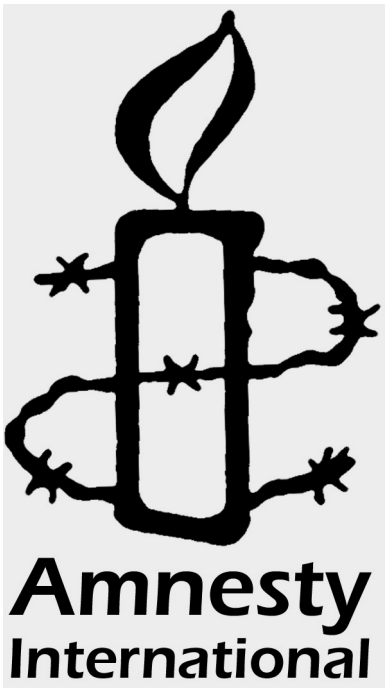
Justice Must be Served

Final Submission of Amnesty International to the
Internal Inquiry into the Actions of Canadian Officials
in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin



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Introduction

1. In 2004, three Canadian citizens were released from detention in Syria and Egypt. They had been illegally detained and held incommunicado in appalling conditions including long periods of solitary confinement. They were subjected to serious and prolonged physical and psychological torture. Everything about their experience raised serious questions about how this had happened. Who had been involved in the events and developments leading up to their imprisonment? What agencies, in what countries, had played a role? Had enough been done to protect these men from the grave human rights violations they experienced?

2. It quickly became clear that all of those questions had an important and very troubling Canadian dimension. Amnesty International has, therefore over the past four years, insisted that justice be served in Canada in the form of answers, accountability, reparations and an assurance that reforms will be undertaken to ensure that such events are not repeated.

3. Amnesty International first met individually with each of Mr. Almalki, Mr. Abou-Elmaati and Mr. Nureddin soon after their return from Syria and Egypt. They spoke in detail about their experiences of torture and the frequent violation of their human rights. They spoke of being held in abysmal conditions while in detention in countries that Amnesty International has recognized as flagrant violators of human rights. They also spoke of their concerns about the role that Canadian officials may have played in their detention and subsequent torture.

4. Amnesty International has been a strong supporter of this Inquiry and welcomes this opportunity to make closing submissions. In making these submissions we are departing from our norm of only participating when our submissions can be made in public. We requested on numerous occasions for arrangement to be made so that at least some portion of these submissions could be made public. We have also called for a public session during which closing submissions could be made. We continue to be of the view that it is critical that there be a final public phase involving oral closing submissions.

5. After reviewing the draft factual narratives Amnesty International is firmly of the view that Canadian officials were seriously deficient throughout their handling of these three cases and that their actions showed a reckless and at times, intentional, disregard for international human rights legal obligations. These deficiencies most certainly contributed to the detention and torture and ill-treatment experienced by Mr. Almalki, Mr.Abou Elmaati and Mr. Nureddin.

6. This submission is based on the draft factual narratives as they were when we reviewed them in early June. The submission contains five sections: (1) a brief overview of key aspects in the three cases; (2) a discussion of our concerns and recommendations with respect to the inquiry process; (3) applicable human rights standards and the corresponding deficiencies; (4) comments regarding the right to a remedy and reparations; and (5) a compilation of our key conclusions and recommendations.

I. The Cases

7. On November 12, 2001 Ahmad Abou-Elmaati was arrested upon arrival at the airport in Damascus, Syria, where he was traveling to join his new wife. He was held in incommunicado detention, his arrest never acknowledged publicly by Syrian authorities, his whereabouts never disclosed to his family. He was subjected to brutal torture and extensive interrogation in Syria until January 25, 2002 at which point in time he was secretly transferred to Egypt. He remained in detention in Egypt, where the torture continued and in fact intensified. His Egyptian jailors refused to release him, despite a number of court orders requiring his release, until he was finally freed on January 11, 2004.

8. Some key pieces of information in the draft factual narratives with respect to Mr. Abou Elmaati include the following.

- Mr. Abou Elmaati was being investigated by the RCMP in 2001 based on information obtained from CSIS and the US.
- Information from their investigation was later shared with foreign agencies including the US, Syria and Egypt.
- He was labeled as a "terrorist," an "Islamic extremist" and a "heavy hitter" in correspondence with foreign agencies including the US.
- The RCMP learned that the map referred to as evidence of a plan to blow up Parliament was outdated yet we do not know when they learned this information.
- The RCMP shared his travel itinerary without caveats with the FBI and CIA.
- He and his mother were followed by the RCMP with the knowledge of other Canadian agencies, on their flight to Frankfurt.
- CSIS was informed that a foreign agency was taking steps to have him questioned and detained.
- CSIS sent questions to the Syrians to be asked of Mr. Abou Elmaati and CSIS received answers to those questions.
- CSIS sent follow-up questions to the Syrians to be asked of Mr. Abou Elmaati.
- The RCMP sought permission to interview him in Egypt.
- He was asked questions in Syria similar to the ones he was asked in Canada.
- While in detention in Egypt he made an allegation of torture in Syria and after that point officials continued to try to interview Abdullah Almalki in Syria.
- In early July 2002 ISI received information that he may have been tortured in Egypt.
- Information from his alleged confession was used to get a search warrant.
- Consular officials passed on information obtained during consular visits.

9. On May 3, 2002 Abdullah Almalki was arrested upon arrival at the airport in Damascus, Syria. Having heard that his grandmother was ill, he was returning to Syria for the first time since his family had emigrated to Canada 15 years earlier. He remained in prison until March 10, 2004. Like Mr. Abou-Elmaati, he was tortured extensively and interrogated relentlessly. He was never allowed legal representation or consular assistance.

10. Some key pieces of information in the draft factual narratives with respect to Mr. Almalki include the following.

- Information derived from this investigation was shared with the RCMP and foreign agencies.
- He and his family were under surveillance while in Ottawa.
- His biographical information and a reference to him being an "important member of Al Qaeda" were sent to Syrian and Egyptian officials.
- He was labeled a "terrorist", "Islamic extremist" and a "heavy hitter" in correspondence with the US and foreign agencies.
- The Supertext database was shared by the RCMP with a US agency.
- The RCMP and CSIS learned while he was in Malaysia that there was a supposed Syrian warrant for his arrest.
- The RCMP was told that he might be the subject of an extraordinary rendition.
- The RCMP repeatedly sought opportunities to question him directly in Syrian prison.
- The RCMP sent questions to the Syrians to be asked of Mr. Almalki and this occurred after they had learned about Mr. Abou Elmaati's allegation that he had been tortured in Syria.
- As early as August 2002 CSIS was receiving information about Mr. Almalki's treatment in detention in Syria, including that he was at that time allegedly in good health but that he had not been treated "fairly" earlier.
- He received no consular support while in detention.

11. On December 11, 2003 Muayyed Nureddin, a Canadian citizen of Iraqi descent, was arrested when he sought to cross the border between Iraq and Syria, en route back to Canada after a visit with his family in northern Iraq. He was imprisoned until January 13, 2004, given no consular or legal assistance, and like Mr. Abou-Elmaati and Mr. Almalki, was interrogated and subjected to torture.

12. Some key pieces of information in the draft factual narratives with respect to Mr. Nureddin include the following.

- He was being investigated by CSIS as of the late 1990's.
- He was suspected of being a money courier and that information was shared between the RCMP and the US pertaining to him.
- Assurances were sought to confirm "his association with criminal extremists."
- Canadian officials shared his travel information with the US and two foreign agencies.
- CSIS sought permission to share information that Mr. Nureddin had been stopped and searched on his way to Syria with the RCMP and foreign agencies including Syria but the foreign agency that provided the information refused to allow them to disclose the information to Syria.
- CSIS was informed that a foreign agency intended to carry out an extraordinary rendition of Mr. Nureddin.
- The RCMP incorrectly stated in a 2004 briefing note to the RCMP Commissioner that the RCMP did not consult with other foreign agencies or domestic agencies about Mr. Nureddin.
- In October 2006 they once again omitted to indicate that they shared information about Mr. Nureddin including his travel plans with foreign agencies.

13. These cases arise in connection with that of Maher Arar. On September 26, 2002 Maher Arar was pulled aside by an immigration officer while transiting through JFK Airport in New York City. Over the coming 12 months he was imprisoned in the United States, then briefly in Jordan and finally in Syria. He was never told what specific allegations had been made against him. He endured extensive interrogations in the United States and Syria, none of which were carried out in the presence of legal counsel. He was never given a chance to confront his accusers, or refute the allegations. He was severely tortured in Syria and held in abysmal prison conditions without access to natural or artificial light for months on end. Mr. Arar's experience, and the many ways in which deficient Canadian conduct was responsible for the serious human rights violations he suffered, are extensively documented in the reports issued by the Commission of Inquiry into the actions of Canadian Officials in relation to Maher Arar ("Arar Inquiry").

II. Inquiry Process

14. Amnesty International, building on our extensive involvement in the Arar Inquiry, has sought to engage actively with this Commission since its inception. Well before the Commission was established we had highlighted that while the Arar Inquiry had provided valuable insight into what had gone wrong in one case, the cases of Mr. Almalki, Mr. Abou Elmaati and Mr. Nureddin raised troubling questions about a possible pattern, practice or policy that went beyond mistakes in a single case. We urged the Government to establish this inquiry as we believed that it was necessary to investigate those wider concerns; ensure a degree of accountability; provide the men with answers; allow their reputations to be repaired; and make recommendations to ensure that tragedies of this sort would not be repeated.

