of detention in Canada, but equally as an important step towards securing sufficient ratifications worldwide so that the Optional Protocol enters into force[47] and begins to provide global oversight in countries where national-level efforts to prevent torture are inadequate.

At present discussions are underway among federal, provincial and territorial governments in Canada about the possibility of Canadian ratification. Amnesty International has raised the issue with each of those 14 governments. Some governments have expressed concern that it would be costly or cumbersome to establish the necessary national level inspection bodies in each of those 14 jurisdictions. Amnesty International's research, however, indicates that bodies already exist in all or most jurisdictions in Canada that could readily assume the obligation to carry out the necessary investigations, including correctional investigators and ombudspersons' offices.

Recommendation 11

The Canadian government should ratify the Optional Protocol to the Convention against Torture without any further delay.

[46] Amnesty International, *UN Adopts Protocol to Prevent Torture*, IOR 40/042/2002, 18 December 2002.
[47] Pursuant to article 28(1) of the Optional Protocol, 20 ratifications are required. As of 5 October, 2004, there are 29 signatures but only 5 ratifications.

SUMMARY OF RECOMMENDATIONS

1. Canada should adopt a clear policy preferring extradition or prosecution over deportation in every case of an alleged torturer who is present in a territory under the jurisdiction of Canada, where the evidence warrants it.

2. The Canadian government should enact the necessary legal provisions to recognize universal jurisdiction with respect to civil suits brought in Canadian courts seeking reparation for torture suffered abroad at the hands of foreign governments and to ensure that any such suits cannot be defended on the basis of state immunity.

3. The Canadian government should amend Canada's Immigration and Refugee Protection Act to recognize the absolute nature of the obligation under article 3 of the Convention against Torture to refrain from deporting, extraditing, surrendering or otherwise removing from Canada any person to a country where he or she faces a substantial risk of torture.

4. The Canadian government should implement a comprehensive program of training for consular officers so as to better equip them to be able to conduct interviews with and make assessments of detainees who may be at risk of torture.

5. The Canadian government should implement a Human Rights Protocol that would be applied in all security and intelligence sharing agreements and arrangements. The Protocol should specifically implement Canada's obligation to refrain from committing or being complicit in committing torture as well as the obligation to actively prevent torture from occurring.

6. The Canadian government should work with all provincial and territorial governments in Canada to ensure that independent, expert bodies with sufficient power to initiate and conduct thorough and impartial investigations of any allegations of grave human rights abuses by police exist in every jurisdiction in the country.

7. The Canadian government should provide funding for comprehensive national research on violence against Indigenous women, including the creation of a national registry to collect and analyze statistical information from all jurisdictions.

8. The Canadian government must put in place a system to consistently monitor the implementation of Directive 702: Aboriginal Programming, and ensure that all staff are adequately trained in the Directive to support its full and effective implementation.

9. The Canadian government should ensure that the use of tasers in Canada is suspended pending comprehensive and independent research to determine whether they should be used and if so, what rules, safeguards and oversight procedures are required.

10. The Canadian government should put in place structures and processes to ensure that the power to segregate inmates, particularly federally sentenced women and Aboriginal inmates, is only exercised when absolutely necessary and when all other alternatives have been exhausted.

11. The Canadian government should ratify the Optional Protocol to the Convention against Torture without any further delay**.**