



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

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## Committee against Torture

### Forty-seventh session

31 October–25 November 2011

## List of issues to be considered in connection with the consideration of the sixth periodic report of Canada (CAT/C/CAN/6)

### Article 2<sup>1</sup>

1. The State party's report covers the period from August 2004 to December 2007.<sup>2</sup> Please update the Committee with detailed information on the relevant new developments in the legal and institutional framework as well as the relevant new political, administrative and other measures taken to prevent acts of torture, including any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

2. Please provide updated information on the legal safeguards and other measures taken to ensure that all detained persons are afforded, in practice, fundamental legal safeguards from the very outset of detention, including the right of access to a lawyer and a medical doctor of their own choice, as well as the right to inform a relative, to be informed of their rights and be promptly presented to a judge. Please specify the functioning and financing of the legal aid system implemented in Canada. Is a statement of detainee rights available at all places of detention for consultation by detainees?<sup>3</sup>

3. Please inform the Committee of the status of proposed new legislation, Bill C-4, and the impact thereof on the State party's compliance with the Convention, in particular in relation to the mandatory detention of any groups of individuals, including children, who enter Canada irregularly.

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<sup>1</sup> The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As general comment No.2, paragraph 3, states "the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

<sup>2</sup> CAT/C/CAN/6, para.1.

<sup>3</sup> E/CN.4/2006/7/Add.2, para.68; A/HRC/WG.6/4/CAN/2, para.51.

4. Please specify the steps taken by the Canadian authorities to implement the recommendations of the United Nations human rights mechanisms, including paragraph 5(b) the Committee's recommendations, in relation to the use of security certificates under the Immigration and Refugee Protection Act (IRPA).<sup>4</sup> In particular, with regard to the amendments to the IRPA which were made following the Supreme Court's judgement in *Charkaoui v. Minister of Citizenship and Immigration et al.* (CAT/C/CAN/6, paras.16-17), please provide information on:<sup>5</sup>

(a) Whether detention of persons suspected of terrorism or any other criminal offence is imposed in the framework of criminal procedures and in accordance with the corresponding safeguards enshrined in international standards. If not, please indicate to what extent the State party considers changing its policy of using administrative detention and immigration law to detain terrorism suspects;

(b) Whether a maximum length of administrative detention under security certificates has been determined. If not, please provide detailed information on measures taken to ensure that indefinite pretrial detention without charge or trial is prohibited;

(c) Whether the detention of foreign nationals who are not permanent residents remains mandatory. If so, does the State party consider reviewing its practice so that the detention is decided on a case-by-case basis?

(d) The basis on which the security certificates is reviewed. Please indicate whether the information and evidence used can be accessed by the person concerned;

(e) The State party's position on concerns raised in the universal periodic review process that special advocates have very limited ability to conduct cross-examinations or to seek evidence independently;<sup>6</sup>

(f) Any other measures taken or envisaged to fully comply with the aforementioned Supreme Court's judgement. Please provide updated information as to whether there have been any cases where an extended period of detention under this regime was judicially found to have reached a point where it amounted to cruel and inhumane treatment.

5. In light of State party's acceptance of the recommendation made in the course of the universal periodic review to prevent and otherwise combat violence against women, in particular aboriginal women, please provide detailed information on:<sup>7</sup>

(a) Measures taken to ensure that reports of violence against women are independently, promptly and thoroughly investigated, and that perpetrators are prosecuted and appropriately punished;

(b) The outcomes of the investigation into the cases of aboriginal women who have gone missing or been murdered. Please indicate whether the State party has carried out an analysis of those cases to address root causes and has taken the necessary steps to remedy the deficiencies in the system<sup>8</sup> (.

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<sup>4</sup> CCPR/C/CAN/CO/5, paras.14-15; E/CN.4/2006/7/Add.2, para.92(b)

<sup>5</sup> CAT follow-up letter of 29 April 2009; A/HRC/WG.6/4/CAN/3, para.67; A/HRC/WG.6/4/CAN/2, para. 51; E/CN.4/2006/7/Add.2, paras. 63-64 and 86; A/HRC/16/52/Add.1, para.17.