15. As active participants in the Arar Inquiry we recognized when making the request to establish this inquiry that the Commission would face serious obstacles in carrying out its investigative responsibilities. Justice O'Connor engaged in a difficult and at times time-consuming struggle with the government over National Security Confidentiality issues (NSC). He pointedly stated that his, "experience in this Inquiry indicates that the Government would take a broader view of what needs to be excluded because of the NSC than I would."[1]

16. Amnesty International appreciates the efforts including, it is our understanding, a pending Federal court challenge, that the Commission has undertaken to secure maximum disclosure from the government. In addition to assertions of NSC from the Government, the Commission has had to work with resource limitations, vast amounts of evidence, non-participation from Syria, Egypt and the United States, and a restrictive mandate from the government. In light of these challenges, Amnesty International is heartened to see that the Commission has gathered a substantial amount of evidence, pointing to clear deficiencies in the actions of Government officials.

17. We continue to have faith in the ultimate outcome and are confident that on the basis of the evidence included in the draft factual summaries the Commissioner will find deficiencies.

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[1] *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, Ruling of Justice O'Connor on Process and Procedure, May 9th and page 9.*

We have, at the same time, noted a number of shortcomings in the Commission process. We have previously highlighted those concerns in other submissions and communications. We repeat our key concerns here as we believe it would be helpful for the Commission's final report to address procedural challenges that have arisen with an eye to making recommendations for future similar processes.

Concerns Regarding Transparency, Disclosure and the Interpretation of the Mandate

18. Amnesty International, other intervenors and the legal teams for the three men have all consistently, throughout the Inquiry process, stressed to the Commission the importance of transparency and disclosure. As Justice O'Connor in the Arar Inquiry noted:

> "Openness and transparency are the hallmarks of legal proceedings in our system of justice. Exposure to public scrutiny is unquestionably the most effective tool in achieving accountability for those whose actions are being examined and in building public confidence in the process and resulting decisions."[2]

19. Commissioner Iacobucci reiterated the importance of this point in his April 2nd Ruling on Participation and Funding:

> "Transparency and openness generally are valued principles in the work of courts, tribunals and inquiries. Their advantages are obvious and of fundamental importance to ensure accountability of decision makers and to inspire public confidence in the conclusions reached."[3]

20. Regrettably these fundamental values have often, in our view, been sacrificed in the context of the procedures adopted for this Inquiry. Unlike the Arar Inquiry, which had a substantial public phase, this inquiry has, with the exception of the hearing on standards, been carried out entirely behind closed doors. This stems from the Commissioner's May 31st Ruling in which he concluded that under the Terms of Reference there is a presumption towards closed proceedings premised on concerns over national security confidentiality.[4] There has also been a clear predilection for the majority of communication and exchanges between the Commission and the parties to be conducted off-the-record. Intervening parties wrote to the Commission at an early stage, urging that more of those exchanges be made in an official, on-the-record manner.[5]

21. After several months of experience as to the interpretation and application of the May 31st ruling, on October 2nd, 2007 we joined in a formal application seeking greater disclosure. Our position was, and remains, that the Commission could have and should have interpreted the terms of reference more generously when it came to the issue of public disclosure and public hearings. The application requested, *inter alia*:

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[2] *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar,* Report of the Events Relating to Maher Arar: Analysis and Recommendations *(2006), at 304.*

[3] *Ruling of Commissioner Iacobucci on Participation and Funding, April 2nd, 2007 pg. 3.*

[4] *Ruling of Commissioner Iacobucci on Terms of Reference and Procedure, May 31 at para 44-45, 72.1*

[5] Amnesty International Canada and other intervenors, in an August 22, 2007 letter to Commissioner Iacobucci, requested that communication between the Commission and the parties be on the record. To date the majority of communication with the Commission has remained off the record.

- disclosure of the names of all witnesses, save those employed by CSIS, who were interviewed by Inquiry Counsel;
- disclosure of all documents provided to Inquiry Counsel by all participants in the Inquiry without redaction save and except where there are valid NSC claims requiring redaction; and
- a direction that certain witnesses be called to give oral evidence publicly.

22. In supporting this application Amnesty International sought not only to strengthen the opportunities for the men to engage in the process but also to allow intervening parties and through us the broader public to participate in and more meaningfully follow the process. In our application we made the following arguments:

- That the provisions of the Terms of Reference and the General Rules of Procedure and Practice when read separately and together clearly provide an opportunity for portions of the Inquiry to be conducted in public where NSC concerns do not arise. Paragraph (d) of the Terms of Reference directs the Commissioner to "take all steps necessary to ensure that the Inquiry is conducted in private." Paragraph (d) is subject to paragraph (e), which authorizes the Commissioner "to conduct specific portions of the Inquiry in public if he is satisfied that it is essential to ensure the effective conduct of the Inquiry."

- That an interpretation of what is meant by the "effective conduct of the Inquiry" can be found in the preambular paragraph of the Terms of Reference that states that the Inquiry should have a "credible process … that inspires public confidence in the outcome."[6] Commissioner Iacobucci alluded to the central place that a credible process and public confidence plays in an Inquiry when he referred in his May 31st ruling to the "great importance attached to public hearings."[7]

23. Amnesty International made its request for greater disclosure because greater transparency through public disclosure allows for public scrutiny and public engagement. This is in keeping with the open court principle whereby public scrutiny of government action allows institutions of representative democracy to function appropriately and helps to ensure that the Government adheres to its pledge of full co-operation with the Inquiry. This plays a vital role in promoting and upholding human rights.

24. Regrettably the application for greater disclosure was denied. Amnesty International has remained concerned that the lack of any meaningful public phase in the inquiry process has, in some important respects, further eroded public confidence in Canada's national security agencies and has made it virtually impossible for the three men to engage with the process in a fair and meaningful manner.

25. We have had extensive interaction with the three men and their legal teams both before and throughout the Inquiry. We are concerned that the private and occasionally contentious nature of the proceedings has clearly left the men feeling marginalized in the process. They have

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[6] *Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin*, Terms of Reference, May 31st, 2007.
[7] *Ruling of Commissioner Iacobucci on Terms of Reference and Procedure, May 31at 27.*

often felt that they are the ones who are being investigated and that their allegations of torture were being aggressively challenged. They are understandably concerned that rather than have the Inquiry serve as an outlet through which their reputations can be restored, the process has shrouded their cases in yet more secrecy. Unlike the Arar Inquiry which included numerous opportunities for public engagement, the private nature of this inquiry has left the men with the impression that their cases do not warrant the same degree of investigation, public attention, or accountability.

26. The sole public hearing held pertaining to standards was welcomed by Amnesty International. The Commission was responsive to our concerns and receptive to the points made by each of the parties. Furthermore it allowed an opportunity for the public to engage with the process. Each day concerned Canadians had the opportunity to attend the hearing or follow progress through the media. It is regrettable that there have not been other similar opportunities. Those two days of hearing most importantly very clearly bolstered the confidence of the three men in the Commission.

27. Amnesty International position has been that the men have a right to effectively participate in the inquiry as a direct result of their right to an effective remedy. International human rights law stipulates that there should be a minimum level of transparency, public scrutiny and effective participation by interested parties in official inquiries into serious human rights violations. Their right to an effective remedy is enshrined in article 2 of the International Covenant on Civil and Political Rights and article 14 of the UN Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment, which have been interpreted to include a right on the part of victims of human rights violations to have an effective and impartial official investigation of the circumstances of the violations and the events that led to them.[8] The victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.[9] In this case the men could not cross-examine or attend examinations of witnesses, see the official witness list, or review interview transcripts or the draft factual narratives. In those circumstances it is difficult to conclude that they have been able to participate in a meaningful fashion.

28. More active participation in the inquiry process by the three men would have benefited the Commission and instilled confidence in the men about the process. One avenue for possible involvement from the men arose during the reviewing of the draft factual narratives. The Commission released the draft factual narrative to the Counsel for the men and Counsel for the interveners for the purpose of asking for feedback and suggestions for further investigations. The men were once against shut out of the process as they were denied the opportunity to review the narratives.

29. Another consequence of the ruling was that an essential member of Amnesty International's team, Kerry Pither, was also denied the opportunity to review and assist in compiling our response to the draft factual summaries because Ms. Pither is not a lawyer. The exclusion of the three men and Ms. Pither from this crucial phase of the Commission has

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[8] *Hugo Rodriquez v. Uruguay,* United Nations Human Rights Committee, No. 322/1988, paras 12-14.
[9] *Finucane v. United Kingdom, Application no. 29178/95, 1 July 2003*, para 71 (citing numerous other European Court decisions reiterating this principle).

substantially limited our ability to provide detailed, relevant and informed feedback. At a time when there has been substantial time pressure and very tight timelines, this significant limitation has led to an unfortunate perception of thoroughness being sacrificed for efficiency. It has also left a sense of uncertainty and doubt as to how thoroughly the suggestions provided in our feedback to the draft factual summaries can be pursued, given the shortness of time remaining.

