

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

Conclusions and recommendations of the Committee against Torture

Canada

1. The Committee considered the fourth and fifth periodic reports of Canada (CAT/C/55/Add.8 and CAT/C/81/Add.3, respectively) at its 643rd and 646th meetings, held on 4 and 6 May 2005 (CAT/C/SR.643 and 646) and adopted, at its 658th meeting, the following conclusions and recommendations:

A. Introduction

2. The fourth periodic report of Canada was due on 23 July 2000 and was submitted on 20 August 2002, while the fifth periodic report was due on 23 July 2004 and was submitted on 11 October 2004, each in accordance with the Committee's reporting guidelines. The Committee welcomes the open and inclusive participation in the reporting process of institutions and non-governmental organizations concerned with the protection of human rights, as well as the inclusion within the reports of diverging views of civil society.

B. Positive aspects

3. The Committee notes:

(a) the definition of torture in the Canadian Criminal Code that is in accordance with the definition contained in article 1 of the Convention, and the exclusion in the Criminal Code of defences of superior orders or exceptional circumstances, including armed conflict, as well as the inadmissibility of evidence obtained by torture;

(b) the direct application of the criminal norms cited in paragraph (a) to the State party's military personnel wherever located worldwide by means of the National Defense Act;

(c) the general inclusion, in the Immigration and Refugee Protection Act 2002 of torture within the meaning of article 1 of the Convention, believed on substantial grounds to exist, as an independent ground qualifying a person as in need of protection (section 97, subsection 1 of the Act), and as a basis for non-refoulement (section 115, subsection 1);

- (d) the careful constitutional scrutiny of the powers conferred by the Anti-Terrorism Act 2001;
- (e) the recognition of the Supreme Court of Canada that enhanced procedural guarantees have to be made available, even in national security cases, and the State party's subsequent decision to extend enhanced procedural protections to all cases of persons challenging, on grounds of risk of torture, Ministerial expulsion decisions;
- (f) the changes to Corrections policy and practice implemented to give effect to the recommendations of the Arbour Report on treatment of female offenders in the federal prison system;
- (g) the requirements that body cavity searches be carried out by medical rather than correctional staff, in a non-emergency situation and after provision of written consent and access to legal advice; and
- (h) the efforts made by the State party, in response to the issue of over-representation of indigenous offenders in the correctional system previously identified by the Committee, to develop innovative and culturally-sensitive alternative criminal justice mechanisms, such as the use of healing lodges.

C.Subjects of concern

- 4. The Committee expresses its concern at:
 - (a) the failure of the Supreme Court of Canada in Suresh v Minister of Citizenship and Immigration to recognise, at the level of domestic law, the absolute nature of the protection of article 3 of the Convention that is subject to no exceptions whatsoever;
 - (b) the alleged roles of the State party's authorities in the expulsion of Canadian national Mr. Maher Arar, expelled from the United States to Syria where torture was reported;
 - (c) the blanket exclusion by the Immigration and Refugee Protection Act 2002 (section 97) of the status of refugee or person in need of protection, for persons falling within the security exceptions set out in the Convention on the Status of Refugees and its Protocols; as a result, such persons' substantive claims are not considered by the Refugee Protection Division or reviewed by the Refugee Appeal Division;
 - (d) the explicit exception of certain categories of persons posing security or criminal risks from the protection against refoulement provided by the Immigration and Refugee Protection Act 2002 (section 115, subsection 2, of the Act);
 - (e) the State party's apparent willingness, in the light of the low number of prosecutions for terrorism and torture offences, to resort in the first instance to immigration processes to remove or expel individuals from its territory, thus implicating

issues of article 3 of the Convention more readily, rather than subject him or her to the criminal process;

(f) the State party's reluctance to comply with all requests for interim measures of protection, in the context of individual complaints presented under article 22 of the Convention;

(g) the absence of effective measures to provide civil compensation to victims of torture in all cases;

(h) the still substantial number of "major violent incidents", defined by the State party as involving serious bodily harm and/or hostage-taking, in the State party's federal corrections facilities; and

(i) continued allegations of inappropriate use of chemical, irritant, incapacitating and mechanical weapons by law-enforcement authorities in the context of crowd control.

D. Recommendations

5. The Committee recommends that:

(a) the State party should unconditionally undertake to respect the absolute nature of article 3 in all circumstances and fully to incorporate the provision of article 3 into the State party's domestic law;

(b) the State party should remove the exclusions in the Immigration and Refugee Protection Act 2002 described in paragraphs (d) and (e) above, and thus extend to currently excluded persons entitlements of status as a protected person and protection against refoulement on account of a danger of torture;

(c) the State party should provide for judicial review of the merits, rather than simply of the reasonableness, of decisions to expel an individual where there are substantial grounds to believe the person faces a risk of torture;

(d) the State party should insist on unrestricted consular access to its nationals who are in detention abroad, with the facility for unmonitored meetings and, if required, appropriate medical expertise;

(e) given the absolute nature of the prohibition against refoulement contained in article 3 of the Convention, the State party should provide the Committee with details on how many cases of extradition or removal subject to receipt of "diplomatic assurances" or guarantees have occurred since 11 September 2001, what the State party's minimum contents are for such assurances or guarantees, what measures of subsequent monitoring it has undertaken in such cases and the legal enforceability of the assurances or guarantees;

(f) the State party should review its position under article 14 of the Convention to ensure the provision of compensation through its civil jurisdiction to all victims of torture;

(g) the State party should take steps to ensure a progressive decrease in the frequency of “major violent incidents” in its federal corrective facilities;

(h) the State party should conduct a public and independent study and policy review of the crowd control methods, at federal and provincial levels, described in paragraph 4(j), above;

(i) the State party should fully clarify, if necessary legislatively, the competence of the Commission for Public Complaints Against the RCMP (Royal Canadian Mounted Police) to investigate and report on all activities of the RCMP falling within its complaint mandate; and

(j) the State party should consider becoming party to the Optional Protocol to the Convention.

6. The Committee requests that the State party provide, within one year, information in response to the Committee’s recommendations in paragraph 5, sub-paragraphs (d), (e) and (g).

7. The Committee requests that the State party submits its sixth periodic report by the due date of 23 July 2008.