<sup>6</sup> CAT/C/CAN/6, paras. 16 and 81; A/HRC/WG.6/4/CAN/3, para.67.

<sup>7</sup> A/HRC/11/17/Add.1, paras. 45-50; A/HRC/11/17, paras. 11, 20-24, 29, 36 and 86; A/HRC/WG.6/4/CAN/3, paras. 22-24; A/HRC/WG.6/4/CAN/2, paras.14-16; CEDAW/C/CAN/CO/7, paras. 29-32.

<sup>8</sup> A/HRC/11/17, para.33; CEDAW/C/CAN/CO/7, para.32.

(c) Data, including statistical data, on complaints, investigations, prosecutions, convictions and penalties imposed for acts of violence against women, in particular women from religious and ethnic minorities, as well as on any compensation provided to victims.

6. Please provide detailed information on measures taken to enact legislation specifically addressing allegedly routine domestic violence, making it a criminal offence and ensuring that victims of domestic violence have access to immediate means of redress and protection and that perpetrators are prosecuted and appropriately punished.<sup>9</sup> Please identify factors impeding such legislation. Please also provide statistical data on complaints, investigations, prosecutions, convictions and penalties imposed for acts of domestic violence, disaggregated by province, ethnicity, and age.

7. Please provide information on steps taken to further increase the protection and assistance provided to victims of trafficking, including prevention measures, social reintegration, access to health care and psychological assistance, in a culturally appropriate and coordinated manner, including by enhancing cooperation with non-governmental organizations and the countries of origin.<sup>10</sup> Please provide statistical data on complaints, investigations, prosecutions and convictions for acts of trafficking.

8. Please provide updated information and statistical data, disaggregated by crime, geographical location, ethnicity, age and gender, on complaints relating to torture, attempted torture and complicity or participation in torture and acts amounting to cruel, inhuman or degrading treatment, which have been filed during the reporting period, as well as related investigations, prosecutions, convictions and penal and disciplinary sentences.

### Article 3

9. In light of paragraph 5(a) the Committee's previous recommendations and follow-up letter of 29 April 2009, please provide updated information on steps taken to unconditionally respect the absolute nature of article 3 of the Convention in all circumstances and to fully incorporate the provisions of this article into the State party's domestic law. How does Canada comply with its obligation under article 3 of the Convention, while its law provides legislative exceptions to the principle of non-refoulement?<sup>11</sup>

10. Considering the State party's policy of resorting to the immigration process to remove or expel individuals rather than in the framework of criminal procedure, please provide detailed information on cases of expulsion or removal initiated under the Immigration and Refugee Protection Act (IRPA) on security grounds. Does the State party envisage removing the exclusions in the Immigration and Refugee Protection Act, namely the blanket exclusion of the status of refugees and the explicit exclusion of certain categories of persons posing security or criminal risks, thereby extending to currently excluded persons entitlement to the status of protected person, and protection against refoulement on account of risk of torture?<sup>12</sup>

11. Please provide detailed information on (a) the extent to which the State party provides for judicial review of the merits, rather than merely of the reasonableness, of decisions to expel an individual where there are substantial grounds for believing that the

<sup>9</sup> A/HRC/WG.6/4/CAN/2, paras.14-15; A/HRC/11/17, paras.20, 22, 29, 36 and 86(33); A/HRC/11/17/Add.1, paras.47-48; CEDAW/C/CAN/CO/7, para. 30.

<sup>10</sup> A/HRC/11/17, paras. 25, 86(16) and (39); A/HRC/11/17/Add.1, para. 52; CRC/C/15/Add.215, para. 53.

<sup>11</sup> A/HRC/11/17, paras. 42 and 86(31).

<sup>12</sup> CAT/C/CR/34/CAN, para. 5(b).

person faces a risk of torture,<sup>13</sup> and (b) efforts made to improve the Pre-Removal Risk Assessment (PRRA) program (State party's report, paras.31 and 33).