Looking ahead: Recommendations for similar future inquiries

30. The Commission has a valuable opportunity to lay out recommendations for any similar future inquiries that revolve around individuals who are alleged to have experienced serious human rights violations, such as torture. Drawing on the experience of carrying out its work under the restrictive Terms of Reference that were established for this inquiry, Amnesty International urges the Commission to make such recommendations.

31. Amnesty International's essential recommendation in this regard is that future similar inquiry processes be structured in a manner that will allow and encourage greater sensitivity to the psychological well-being of the victims. We are particularly concerned about the degree to which an excessively secretive and restrictive process has the very real potential to retraumatize or otherwise cause psychological distress to the individuals concerned.

32. We submit that the starting point for future inquiries should be an initial assessment of such fundamental questions as to whether or not the individual(s) involved has been subjected to torture or other serious human rights violations, and to then adopt a process that will be attentive to their psychological well-being.

33. On the basis of early interviews with the men soon after their return to Canada Amnesty International has concluded that the accounts of torture provided by Mr. Abou-Elmaati, Mr. Almalki and Mr. Nureddin are credible and believable. It is our conclusion all three men are, therefore, survivors of torture. Professor Stephen Toope had come to a similar conclusion when he interviewed these men as part of his fact-finding for the Arar Inquiry. In such a context, there should have been an operating assumption that the allegations of torture were true until such time as they are more fully examined through the Inquiry's own procedure.

34. Numerous models and standards exist to assist in ensuring that any assessment of allegations of torture is both sensitive and thorough. In Canada the Immigration and Refugee Board has guidelines in place for working with vulnerable persons.[10] Internationally many states have established inquiries to address serious human rights violations and Truth and Reconciliation processes that tackle similar subjects and thus can provide guidance.

35. International standards should also serve to inform future inquiries. The UN's *Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* in article 10 states that alleged victims should "benefit from special

[10] *"Guideline on Procedures with Respect to Vulnerable Persons Appearing Before the IRB,"* Immigration and Refugee Board Canada, Dec. 15, 2006.

consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation."[11]

36. Even more instructive is the *Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The Protocol, established in 1999 by leading organizations and experts involved in investigating allegations of torture and working with survivors, has been endorsed by the United Nations. The Protocol states that inquiries such as this one should be non-adversarial and incorporate measures to ensure that retraumatization of victims does not occur.

37. We are concerned that the decision to so widely exclude the men from the inquiry process has left them feeling isolated and defenceless — two states that they found themselves in while detained and tortured. While the contexts are different, given the significance of the inquiry for their reputations, such feelings could act as a trigger and contribute to retraumatization.

38. The Istanbul Protocol in its articles on Commissions of Inquiry clearly states that inquiries should "not be hampered by overly restrictive or overly broad terms of reference."[12] Furthermore, survivors must be given a central role in the process and access to the witnesses and hearings.

> "Those alleging that they have been tortured and their legal representatives should be informed of and have access to any hearing and all information relevant to the investigation and must be entitled to present evidence. This particular emphasis on the role of the survivor as a party to the proceedings reflects the especially important role their interests play in the conduct of the investigation.[13]"

In this case the men were denied such a role.

39. The Protocols also highlight the importance of providing the opportunity for survivors to participate in cross-examination and where that does not occur states that:

> "Testimony not tested by cross-examination must also be viewed with caution. In-camera testimony preserved in a closed record or not recorded at all is often not subject to cross-examination and, therefore, may be given less weight."[14]

40. Amnesty International was not present for the interviews and as such is unable to go into detail in commenting on them beyond general principles that should apply when interviewing survivors of gross human rights violations including torture.

- Every measure should be taken to ensure that survivors are interviewed in a comfortable and non-adversarial setting.

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[11] *Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,* A/CONF.157/24, 16 December 2005.
[12] *Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* Physicians for Human Rights, 9 August 1999, at 106.
[13] *Ibid* at 115
[14] *Ibid* at 114

- Those carrying out the interviews should have "prior training or experience in documenting torture and working with victims of trauma, including torture." If it is not possible to find such individuals, every effort must be taken to ensure that the interviewers have been "informed about torture and its physical and psychological consequences before interviewing the individual."[15]
- Support in the form of therapists should be on hand and, if desired by the survivor, attendance of family and friends permitted.
- Attention must be paid to the nature of the questions asked, who is asking them, and in what tone the questions are asked.
- The burden should not be on the individual to prove that they were harmed.
- The Istanbul Protocol provides guidelines for Commissions of Inquiry to follow when questioning survivors in order to help build trust and be sensitive to the risks of re-traumatization.[16]
- The *Istanbul Protocols* note that the "torture survivor's personal reactions to the interviewer can have an effect on the interview process … Likewise, the personal reactions of the investigator towards the person can also affect the process of the interview and outcome of the investigation." Thus, interviewers must always be cognizant of the impact their responses may be having on the individual and routinely examine "the process of the interviews and investigation through consultation and discussion with colleagues familiar with the field of psychological assessment and treatment of torture survivors."[17]
- The Protocols highlight the importance of allowing the survivor to speak freely and for the interview to be non-adversarial.

III. Deficiencies

41. In our final submission we have been asked to direct our responses to the question of whether or not the actions of Canadian officials contributed directly or indirectly to the detention and mistreatment of the three men, particularly in relation to the sharing of information with foreign countries, and if so, whether those actions, and the consular services provided, were deficient given the circumstances. After reviewing the draft narratives, Amnesty International strongly believes that Canadian government officials' actions were deficient and that they contributed directly or indirectly to the detention and mistreatment of the men.

42. In light of flagrant human rights abuses in Syria and Egypt and more specifically, their treatment of suspected Islamic terrorists, *anytime* the actions of Canadian Government officials directly or indirectly contributes to the detention and/or mistreatment in these two countries of a Canadian citizen who is a suspected terrorist, those actions are deficient.

43. Under international human rights law officials have a positive obligation to refrain from activities that should reasonably have been known might contribute to torture, in Canada or abroad. In light of this obligation and the exhaustive accounts of torture and mistreatment

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[15] *Ibid* at 89.
[16] "Trust is an essential component of eliciting an accurate account of abuse. Earning the trust of someone who has experienced torture or other forms of abuse requires active listening, meticulous communication." *Ibid* at 163.
[17] *Ibid* at 147.

readily available to officials in the period from 2001 to 2005, officials "ought to have known" that their actions would contribute directly or indirectly to the men's detention, torture and ill-treatment. [18]

44. The obligation of Canadian officials to prevent torture and other cruel, inhuman or degrading treatment or punishment is absolute and a disregard for this principle cannot be justified on the grounds that terrorism in the post 9-11 world poses unprecedented threats to Canada.

45. Clearly, the RCMP, CSIS and other law enforcement and security agencies play a valuable and necessary role in protecting human rights through investigating and preventing acts of terrorism. Amnesty International underscores, however, that those investigations must be carried out with the utmost respect for international human rights law. Framing intelligence activities in a ticking time bomb paradigm results in hastily prepared investigations where dehumanizing labels and potentially unsubstantiated allegations are recklessly used to justify actions that put individuals at risk of serious human rights abuses. A careful reading of the draft factual narratives reveals that for many officials this paradigm influenced heavily the decisions they made and led to numerous deficient actions.

46. Amnesty International's analysis of deficiencies is informed by our January 25, 2008 submission to the Commission on the applicable international human rights standards.

The Prohibition against the Use of Torture is Absolute

47. International human rights law clearly states that, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[19] This principle has been enshrined in numerous human rights treaties and is part of customary international law as, "the torturer has become, like the pirate and slave trader before him, *hostis humani geenris,* an enemy of all mankind."[20]

48. The prohibition on torture is absolute and has attained the status of jus cogens. It is a peremptory norm from which there can be no derogation, including in times or war, or in the face of terrorist threats.[21] Allegations of imminent terrorist threats cannot override the prohibition, as it is intransgressible. [22]

49. Under *no* circumstances can Canada engage in activities that would render it complicit or otherwise participate, instigate, consent to or acquiesce in the use of torture. The terms "with the

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[18] *Ahmed Hussein Mustafa Kamil Agiza v. Sweden,* Decision CAT/C/34/D/233/2003, 24 May 2005.
[19] *Article 5,* Universal Declaration of Human Rights*, GA. Res. 217A(III) of 10 Dec. 1948. See also: Article 7,* International Covenant on Civl and Political Rights *(ICCPR), G.A. res. 2200A(XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316(1966), 9999 UNTS 171,* entered into force *Mar. 23, 1976, (ICCPR) and Article 1,* Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *GA res. 39/46, annex, 39 U.N. GOAR Supp. (No 51) at 197, U.N.Doc. A/39/51(1989),* entered into force *June 26, 1987. (CAT)*
[20] Filartiga v. Pena-Irala, *630 F. 2d 876 (2d Cir. 1980).*
[21] *Article 2 CAT, Article 4 & 7 ICCPR, and* Prosecutor v. Furundzija, *(10 December 1998), Case No. IT-95-17/I-T (International Criminal Tribunal for the Former Yugoslavia), at paragraph 144 and 153-157.*
[22] *International Court of Justice,* Legality of the Threat or Use of Nuclear Weapons, *ICJ Reports 1996, p. 226 at p. 257, para. 79*

consent or acquiescence" in Article 1 of the Convention Against Torture have been interpreted to include *omissions* or *failures* of public officials to act "*when they had or should have had reasonable grounds* to believe that torture was taking or had taken place."[23]

