

COMMITTEE AGAINST TORTURE
Forty-eighth session
7 May – 1 June 2012

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture
(*Extracts for follow-up of CAT/C/CAN/CO/6*)

CANADA

(...)

C. Principal subjects of concern and recommendations

(...)

Security certificates under the Immigration and Refugee Protection Act

12. While taking note of the system of special advocates introduced by the amended Immigration and Refugee Protection Act in response to concerns raised by different actors and the judgement by the Supreme Court in the case of *Charkaoui v. Canada*, the Committee remains concerned that (arts. 2, 3, 15 and 16):

- (a) Special advocates have very limited ability to conduct cross-examinations or to seek evidence independently;
- (b) Individuals subject to security certificates have access to a summary of confidential materials concerning them and cannot directly discuss full content with the special advocates. Accordingly, the advocates cannot properly know the case against them or make full answer or defence in violation of the fundamental principles of justice and due process;
- (c) The length of this detention without charge is indeterminate and some individuals are detained for prolonged periods; and
- (d) Information obtained by torture has been reportedly used to form the basis of security certificates, as evidenced by the case of Hassan Almrei.

The Committee recommends that the State party reconsider its policy of using administrative detention and immigration legislation to detain and remove non-citizens on the ground of national security, inter alia, by extensively reviewing the use of the security certificates and ensuring the prohibition of the use of information obtained by torture, in line with relevant domestic and international law. In that regard, the State party should implement the outstanding recommendations made by the Working Group on Arbitrary Detention following its mission to Canada in 2005, in particular that detention of terrorism suspects be imposed in the framework of criminal procedure and in accordance with the

corresponding safeguards enshrined in the relevant international law (E/CN.4/2006/7/Add.2, para. 92).

Immigration detention

13. While noting the State party's need for a legal reform to combat human smuggling, the Committee is deeply concerned about Bill C-31 (the Protecting Canada's Immigration System Act), given that, with its excessive Ministerial discretion, this Act would (arts. 2, 3, 11 and 16):

- (a) Introduce mandatory detention for individuals who enter irregularly the State party's territory; and
- (b) Exclude "irregular arrivals" and individuals who are nationals of designated "safe" countries from having an appeal hearing of a rejected refugee claim. This increases the risk that those individuals will be subject to refoulement.

The Committee recommends the State party to modify Bill C-31, in particular its provisions regulating mandatory detention and denial of appeal rights, given the potential violation of rights protected by the Convention. Furthermore, the State party should ensure that:

- (a) **Detention is used as a measure of last resort, a reasonable time limit for detention is set, and non-custodial measures and alternatives to detention are made available to persons in immigration detention; and**
- (b) **All refugee claimants are provided with access to a full appeal hearing before the Refugee Appeal Division.**

(...)

Torture and ill-treatment of Canadians detained abroad

16. The Committee is seriously concerned at the apparent reluctance on part of the State party to protect rights of all Canadians detained in other countries, by comparison with the case of Maher Arar. The Committee is in particular concerned at (arts. 2, 5, 11 and 14):

- (a) The State party's refusal to offer an official apology and compensation to the three Canadians despite the findings of the Iacobucci Inquiry. Their cases are similar to the case of Arar, in the sense that all of them were subjected to torture abroad and the Canadian officials were complicit in the violation of their rights;

(b) Canadian officials' complicity in the human rights violation of Omar Khadr while detained at Guantánamo Bay (*Canada (Prime Minister) v. Khadr*, 2010 SCC 3; and *Canada (Justice) v. Khadr*, 2008 SCC 28) and the delay in approving his request to be transferred to serve the balance of his sentence in Canada.

In the light of the findings of the Iacobucci Inquiry, the Committee recommends that the State party take immediate steps to ensure that Abdullah Almalki, Ahmad Abou Elmaati and Muayyed Nureddin receive redress, including adequate compensation and rehabilitation. Furthermore, the Committee urges the State party to promptly approve Omar Khadr's transfer application and ensure that he receives appropriate redress for human rights violations that the Canadian Supreme Court has ruled he experienced.

Intelligence information obtained by torture

17. While taking note of the State party's national security priorities, the Committee expresses its serious concern about the Ministerial Direction to the Canadian Security Intelligence Service (CSIS), which could result in violations of article 15 of the Convention in the sense that it allows intelligence information that may have been derived through mistreatment by foreign States to be used within Canada; and allows CSIS to share information with foreign agencies even when doing so poses a serious risk of torture, in exceptional cases involving threats to public safety, in contravention to recommendation 14 from the Arar Inquiry (arts. 2, 10, 15 and 16).

The Committee recommends that the State party modify the Ministerial Direction to CSIS to bring it in line with Canada's obligations under the Convention. The State party should strengthen its provision of training on the absolute prohibition of torture in the context of the activities of intelligence services.

(...)

29. The Committee requests the State party to provide, by 1 June 2013, follow-up information in response to the Committee's recommendations related to: (a) ensuring or strengthening legal safeguards for detainees; (b) conducting, prompt, impartial and effective investigations; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 12, 13, 16 and 17 of the present document.