12. With reference to paragraph 42 of the State party's report and in light of paragraph 5(a) of the Committee's previous recommendations, please clarify the issues of diplomatic assurances in the State party, inter alia (a) the minimum requirements for diplomatic assurances or guarantees, (b) steps taken to guarantee effective post-return monitoring arrangements and the legal enforceability of the assurances or guarantees given, and (c) all cases where diplomatic assurances have been provided and all cases where assurances have not been honoured, if any, since the consideration of the previous report.<sup>14</sup>

13. Please provide information about whether the State party appealed the Supreme Court decision in *Amnesty International Canada et al. v Chief of the Defence Staff for the Canadian Forces et al.* to decline an obligation of non-refoulement under international human rights law and its own Charter of Rights and Freedoms in circumstances where there may be a risk of torture to detainees that its forces in Afghanistan wish to transfer to Afghan authorities?<sup>15</sup>

14. Please provide an update on the cases of (a) Mostafa Dadar (CAT/C/35/D/258/2004) who was removed to Iran despite a finding of a violation of the Convention, (b) Bachan Singh Sogi (CAT/C/39/D/297/2006) who was removed to India on security grounds despite the Committee's repeated requests for interim measures, (c) Ivan Apaolaza Sancho who was chained to his seat on the flight while deported to Spain after being detained for 16 months without charge in Canada, and (d) Adel Benhmuda who was deported to Libya in 2008 with his family, including two children born in Canada, and was allegedly ill-treated in a prison.<sup>16</sup> Please explain the procedure followed, guarantees received and monitoring mechanisms, and how such practice is compatible with the State party's non-refoulement obligation under the Convention. To what extent has the State party conducted investigations into all allegations of violation of article 3 of the Convention and provided remedies to them?

15. Please provide data, disaggregated by age, sex and nationality on:

- (a) The number of asylum requests registered and approved;
- (b) The number of asylum-seekers whose requests were granted because they had been tortured or might be tortured if they were returned to their country of origin;
- (c) The number of forcible deportations or expulsions (please indicate how many of them involved rejected asylum-seekers), and the countries to which these persons were expelled.

#### **Article 4**

16. What is the competency at the provincial level with regard to enforcement and prosecution of offences set out in the main provisions of the Convention which have been incorporated into federal law? What are the penalties for the crime of torture, attempted torture and complicity or participation in torture and which provisions of the Penal Code apply?

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<sup>13</sup> Ibid., para. 5(c).

<sup>14</sup> The Committee's follow-up letter of 29 April 2009: CAT/C/CAN/6, para.38.

<sup>15</sup> Ibid.

<sup>16</sup> See also the case of Mansour Ahani (A/HRC/WG.6/4/CAN/2, para.53; CCPR/C/80/D/1051/2002).

**Articles 5, 7 and 8**

17. Please provide (a) detailed information on how the State party has exercised its universal jurisdiction over persons responsible for acts of torture, wherever they occurred and regardless of the nationality of the perpetrator or victim, and (b) specific examples and texts of any decisions on the subject, including the outcomes of reviews by the Program Coordinating Operations Committee (PCOC)<sup>17</sup> and the two cases referred to in paragraph 49 of the State party's report. In that regard, please comment on reports before the Committee that Canada has chosen the path of deportation rather than criminal prosecution against perpetrators of international crimes and has failed to take effective measures to exercise its universal jurisdiction over persons responsible for acts of torture, while its law, through provisions in the Criminal Code and the Crimes against Humanity and War Crimes Act, provides for universal jurisdiction and thus allows domestic prosecution.

18. Please provide information on whether the State party has rejected, for any reason, requests for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result. Please provide information on any new cases that have reached trial and with what result.

**Article 10**

19. Please provide updated information on:

(a) Educational and training programmes of law enforcement personnel, penitentiary staff and staff of detention centres, members of the judiciary and prosecutors as well as consular officers on the State party's obligations under the Convention;

(b) The training of forensic doctors and medical personnel, especially on the use of the Istanbul Protocol;

(c) Steps taken to develop and implement a methodology to evaluate the implementation of its training/educational programmes and its effectiveness and impact on the reduction of cases of torture and ill-treatment. Please provide information on the content and implementation of such methodology as well as on the results of the implemented measures.