50. Furthermore, Canada has a positive obligation to prevent, punish, and redress acts of torture.[24] The obligation to prevent torture from occurring is far reaching. "States are obliged not only to prohibit and punish torture, but also to forestall its occurrence: it is insufficient merely to intervene after the infliction of torture, when the physical or moral integrity of human beings has already been irremediably harmed. Consequently, states are bound to put in place all those measures that may pre-empt the perpetration of torture."[25] This includes an obligation to "ensure that education and information regarding the prohibition against torture are fully incorporated into the training" of individuals such as consular officials.[26] Furthermore, the prohibition against torture imposes on states an obligation *erga omnes*, one that is owed to all members of the international community.[27]

Canadian Officials Ought to Have Known that Their Actions Would Directly or Indirectly Result in the Men Being Detained or Mistreated Given Human Rights Concerns

51. The obligation to prevent torture requires that Canadian government officials be informed of human rights conditions in countries that it is sharing intelligence information with, and where Canadian citizens are being detained. The repeated references by officials in the draft narratives to their lack of awareness of human rights conditions in Syria and Egypt, or the risks associated with sharing information with the United States is very troubling. Extensive reports on human rights conditions were readily available at the time from Amnesty International, Human Rights Watch, and the US State Department, outlining human rights concerns. Information would have also been readily available from Canadian and international organizations working in those countries, through contacts with other diplomats and through media reports. For those officials working in Syria and Egypt, it is unacceptable to in any way accept that they could not and should not have been aware of human rights abuses in those countries. Canadian officials had reasonable grounds to know that their actions could directly and/or indirectly result in the men being detained, mistreated, and their detention prolonged in Syria and Egypt. They also ought to have known that in sharing information with the United States that information would have been shared with other foreign agencies including potentially Egypt and Syria. Their failure actively and frequently to inform themselves of human rights conditions does not in anyway diminish their culpability.

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[23] *Submission to Factual Inquiry and Policy Review of the Commission of Inquiry Into the Actions of Canadian Officials in Relation to Maher Arar on behalf of Redress Trust, The Association for the Prevention of Torture, and the World Organisation Against Torture, pg. 15 citing from, A. Boulesbaa,* The UN Convention Against Torture and The Prospects for Enforcement *(Martin Nijhoff, The Hague, 1999)* at pg. 26.

[24] CAT, European Court of Human Rights*, Z v. United Kingdom,* judgment of 10 May 2001*; A v. United Kingdom,* judgment of 23 September 1998 at 22.

[25] *Prosecutor v. Furundzija*, (10 December 1998), Case No. IT-95-17/I-T (International Criminal Tribunal for the Former Yugoslavia), at paragraph 148.

[26] CAT Article 10

[27] *Supra.,* at paragraph 151.

52. Officials should have been aware of the fact that in cases involving threats to national security in Syria and Egypt, arbitrary detention was commonplace and that torture of such detainees was routine. They ought to have known that their actions in sharing information, seeking confirmation of biographical information, sending questions, seeking permission to meet with officials and to interview detainees with the Syrian government, would have contributed to the men's detention and subsequent mistreatment.

53. Canadian officials ought to have known that, "Syria has a long record of arbitrary arrests, systematic torture, prolonged detention of suspects, and grossly unfair trials."[28] They should have known that at Far Falestin, where the three men were held, "commonly cited torture methods include *falaqa* (beating on the soles of the feet) and *dullab* (the "tire", whereby the victim is suspended from a tire and beaten with sticks or cables*).*[29] They should have known that forced confessions made under duress in the face of such torture were reported frequently.[30] Similar evidence was also available regarding Egypt revealing that, "torture is systemically practiced by the Security Forces in Egypt, in particular by State Security Intelligence,"[31] and that forced confessions made under duress have been reported, as have deaths as a result of torture.[32]

54. Canadian officials should also have known that Syria and Egypt's states of emergency violated international law, as they were not of an exceptional and temporary nature, and that the those states of emergency created an environment where gross human rights abuses were rampant.[33] As a result they ought to have taken every precaution to ensure that Canadian citizens were not detained under the emergency laws and subjected to not just a credible risk of torture but also arbitrary, incommunicado and indefinite detention without out the opportunity to know the charges against them or have a fair trial. In light of these well-known human rights conditions Canadian officials should have actively worked for the men's release once learning of their detention.

55. Canadian officials ought to have been aware that both Syria and Egypt have been engaged in a more than 30 year struggle with terrorism and political opponents linked to Islamic elements of their society. As we outlined in more detail in our January 25th, 2008 submission, given the historical and political context in which intelligence officials in these two states would have evaluated such a label, it is clear that the labels 'Islamist,' 'Islamic terrorist,' 'important members of Al Qaeda,' and 'imminent threats,' would have been regarded as being synonymous with membership in Islamic groups that those governments have outlawed and taken harsh action to contain and defeat. In both countries supporters and members of Islamic groups, such as the Muslim Brotherhood, have routinely been targeted for arbitrary detention, subjected to torture

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[28] Human Rights Watch, *World Report 2003,* online: Human Rights Watch http://www.hrw.org.
[29] Amnesty International, *Amnesty International Report,* (London: Amnesty International Publications, 1996) at 278.
[30] *Ibid* 6 at 278.
[31] General Assembly, *Report of the Committee Against Torture,* UN GA, 1996, Supp. No. 44. UN Doc. A/51/44. at para. 220.
[32] Amnesty International, "Egypt, Indefinite Detention and Systematic Torture: The Forgotten Victims," (1996) MDE 12/13/96 at 8, <www.amnesty.org>
[33] General Comment on Article 4. *Syria has been under a state of emergency since the enactment of Legislative Decree No. 51 of the 9th of March, 1963, see also* Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant,* CCPR/CO/71/SYR, 24 April 2001, page 2.

and/or ill-treatment, disappeared, or been killed as a result of their alleged Islamist sympathies. [34] Furthermore, "facilities for political or national security prisoners generally are worse than those for common criminals."[35] In 2000 the US Department of State reported that in political or national security cases, "arrests generally are carried out in secret, and suspects may be detained incommunicado for prolonged periods without charge or trial."[36] This information was readily available. For Canadian officials to claim that they were unaware that torture was rampant or that detention was likely for suspected terrorists, suggests a deficiency in their judgment and competency or an intention to be willfully blind to the likely implications of their actions.

56. Similarly, ample evidence was available at the time that pointed to serious human rights violations being carried by the United States in its 'war on terror.' While the men were being detained, Syria was named one of the seven state sponsors of terrorism by the US State Department, yet they "had co-operated with the United States and with other Foreign governments in investigating al-Qaeda and some other terrorist groups and individuals."[37] The United States had no qualms carrying out investigations with, and using the interrogation services provided by, states with poor human rights records such as Syria. While the draft factual narratives pertain only to the three men, it is worth noting that the experience of Maher Arar highlights clearly the cavalier attitude that the US had towards protecting human rights and relying on countries like Syria to use torture as a means of soliciting answers.

57. Prior to and during the men's detention there was a steady stream of information about human rights abuses by the United States that was being exposed in the media and by human rights groups. In each of Amnesty International's reports since 2001 we have documented such abuses as the use of rendition, secret detention, and human rights violations associated with Guantanamo Bay.[38] As such Canadian officials ought to have known that in sharing information with the United States there was a risk that that information would be used in ways that might lead to serious human rights violations. Relying on caveats and assurances was not sufficient because, as the UN Committee Against Torture noted in regards to assurances received by the United States, states "should only rely on "diplomatic assurances" in regard to States which do not systematically violate the Convention's provisions, and after a thorough examination of the merits of each individual case."[39] Furthermore, "assurances are inherently unreliable, not legally binding, and provide no recourse for the persons."[40]

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[34] Amnesty International, "*Egypt: Indefinite Detention and Systematic Torture: The Forgotten Victims*," July 3rd, 1996, MDE 12/13/96 at pg. 1.

[35] US Department of State, Bureau of Democracy, Human Rights, and Labour, Country Reports on Human Rights Practices*, Syria, 1999*, February 23, 2000, <www.state.gov/g/drl/rls/hrrpt/1999/427.htm> and US Department of State, Bureau of Democracy, Human Rights, and Labour, Country Reports on Human Rights Practices*, Syria, 2001, March 4, 2002,* <www.state.gov/g/drl/rls/hrrpt/2001/nea/8298.htm>

[36] US Department of State, Bureau of Democracy, Human Rights, and Labour, Country Reports on Human Rights Practices, *Syria,* 1999, February 23, 2000, <www.state.gov/g/drl/rls/hrrpt/1999/427.htm>

[37] HRW 2003 World Report.

[38] Amnesty International reports 2001. 2002 etc.

[39] *Committee Against Torture,* Conclusions and Recommendations of the Committee Against Torture, United States, *25 July 2006, CAT/C/USA/CO/2 at p. 21.*

[40] Amnesty International*,* "United States of America, Justice Delayed and Justice Denied," March 2007, AMR 51/044/2007 at 70. See also General Assembly, *Note by the Secretary General, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* 1 September 2004, A/59/324 at para 34.

58. Canadian government officials should have known that human rights conditions in Syria and Egypt were abysmal and the United States had been justifying its own derogations from human rights law on the grounds that it was engaged in a war on terror. Evidence supporting these assertions was disseminated widely and was easily accessible. As a result the excuse that they just did not know cannot be used to diminish the deficiency of their actions.

Human Rights Standards Apply to Consular Services

59. There are a number of human rights standards that should have been adhered to by consular officials. They have an obligation to take all necessary measures to prevent torture from occurring or continuing. They have a duty to protect their nationals from torture and ill treatment abroad; to enquire into the circumstances of their citizen's detention; and to make diplomatic representations and to deploy diplomatic measures to bring them back to Canada. [41]

60. Canadian consular officials should remind foreign officials who are detaining Canadians of the prohibition of the use of torture and of arbitrary arrest or detention.[42] They should also request on behalf of the detained Canadian that formal charges be laid so as to end their indefinite detention.[43] They should urge that the right to a fair trial is respected and that the individual is afforded legal representation and is treated "with humanity and with respect for the inherent dignity of the human person".[44]

61. All detained Canadian citizens who face a serious risk of torture are entitled to the presumption of innocence and to be treated equally, given local realities, by consular officials.[45] That means the same degree of effort should be expended on behalf of each and every one with respect to frequency of diplomatic protests, forcefulness of attempts to gain consular access, persistence in seeking private visits, and the degree to which senior government officials become involved.[46]

62. Canada, Egypt, and Syria are all signatories of the Vienna Convention on Consular Relations and as such are entitled to request of host states the right of consular access to their detained citizens; the right to be informed when their citizens are detained, and the right to visit them.[47] They should, "insist on unrestricted consular access to its nationals who are in detention

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[41] *Hicks v. Ruddock (*2007) FCA 299 (8 March 2007)*, Flynn v. Schultz*, 748 F.2d 1186, 1195 (7th Cir. 1984), and *Hess Berge* 55, 349 (1980). See also; UN Human Rights Committee*, General Comment No. 31, Nature of the General Legal Obilgation on States Parties to the Covenant,* 2004, UN Doc, CCPR/C/21/Rev.1/Add.13.

[42] *CAT, Article 3, ICCPR re Torture, Article 9, International Covenant on Civil and Political Rights.*

[43] *ICCPR Article 9*

[44] *ICCPR Article 10,* In the context of those deprived of their liberty the Human Rights Committee stated in *General Comment 21,* 10 April 1992, para 4 that, "treating all persons deprived of their liberty with humanity and respect for their dignity is a fundamentally and universally applicable rule."

[45] Canadian Charter of Rights and Freedoms, section 11d.

[46] *Canadian Charter of Rights and Freedoms, Article 15, ICCPR Article 2.*

[47] Vienna Convention on Consular Relations, 24 April, 1963, Accession, Egypt Jan 21st, 1965. Accession**,** Syria, Oct 13, 1978. Accession**,** Canada, 18 July 1974.

abroad, with facility for unmonitored meetings and, if required, of appropriate medical expertise."[48] When these requests are denied they should protest forcefully.

Examples of Key Deficiencies

63. The draft factual narratives reveal that the actions of Canadian government officials were starkly deficient in many respects.

64. Canadian officials repeatedly sought out opportunities to share information gathered in their investigations into possible Canadian terrorists with governments who flagrantly violate human rights in a counter-terrorism and national security context, including Syria, Egypt and the United States. They sent questions to be asked of Canadian citizens being detained in appalling conditions in facilities where the use of torture and other cruel, inhuman and degrading treatment is rampant. They received answers to one set of questions that were put to Mr. Abou Elmaati. There are no circumstances in which these actions would be considered acceptable. In requesting that questions be put to Mr. Abou Elmaati while he was confined in the notorious Far Falestin prison, CSIS did what they could not have done in Canada, they benefited from torture being used as a means of eliciting responses to their questions. As the likelihood this would occur was strong, officials thereby become complicit in the use of torture. They cannot now use the excuse that they did not know that he would be tortured, or that harsh methods were justified given the imminent threat that they believed he posed at the time. They ought to have known that there was a credible risk of torture, and that the prohibition on the use of torture is absolute.

65. The draft factual narratives reveal a pattern of deficiencies. We have highlighted numerous examples below.

The Deficient Actions of Canadian Government Officials Directly/Indirectly Resulted in the Men's Detention

<u>Labeling and Sharing of Information with US Officials</u>

65. The draft factual narratives reveal that Canadian agencies routinely made seemingly unsubstantiated allegations and used labels that connoted that the men were Islamic terrorists in an unprincipled way when corresponding and sharing information with foreign intelligence agencies.

66. In correspondence with US and other foreign agencies between 2000 and 2002, Mr. Abou Elmaati and Mr. Almalki were referred by the RCMP and CSIS as 'heavy hitters,' members of an 'Islamic extremist movement' and an 'imminent threat.' In 2002 Mr. Nureddin was referred to as being a money courier linked to Islamic extremists.

67. In addition to using labels, the RCMP and CSIS worked closely at times with US agencies and information sharing was commonplace. The RCMP shared information about its

[48] Committee Against Torture, *Concluding Observations/Comments on 4th and 5th periodic reports of Canada*, CAT/C/CR/34/CAN. 7 July 2005, paragraphs 4(b) and 5(d) and *European Convention for the Punishment of Torture and Inhuman or Degrading Treatment or Punishment,* Strasbourg, 26. XI. 1987.

investigation into Mr. Almalki with a US agency and gave them access to material such as the Supertext database. We also know that information about Mr. Abou Elmaati's will and his time in Afghanistan was shared, as was his travel itinerary, which the RCMP sent to the FBI and CIA without any caveats. In the case of Mr. Nureddin, assurances were sought from the United States to confirm "his association with criminal extremists." CSIS also sent his travel itinerary, including his intention to return to Canada from Syria, to the United States and two foreign agencies.

68. Canadian officials ought to have known that information given to the United States about the allegations against the three men would have been sent to other foreign agencies including potentially the Syrians and Egyptians. As has been noted, assurances from the United States that they will not give the information to other countries cannot be considered an adequate safeguard. In the aftermath of September 11th, the use of a label like 'Islamic extremist' and 'imminent threat' would have instantly made the individual a target for investigation irrespective of the validity of the assertion. The US around the time of the men's detention had adopted the ticking time bomb approach to investigations and as a result there was little room to stop and assess the labels' merits or analyze the veracity of the evidence on which the label was based. Instead the supposed threat necessitated rapid action, including potentially facilitating or encouraging the detention and interrogation of an individual — using torture if necessary.

69. Ample evidence was available at the time to suggest that such practices were commonly employed by US intelligence agencies. In the late 1990's US intelligence agents detained one of Egypt's most wanted Islamic militants, Talaat Fouad Qassem. He was seized in Croatia and placed on a ship in the Adriatic Sea where he was interrogated and subsequently turned over to the Egyptians. In 2002, US authorities flew six men — who only hours before had been released from detention by Bosnia's Supreme Court — to Guantanamo Bay.[49] Thus it is not implausible to suggest that information about, and the labeling of, Canadian citizens as potential Islamic terrorists could have influenced US officials to find a way to have the men detained and interrogated in a country like Syria.

70. The case of Mr. Nureddin provides the perfect example to reveal how this might have unfolded in the cases of the three men. Information sharing and labeling likely led to the US reaching the conclusion that Mr. Nureddin was a money courier for Islamic extremists. On learning that he was planning to fly home to Canada from Damascus, an opportunity arose to have Mr. Nureddin detained and questioned. They could have either asked the Syrians directly to detain Mr. Nureddin and/or provided the Syrians with enough of the information given to the US by Canada so as to justify in the minds of Syrian officials the need to detain and interrogate Mr. Nureddin. The fact that CSIS officials have told the Inquiry that they did not believe that the US would share information about Mr. Nureddin with other countries because it would jeopardize the relationship between US and Canadian agencies, fails to take account of what was readily known with respect to US practices in the 'war on terror'.

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[49] Center for Human Rights and Global Justice, and the Association of the Bar of the City of New York, *Torture by Proxy: International and Domestic Law Applicable to Extraordinary Rendition,* October 2004, at *para 68, 111.*

Labeling and The Sharing of Information with the Syrians and Egyptians

71. In late September 2001, a request was made to a number of countries, including Syria and Egypt, asking them to conduct a background check on Mr. Abou Elmaati on the grounds that he was an imminent threat to public safety. They were asked to make the request a priority. In October 2001, faxes were sent to Syria and Egypt by the RCMP seeking biographical information about Mr. Abou Elmaati and Mr. Almalki who were again referred to as "imminent threats." Mr. Almalki was further referred to in subsequent correspondences as being an "important member of Al Qaeda."

72. Given the prevailing human rights context in Syria and Egypt these labels would have almost certainly led Syrian and Egyptian intelligence agents to draw immediate conclusions about the men. Their treatment of suspected Islamists was and still is harsh and those labeled as they were by the Canadian officials, would face more than a serious risk of being detained and tortured. Without presenting any qualification, limitation or explanation the use of those labels by Canadian officials would have certainly led Syrian and Egyptian officials to perceive of the men as dangerous and deserving of harsh treatment.