**Article 11**

20. Please indicate how the State party has kept under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing any cases of torture. Please indicate any relevant amendments to these rules and instructions.

21. Please provide updated information on the impact of various programmes, including the Segregation Intervention Strategy (SIS), undertaken by the State party in reducing major inter-prisoner violent incidents in detention facilities.<sup>18</sup> Please also provide (a) statistical data on complaints, investigations, prosecutions, convictions and penalties imposed for such incidents, and (b) the number of prisoners in Canadian prison facilities as well as the degree to which the number of prisoners in each facility exceeds design capacities.

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<sup>17</sup> CAT/C/CAN/6, paras. 44-45.

<sup>18</sup> CAT/C/CAN/6, para.64; CAT/C/CR/34/CAN, para. 5(g); Follow-up letter of 29 April 2009.

22. Please provide information on the progress made in implementing the 109 recommendations of the Report of the Correctional Service of Canada (CSC) Independent Review Panel, released in 2007 (State party's report, para.66).

23. Please address the situation of women prisoners and the State party's cross-gender staffing policy in correctional services system. Please provide updated information on whether an external redress and oversight mechanism for federal women prisoners has been established and whether girls are continued to be held in mixed-sex youth detention centres.<sup>19</sup>

### Articles 12 and 13

24. In light of paragraph 5(i) of the Committee's previous recommendations, please provide updated information on:

(a) The competence of the Commission for Public Complaints Against the Royal Canadian Mounted Police (RCMP) to investigate and report on all activities of the RCMP falling within its complaint mandate;

(b) Measures taken to ensure that external, independent mechanisms exist for the investigation of complaints regarding the conduct of law enforcement personnel in all jurisdictions.<sup>20</sup>

25. Please provide detailed information about the status of implementing several recommendations made by Justice Dennis O'Connor following of the Commission of Inquiry into the case of Maher Arar (State party's report, para.20), in particular as to the establishment of a comprehensive review and oversight mechanism for security and intelligence operations in Canada. Has the State party prepared an implementation plan with a timeline for all of these recommendations? What measures would prevent Canadian officials from repeating the acts that led to this transfer and alleged complicity in the abuses while he was in custody in Syria.<sup>21</sup>

26. Please provide information about the outcomes of the inquiry into the case of three Arab-Canadians, carried out by former Supreme Court Justice Frank Iacobucci, and the efforts made by the State party to guarantee the independent, public and transparent inquiry and to implement his recommendations. According to the information before the Committee, the men affected and their lawyers were shut out of the process and have had no access to information. Please comment on this allegation and also outline any relevant cases in this regard, including the *Khadr* case mentioned in the Committee's follow-up letter of 29 April 2009, and any measures taken to remedy rights of nationals to whom access was improperly restricted while in detention.

### Article 14

27. In light of paragraph 5(f) of the Committee's previous recommendations, please provide updated information on measures taken to ensure the provision of compensation through its civil jurisdiction to all victims of torture.<sup>22</sup> Please include the number of requests filed, the number granted, and the amounts ordered and those actually provided in each case.

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<sup>19</sup> CEDAW/C/CAN/CO/7, para. 34; CAT/C/CAN/6, paras.70-72; A/HRC/WG.6/4/CAN/2, paras.12 and 16; A/HRC/WG.6/4/CAN/3, para.23.

<sup>20</sup> CAT/C/CAN/6, paras.97-99; E/CN.4/2006/7/Add.2, para. 72.

<sup>21</sup> CAT/C/CR/34/CAN, para.4(b); A/HRC/WG.6/4/CAN/3, para. 64; CCPR/C/CAN/CO/5, para.16.

<sup>22</sup> CCPR/C/CAN/CO/5, para.13; A/HRC/WG.6/4/CAN/2, para.49.

## Article 16

28. Please provide information on measures taken to adopt legislation to remove the existing authorization of the use of “reasonable force” in disciplining children and explicitly prohibit all forms of violence against children within the family, in schools and in other institutions where children may be placed.<sup>23</sup> Has this led to Canada’s repeal of Section 43 of the Criminal Code, as recommended repeatedly by the Committee on the Rights of the Child (CRC/C/15/Add.215, para.32)?<sup>24</sup> What prosecutions, convictions and remedial measures have been taken against those found responsible and how has the State party ensured that those responsible are removed from schools and institutions so the alleged acts cannot be repeated?