73. As a result Syrian and Egyptian officials might have been left asking why they would want such individuals moving freely around their countries. The men could conspire with other Islamic extremists to undermine the power of the government. As such should it would have been better to detain them as soon as possible. Furthermore, Syrian and Egyptian officials may have interpreted Canada's labels, information sharing and intelligence gathering as an indication that Canada was eager to see the men detained and questioned. Thus Canadian officials may have directly or indirectly contributed to the men's detention. Canadian officials ought to have known that there was a credible risk of detention, and that torture in detention was a very strong possibility. When Mr. Abou Elmaati was interviewed on the afternoon of September 11th the CSIS officials who interviewed him used the term 'Mukhabarat.' The use of that term clearly suggests that the officials were aware of the notorious practices of the Mukhabarat. While they indicate they used the term to help clarify their role, it should have been obvious that using such a notorious term would almost certainly serve to intimidate Mr. Abou Elmaati.

Possible Detention and Rendition and Canada's Silence

74. A troubling revelation in the draft factual narratives was that Canada was informed on more than one occasion that each of the men were probably going to be detained at some stage in their travels. At no point did Canadian officials object to their impending detention or raise concerns about the legality of practices like rendition and arbitrary detention.

75. Under international human rights law Canada has a clear obligation to prevent the use torture, and to promote human rights standards such as the rights to security of the person, fair trials and not to be held incommunicado. Rendition and similar forms of detention fundamentally violate such human rights standards and as such Canada has an obligation to prevent, and most certainly object to, their use.

76. CSIS was informed in 2002 that a foreign agency was taking steps to have Mr. Abou Elmaati questioned and detained and that they had asked the Syrians to arrest him. This was prior to the detention of Mr. Almalki and Mr. Nureddin and suggests that from an early point CSIS was aware that foreign agencies were working with the Syrians to have individuals detained.

77. We also know that the RCMP and CSIS learned that while Mr. Almalki was in Malaysia there was an alleged search warrant out against him and that the Malaysians had been asked to arrest him. Canadian officials have stated that they did not collaborate in having him arrested; yet they also did not make an appeal for him not to be detained and sent to Syria. Similarly we also know that the RCMP was told by a foreign agency that he might be arrested while traveling through a country in which that foreign agency had jurisdiction; or through a country with which the agency had some sort of relationship. The RCMP made it clear that it would not permit Mr. Almalki to be arrested on Canadian soil but again did not object to him being detained. Rather than uphold Canada's human rights obligations and their obligation to ensure that Canadians are not held arbitrarily in incommunicado and indefinite detention without access to a fair trial and are protected from torture — they chose to merely look the other way.

78. In Mr. Nureddin's case Canadian officials were informed that a foreign agency intended to detain Mr. Nureddin during his travels. The response of CSIS officials was to request that he be treated in accordance with international conventions and due process. This is an interesting request given that it is unclear on what grounds if any he could have been legally detained and it once again reveals a failure on Canada's part to prevent or even protest the plan to illegally detain a Canadian citizen.

79. Amnesty International submits that this pattern of inaction sends a clear signal that Canada will not intervene if citizens who are labeled as terrorists, Islamic extremists and similar terms are detained and/or are subject to rendition or similar forms of detention. We do not know which states intended to detain the three men, nor if they explicitly asked the Syrians to detain the men. However it is clear that Canadian officials, in failing to uphold human rights obligations and protest the intended detentions, contributed to the men's detentions.

<u>The Deficient Actions of Canadian Government Officials Directly/Indirectly Resulted in the Men's Mistreatment</u>

80. The failure to consider whether or not there was a credible risk of torture prior to and during the men's detention is a serious deficiency that contributed to the men's mistreatment. Rather than be vigilant about their obligation to prevent torture, Canadian officials showed little or no concern about that very real risk. They made little to no effort to inform themselves of the scope of the duty or to the human rights implications of sharing information and using labels in correspondence with Syria, Egypt and the United States. They also failed to take appropriate measures to determine whether or not the men were experiencing torture or if they actions were contributing to a prolonging of their detention and torture.

Sending Questions is A Grave Deficiency

81. As has been noted above, labeling an individual as an Islamic extremist would have resulted in there being a credible risk of torture. Sending questions to be asked of them while they were in detention when Canadian officials ought to have known that torture would be used during interrogations is not merely a deficiency it is an egregious violation of international human rights law.

82. Article 1 of the Convention against Torture explicitly refers to those acts "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." As such, Canadian officials cannot send questions to foreign officials, knowing or where they ought to have known that they will lead to a serious risk of torture. Yet this is exactly what happened. CSIS sent questions via a foreign agency to be sent to Syrian authorities and asked of Mr. Abou Elmaati. They received answers to those questions and were emboldened to send a second round of questions. The RCMP similarly sent questions to be put to Mr. Almalki.

83. They sent questions to be used in the interrogation of Canadian citizens who were being held on national security grounds in a country with a record of widespread torture. They should have known that the men would face a serious risk of torture or ill-treatment. In sending the questions they lent Canadian legitimacy to the interrogation techniques used by the Syrians and may have emboldened the interrogators and resulted in them being even harsher with the men. The fact that Canada sent questions may have also strengthened the Syrian's belief that the men were indeed terrorists and thus again served to justify the use of harsh interrogation techniques. As such, it may be that not only were Canadian officials deficient in their actions but that their actions encouraged and/or facilitated the use of torture. On that basis it is possible that the Canadian government could even be held responsible for the commission of an internationally wrongful act.[50]

84. The possible culpability and the gravity of the "deficient actions" is heightened by the fact that the RCMP sent questions to be asked by Syrian intelligence of Mr. Almalki while he was being held at Far Falestin — the same prison that Mr. Abou Elmaati had been detained and tortured in — after Mr. Abou Elmaati made his allegation of torture to Canadian consular officials in Cairo. They sent questions after Mr. Solomon and other DFAIT officials raised concerns that there was a credible risk that Mr. Almalki would face torture.

85. As the draft narratives reveal, the questions were sent after certain officials questioned the veracity of Mr. Abou Elmaati's alleged confession on the grounds that it was too detailed. Mr. Pilgrim from the RCMP noted that it appeared as though the information had been fed to him by an interrogator. CSIS felt that while the threat posed in the confession was 'fairly' credible it could not be regarded as the exclusive statement of Mr. Abou Elmaati. If the credibility of Mr. Abou Elmaati's confession was being questioned why would Government officials have felt that answers from Mr. Almalki, given in the same environment that Mr. Abou Elmaati made his confession, would be any better? This raises the troubling possibility that

[50] Article 16 of the International Law Commission's Articles on State Responsibility, which is recognized as a codification of customary international law.

officials were engaging in activity that they could not legally undertake in Canada, turning a blind eye to the use of torture as a means of deriving information.

86. In numerous places in the narratives officials state that they did not believe that Canada was sending anything inflammatory or that would increase the risk of torture. We respectfully submit that their line of reasoning is deficient. They should have, in light of country conditions, recognized that even information that may be deemed insignificant in Canada could result in the men being tortured in Syria or Egypt.

87. It should also be noted that the actions of officials were deficient when they sought to interview Mr. Almalki and Mr. Abou Elmaati while they were in detention in Syria and Egypt. Under no circumstances could the information obtained during those meetings be admissible in a court of law. Yet officials sought them out. While they did not occur they may have directly or indirectly contributed to a prolonging of detention and to further mistreatment as it reinforced the idea that these men were of such importance and the threat was so great that Canadian officials had to interview them in person. Requesting an interview would also have sent mixed messages to Syrian and Egyptian officials who were also receiving requests from DFAIT to release the men. It may have left them questioning, in light of Canada's labeling, information sharing, the sending of questions and now its attempts to get an interview, how sincere Canada's attempts to have the men released were.

The Actions of Consular Officials were Deficient

88. Officials who carry out consular duties such as meeting with detainees must be trained to look for torture and to take every opportunity to urge detaining states to respect the basic human rights of Canadian citizens. The *erga omnes* nature of this norm necessitates that Canadian officials actively intervene to prevent torture from occurring and to call on states to uphold their obligations. The draft factual narratives reveal that consular officials were not adequately trained nor did they take steps to prevent torture from occurring or even, on a more basic level, forcefully and consistently ask that the Vienna Convention on Consular Relations be respected. Each of the consular officers interviewed by the Commission stated that they were not aware that torture was a serious problem in Syrian and Egyptian prisons nor had they received training on how to look for signs of torture. Recognizing that torture can be physical, mental, or both, and that torture often does not leave visible scars, they should have been provided with training and resources that would have made them better prepared and able to intervene if necessary as a means of trying to prevent further torture.

89. This obligation was heightened after Mr. Abou Elmaati's allegation of torture became known to the Canadian government. As a result, efforts to assist Mr. Almalki and Mr. Nureddin should have been escalated. Yet in the case of Mr. Almalki that does not appear to have occurred. Consular officials should have started from the understanding that in light of human rights conditions in Syria and Mr. Abou Elmaati's allegation it could be presumed that Mr. Almalki was being tortured and as such Canadian officials have to take every measure possible to alleviate that situation. In the case of Mr. Abou Elmaati, Canadian officials learned in July 2002 that he had allegedly been tortured in Egypt. When Consular officials met with him he did not mention that he had been tortured in Egypt, he only referred to his experience in Syria. Once

again consular officials should have presumed that he was being tortured, especially in light of the information that they received. Instead the consular officials appeared to be satisfied that he was looking healthy and in good spirits therefore he is not being tortured.

90. The draft factual narratives reveal that Consular officials did not provide consular assistance in a manner that is respectful of the principle of equality. There are numerous examples of apparent inequity in the treatment of the three men by consular officials. There were discrepancies as to when and to what degree Canadian officials became concerned in the men's cases; the number of visits with consular officials; the number of diplomatic notes sent on the men's behalf; the number meetings held between government officials on each of the men's behalf, and the disparate treatment they received on their release reveals a striking inequity in the level of assistance afforded to each man and a clear deficiency in consular services.

91. This Commission is investigating deficiencies associated with the role that Canadian officials played in the men's detention, mistreatment and the consular services they received. In reviewing the draft narratives numerous deficiencies that fall outside of that scope were revealed such as the RCMP's 'omission' in 2004 and 2006 that it did share Mr. Nureddin's travel itinerary and information with the United States. Relying on Mr. Abou Elmaati's alleged confession to get a search warrant is another. The final report with each of these references will play a valuable role in revealing such deficiencies and while outside the scope of this Inquiry, will hopefully result in there being some accountability for these actions as well.

IV. The Right to an Effective Remedy and Reparations

92. Mr. Almalki, Mr. Abou-Elmaati and Mr. Nurredin will almost certainly never know what motivated Syria and Egypt's actions or be able to hold accountable the individuals who physically wielded the instruments of torture against them. What they can know is what role Canadian Government officials played in their detention and torture. They can get answers as to why, when faced with abundant material decrying human rights abuses in Syria and Egypt, including the prolific use of torture, Canadian officials continued to share information with, send questions to, and seek permission to interview from the Syrian and Egyptian governments prior to and while the men were detained. They can also find out why Canadian officials recklessly engaged in information sharing with the United States, a country known to disregard caveats and memorandums of understanding, which has disregarded and excused blatant human rights violations in the so-called "war on terror."

93. Mr. Almalki, Mr. Abou-Elmaati and Mr. Nureddin have a well-established right to an effective remedy and reparations under international human rights law.[51] They are the victims of "acts or omissions that constitute gross violations of international human rights law."[52] As such they are entitled to an impartial and thorough investigation into their allegations of torture and the potential wrongdoing of Canadian Government officials. The right also entails that they

[51] See: UDHR article 8, ICCPR Art 2, ICERD Art 6, CAT Art 14 and 11, Rome Statute article 68 and 75, American Convention on Human Rights art 25.

[52] *8, UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Human Rights Resolution 2005/35, E/CN.4/2005/L.10/Add.11] and 3 a and b.*

should be treated with respect and dignity throughout that process.[53] As this Inquiry draws to a conclusion we ask the Commissioner to ensure that his findings reflect a respect for the men's dignity and that his conclusions reveal the full scope and extent of the Inquiry's investigations.

94. The Inter-American Court of Human Rights has stated that the obligation to afford reparations for human rights violations is, "one of the fundamental principles of current international law."[54] Reparations include not only investigation, but also restitution, compensation, rehabilitation and satisfaction in that impunity is brought to an end and wrongdoers are held accountable.[55]

95. Reparations must be adequate, appropriate and proportionate to the harm that was caused.[56] The Human Rights Committee has held that reparations in the form of compensation cannot be simply symbolic; it must meet the threshold of being appropriate.[57] Increasingly states are being called on in international treaties to establish a national program for compensation.[58] Amnesty International urge the Commissioner to recommend that Canada do so as we believe that these three men, as with Mr. Arar, are entitled to compensation for the physical and mental pain, suffering and emotional distress they experienced as a result of Canadian officials acts and omissions.

96. In the case of the three men their willingness to participate the Inquiry process was influenced by a desire to know why they were detained and tortured, and a desire to restore their and their families' reputations, tarnished by media leaks and Government allegations. Amnesty International strongly encourages the Commissioner to make a clear statement in his final report highlighting the fact that the men were never criminally charged in Syria, Egypt or in Canada. We further urge him to state that they were erroneously labeled as terrorists and security threats,

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[53] Preamble, UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Human Rights Resolution 2005/35, E/CN.4/2005/L.10/Add.11] and 3 a and b.

[54] Aloeboetoe and others v. Suriname, Reparations, *20 September 1993, para 43.*

[55] See: Permanent Court of Arbitration, *Chorzow Factory Case* (Ger. V. Pol.), (1928) P.C.I.J., Sr. A, No.17, at 47 (September 13); International Court of Justice*: Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. U.S.), Merits 1986 ICJ Report, 14, 114 (June 27); *Corfu Channel Case*; (UK v. Albania); *Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, p. 184 ; *Interpretation des traites de paix conclus avec la Bulgarie, la Hongrie et la Romanie, deuxieme phase, avis consultatif*, C.I.J., Recueil, 1950, p. 228. See also Article 1 of the draft Articles on State Responsibility adopted by the International Law Commission in 2001: Every internationally wrongful act of a State entails the international responsibility of that State. (UN Doc. A/CN.4/L.602/Rev.1, 26 July 2001 ("ILC draft Articles on State Responsibility")).

[56] *15 UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Human Rights Resolution 2005/35, E/CN.4/2005/L.10/Add.11] and 3 a and b.*

[57] 22 D/E UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Human Rights Resolution 2005/35,
Albert Wilson v the Philippines, Communication No. 868/1999, U.N. Doc. CCPR/C/79/D/868/1999 (2003). The Human Rights Committee has referred in several decisions to the duty to afford "appropriate" compensation.

[58] *16, UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Human Rights Resolution 2005/35, and 3 a and b.*

and that those labels and the actions of Canadian officials contributed to their detention and mistreatment in Syria and Egypt. The Arar Inquiry was beneficial to Mr. Arar for the central reason that it provided him with an opportunity to have his reputation vindicated – Amnesty International respectfully submits that these three men are entitled to the same outcome.

97. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, states that victims have a right to, "an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim." The principles further state that victims have a right to a, "public apology, including acknowledgement of the facts and acceptance of responsibility," as well as a right to know the truth.[59]

98. Amnesty International submits that an effective remedy also requires that the Canadian government implement the Arar recommendations. The Canadian government must take measures to ensure that it complies fully with international human rights law and implements rigorous internal policies to prevent torture.[60]

99. We further submit that Canada also has a responsibility to use the publication of the Commissioner's final report as an important opportunity to put key concerns about human rights abuses in Syria and Egypt on the record and make amends for the Canadian Government's earlier disregard for those abuses. Rather than be complicit in torture and human rights abuses abroad, Canada has the opportunity to be a champion of reform domestically and internationally.

100. We urge the Commissioner to make a recommendation that the Canadian Government engage in capacity building with the Syrian and Egyptian Governments as a means of strengthening legal and procedural protection of human rights in those countries. We similarly urge the Commissioner to recommend that the Canadian Government make the following requests of the Syrian and Egyptian Governments:

- Officially and publicly condemn all acts of torture and other ill-treatment.
- End secret detention and make incommunicado detention illegal and ensure that fair trial rights are protected.
- Establish an independent body to promptly investigate all complaints of torture and ill-treatment and investigate places of detention.
- Modify existing legal provisions to ensure that they comply with the Convention Against Torture.
- Prohibit the use of statements extracted under torture.

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[59] UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Human Rights Resolution 2005/35,FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS THROUGH ACTION TO COMBAT IMPUNITY principle 2 E/CN.4/2005/102/Add.1

[60] CAT, 23 F UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Human Rights Resolution 2005/35

- End impunity and bring to justice those suspected of having committed acts of torture and ill-treatment.
- Ensure that all victims of torture and their families obtain financial compensation and that victims are provided with appropriate medical care and rehabilitation.
- Co-operate with the United Nations to end torture through facilitating visits from UN experts.

Conclusion

101. In 2004 Mr. Almalki, Mr. Abou-Elmaati, and Mr. Nureddin were released after months and in the case of Mr. Abou-Elmaati and Mr. Almalki, years, of being illegally detained in Syria and Egypt. They were forced to live in abysmal conditions and endure interrogation techniques that involved brutal torture. Their lives have been forever altered by this experience. They each bare the psychological scars of torture and now live with the effects of post-traumatic stress disorder. The devastating impact of their detention and torture has been experienced by not only the men, but by their families as well.

102. It must also be highlighted, however, that these three men are also survivors. Their strength is evidenced by their commitment to this Inquiry process even in the face of the limited opportunities provided to them to participate in a meaningful fashion. Out of a desire to know the truth, seek justice, and have their reputations restored, they have subjected themselves to questioning about their experiences, relived memories of detention and torture, and endured frustration stemming from their relative exclusion from the Inquiry process. They should be commended for their courage and strength. They are the victims of a war on terror that has seen human rights denigrated and rights from which no derogation is permitted, such as the right to be free from torture, discarded.

103. Amnesty International is of the view that the draft factual narratives reveal real and serious deficiencies in the actions of Canadian Government officials, documented earlier in these submissions. The evidence points to at times reckless, and in other instances, willful blindness actions on the part of Government officials to the dereliction of human rights obligations and the suffering of Mr. Almalki, Mr. Abou-Elmaati and Mr. Nureddin. Amnesty International urges the Commissioner to make a clear finding of deficiency, to demand that officials be held accountable, and to take this opportunity to restore the men's reputations and recommend reparations.