29. In light of paragraph 5(h) of the Committee’s previous recommendations and the State party’s acceptance of the recommendation made in the course of the universal periodic review (A/HRC/11/17/Add.1, para.55), please provide detailed information on whether the State party has conducted a public and independent study and a policy review of continued allegations of use of excessive force by the police, including inappropriate use of chemical, irritant, incapacitating and mechanical weapons, often in the context of crowd control at federal and provincial levels.<sup>25</sup> Furthermore, please provide information on:

(a) The outcomes of the investigation into allegations of police misconduct and ill-treatment during land-related protests at Tyendinaga, Ontario. Please also indicate steps taken to implement the recommendations of the Ipperwash Inquiry following its examination in the killing of an unarmed indigenous man involved in a land protest by an Ontario Provincial Police sharpshooter;

(b) The policing response to large scale public protests in Toronto when Canada hosted the G8 and G20 Summits in June 2010. Please indicate to what extent the State party has carried out a public inquiry to examine all aspects of the security operation;

(c) The outcomes of investigation into the death of individuals after being tasered, including the case of Robert Dziekanski who died after being hit by a Taser gun from the Royal Canadian Mounted Police (RCMP) on 14 October 2007 at Vancouver International Airport;

(d) The State party’s view on reports before the Committee regarding the lack of training of law enforcement personnel on the use of tasers;

(e) Statistical data on any complaints, investigations, prosecutions, convictions and penalties imposed for alleged excessive use of force by law enforcement personnel.

### Other issues

30. Please update the Committee with information on whether and how the Anti-terrorism Act and other anti-terrorism measures have affected human rights safeguards in law and practice and how those measures comply with the State party’s obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist

<sup>23</sup> CRC/C/15/Add.215, para.33.

<sup>24</sup> A/HRC/WG.6/4/CAN/3, para.24; A/HRC/11/17, recommendation 33.

<sup>25</sup> A/HRC/11/17, paras.21, 25, 34 and 86(32); A/HRC/WG.6/4/CAN/2, para.20; A/HRC/WG.6/4/CAN/3, para.25; E/CN.4/2006/7/Add.2, paras. 71-72.

measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

31. With reference to paragraphs 13-14 of the State party's report, please inform whether the amended Anti-terrorism Act includes an explicit anti-discrimination clause and a more precise definition of terrorism, as recommended by the Committee on the Elimination of Racial Discrimination (CERD/C/CAN/CO/18, para.14) and the Human Rights Committee (CCPR/C/CAN/CO/5, para.12).<sup>26</sup>

32. What measures have been taken to ensure independent review of all cases of Canadian citizens who are suspected terrorists or suspected of possessing information relating to terrorism, and who have been detained in countries where it is feared they have undergone or may undergo torture or ill-treatment?<sup>27</sup>

33. In light of paragraph 5(j) of the recommendations made by the Committee and by the Working Group on the Universal Periodic Review (A/HRC/11/17, para.86 (2)) as well as the State party's pledges made to the Human Rights Council in 2006, please update the Committee with the outcome of the long outstanding discussion on whether to ratify the Optional Protocol to the Convention. If the State party has not yet made a decision, please indicate (a) the outcome of the analysis on the implications of the ratification of the Optional Protocol in Canada and (b) steps taken to set up or designate a national mechanism which would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment.<sup>28</sup>

34. Please indicate if there is any legislation in place aimed at preventing and prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. If so, please provide information about the content and implementation of such legislation. If not, please indicate whether the adoption of such legislation is under consideration and whether any steps have been taken to demonstrate this commitment.

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<sup>26</sup> A/HRC/WG.6/4/CAN/2, paras. 49-50; A/HRC/WG.6/4/CAN/3, para.62.

<sup>27</sup> A/HRC/WG.6/4/CAN/2, para. 52.

<sup>28</sup> CAT/C/CAN/6, paras.9-10.