104. Abdullah Almalki, Ahmad Abou Elmaati and Muayyed Nureddin have experienced great injustice. Amnesty International respectfully submits that justice must finally be served.

CONCLUSIONS AND RECOMMENDATIONS

This Commission of Inquiry has examined fundamentally important human rights issues arising in the context of Canada's counter-terrorism and national security laws, policies and practices. Over several decades, Amnesty International's research has highlighted the propensity of states to use national security as a pretext or justification for human rights violations. Governments have argued that arbitrary arrest, illegal detention, torture and executions are necessary when a country faces security threats.

Amnesty International has repeatedly highlighted that violating human rights in the name of security not only undermines the protection of human rights, it leads to greater insecurity. We have stressed that governments must be scrupulous to ensure that their security practices do not directly violate human rights or indirectly, through complicity, contribute to human rights violations. We are deeply concerned that the cases of Abdullah Almalki, Ahmad Abou Elmaati and Muayyed Nureddin are illustrative of security practices that have directly caused, countenanced and taken advantage of human rights violations. The cases also starkly remind us of the human cost of such practices.

General Recommendations

- The Commissioner should clearly state in his final report that Canada's national security laws, policies and practices must be firmly grounded in respect for Canada's international human rights obligations.
- The Commissioner should specify that Canada's national security laws, policies and practices must safeguard against any Canadian complicity in violations of international human rights standards. Such complicity arises when action or omission on the part of Canadian officials could reasonably be foreseen to contribute to such violations.

Recommendations with respect to the inquiry process

- The Commissioner should recommend that future inquiries which revolve around the treatment of individuals who allege they have been subjected to serious human rights violations, such as torture, should ensure that those individuals are able actively to engage with and contribute to the inquiry process, including a reasonable degree of access to evidence and an ability to cross-examine key witnesses.
- The Commissioner should recommend in particular that Terms of Reference for future inquiries allow for the adoption of a process that meets recognized international standards for fair trials and, when involving survivors of torture, a process that meets the Istanbul Protocols.
- The Commissioner should recommend that Terms of Reference for any similar future inquiries allow for the more meaningful involvement of interested third parties, the media and the public.

Recommendations with respect to deficiencies

Amnesty International urges the Commissioner to highlight the following deficiencies, among others, as being inconsistent with Canada's international human rights obligations:[61]

- CSIS, RCMP and DFAIT officials did not receive training about human rights standards, more specifically the prohibition against torture.
- CSIS, RCMP and DFAIT officials were not adequately informed of human rights conditions in the countries that they were sharing and gathering information with, and that Canadian citizens were detained in.
- Consular officials did not receive training as to how to identify signs of torture or the measures that should be taken when it is suspected that torture is occurring.
- The RCMP and CSIS unjustifiably labeled Mr. Abou Elmaati a "terrorist," an "Islamic extremist" and a "heavy hitter" in correspondence with foreign agencies including in the US.
- RCMP officials unjustifiably labeled Mr. Almalki an "important member of Al Qaeda" in correspondence with Syrian and Egyptian officials.
- RCMP officials unjustifiably labeled Mr. Nureddin a money courier for Islamic extremists in correspondence with US agencies and sought confirmation of "his association with criminal extremists" from the US and foreign agencies.
- CSIS and the RCMP shared information with the United States, Syria and Egypt about Mr. Abou Elmaati and Mr. Alamlki.
- CSIS and the RCMP shared the travel itinerary of both Mr. Abou Elmaati and Mr. Nureddin with the United States, including specifically that they would be traveling through Syria.
- Mr. Abou Elmaati's itinerary was shared by the RCMP with the FBI and CIA without caveats.
- CSIS officials sent questions to Syrian officials to be asked of Mr. Abou Elmaati and on receipt of answers, sent follow-up questions.
- RCMP officials sent questions to Syrian officials to be asked of Mr. Almalki, after RCMP officials had learned of Mr. Abou Elmaati's allegation of torture in Syria.
- RCMP officials repeatedly sought to interview Mr. Almalki while he was in Syria.
- CSIS was informed that a foreign agency was trying to have Mr. Abou Elmaati detained and questioned and did nothing to prevent that from occurring.
- RCMP and CSIS were informed that Mr. Almalki was the subject of a supposed Syrian search warrant while in Malaysia but did not try to prevent his detention or intervene to urge him to not go to Syria.
- The RCMP learned that Mr. Almalki might be the subject of an extraordinary rendition but did nothing to stop it other than declare that it could not occur on Canadian territory.
- CSIS was informed that a foreign agency intended to carry out an extraordinary rendition of Mr. Nureddin.

[61] Because of the limited access to evidence in this inquiry process, the restricted nature of the process that was adopted for reviewing the draft factual summaries and the tight timeline that has governed this final phase of the inquiry, Amnesty International has not been able to conduct an exhaustive review and analysis of the information available about these cases. This list of deficiencies should, therefore, not be considered to be exhaustive.

- DFAIT learned in July 2002 that Mr. Abou Elmaati had allegedly been tortured in Egypt yet they did not request permission to speak with him in private or take other precautions to try to ascertain if he was being tortured.
- Rather the RCMP sought permission from Mr. Abou Elmaati to interview him while he was in detention in Egypt.
- CSIS officials learned in August 2002 that Mr. Almalki may not have been treated "fairly" during the early part of his detention yet did not urge DFAIT officials to attempt to facilitate consular meetings with him to ascertain whether or not he was or had been tortured.
- Mr. Almalki received no consular visits while he was detained.
- DFAIT did not facilitate the return to Canada of Mr. Almalki or Mr. Abou Elmaati yet they did have Mr. Martel accompany Mr. Nureddin back to Canada.
- Mr. Abou Elmaati's alleged confession was used as grounds for asking the court for a search warrant even though there were reasonable grounds to suspect that the confession was the product of torture.
- The RCMP incorrectly stated in a 2004 briefing note to the RCMP Commissioner that the RCMP did not consult with other foreign agencies or domestic agencies about Mr. Nureddin. In October 2006 they once again omitted this information.
- The RCMP learned at some point that the map that served as the basis for much of the suspicion about Mr. Abou Elmaati was not incriminating as it was a map of building that no longer existed, but there is no evidence that the RCMP sought to ensure that other agencies, in Canada and abroad, were made aware of this important discovery.
- It does not appear that Canadian officials familiarized themselves with the nature of an Islamic will, so as to properly understand provisions in Mr. Abou Elmaati's will which they assumed were incriminating.
- The numerous leaks to the media throughout the ordeals of these three men, were clearly designed to erode any public support or sympathy for them and thus dissuade politicians from intervening, and it is reasonable to conclude that their effect was to prolong their detention and continue to expose them to torture as a result.

Recommendations with respect to Mr. Almalki, Mr. Abou Elmaati and Mr. Nureddin

- The Commissioner should unconditionally conclude that Mr. Almalki, Mr. Abou Elmaati and Mr. Nureddin were all subjected to torture, including grave forms of psychological torture and that their prison conditions constituted an aspect of the torture they experienced.
- The Commissioner should unequivocally state that there was no evidence to justify the labels that were applied to Mr. Almalki, Mr. Abou Elmaati in information that was shared with foreign agencies.
- If the Commissioner is not prepared to do so, he must refrain from reaching any conclusions or making any inferences about the three men's alleged involvement in terrorist or other criminal activities and should instead recommend that a fair process be adopted under which the men would be informed of the evidence and allegations against them and provided with a meaningful opportunity to respond.

- The Commissioner should recommend that the government apologize to Mr. Almalki, Mr. Abou Elmaati and Mr. Nureddin for the deficiencies in conduct that led to serious violations of their human rights.
- The Commissioner should recommend that the government provide compensation to Mr. Almalki, Mr. Abou Elmaati and Mr. Nureddin through a fair and transparent process.
- The Commissioner should recommend that the government take appropriate disciplinary or criminal action against officials whose deficient actions contributed to the human rights violations experienced by these three men.

Further recommendations

- The Commissioner should recommend that the government actively push the Syrian and Egyptian governments to launch independent investigations of the torture and illegal detention these three men experienced in Syria and Egypt, leading to those responsible being charged and brought to justice.
- The Commissioner should recommend that the government actively press US officials to provide a full, public accounting as to the role US agencies played in these three cases.
- The Commissioner should call on the government actively to push the Syrian and Egyptian governments to adopt a comprehensive plan of action to combat to torture, in line with recommendations outlined in paragraph 100 of this submission.
- The Commissioner should call on the government actively to push the US government to enact reforms to ensure that human rights will not be violated in the course of counter-terrorism activities.
- The Commissioner should call on the government to move immediately to enact the full range of recommendations from the Arar Inquiry, including the establishment of a new review mechanism for the RCMP and other agencies involved in national security investigations in Canada.
- The Commissioner should call on the government to ensure that other cases of Canadian citizens who have experienced human rights violations abroad in the context of national security investigations or allegations of supporting terrorism have access to an independent review of their case, either through immediately instituting the new review mechanism recommended by the Arar Inquiry or making available some other fair process.