



## Concerns of ACAT Canada<sup>1</sup> and FIACAT concerning torture and ill treatment in Canada

Presented to the Human Rights Council prior to Canada's periodic review,  
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ACAT Canada and FIACAT wish to draw the Council's attention to information concerning the issuing of "security certificates" and the status of prisoners, asylum seekers and foreigners in Canada facing deportation.

### **1. Deportation or extradition of individuals to a country where there are genuine grounds to fear that they will be tortured**

The issue of the deportation or extradition of individuals to a country where there are genuine grounds to fear that they will be tortured is still very topical in Canada. The case of Mr Maher Arar, a Canadian citizen of Syrian origin, has been widely publicised and had a happy outcome. On 18 September 2006, Judge Dennis O'Connor officially cleared Mr Arar of any blame and of any suspicion of belonging to a terrorist movement. He acknowledged the liability of the Royal Canadian Gendarmerie (GRC) in particular in its relations with the American Government that led to Mr Arar being extradited to Syria where it has been proven and admitted that he was

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<sup>1</sup>ACAT **Canada** is an ecumenical, Christian human rights association set up in 1974 to fight against torture and the death penalty. It takes up controversial issues connected to its mission on a regular basis with the Canadian government.

ACAT **Canada** is affiliated to FIACAT (International Federation of Action by Christians for the Abolition of Torture), and holds consultative status at the United Nations, the Council of Europe and the African Commission on Human and Peoples' Rights.

tortured. The false intelligence concerning the man in question sent by the GRC to the American authorities provided the grounds for his arrest on American soil and the subsequent unhappy consequences. Mr Maher Arar, in addition to full civil rehabilitation, received compensation of \$10 million Canadian dollars.

Nonetheless, there are other Canadian citizens of Arab origin like Mr Arar who have suffered similar experiences: Mr Abdullah Almalki, Mr Ahmad El-Maati and Mr Muayyed Nureddin. To date their status has still not been properly clarified, no rehabilitation has been ordered in their favour and they are still awaiting a full enquiry to be opened as it was for Mr Arar.

## **2. The practice of “security certificates”**

The “security certificate” is a procedure contained within Canadian immigration legislation (and is not a criminal procedure). It is used by the Federal government to arrest and deport individuals born abroad and suspected of engaging in terrorist activities. The security certificates raise the problem in the first instance of sending an accused person back to his own country where he risks being tortured or even death.

Up to the present day, five people have been served with security certificates in Canada: Mr Mahmoud Jaballah, Mr Mohammad Zeki Mahjoub, Mr Hassan Almrei, Mr Mohamed Harkat and Mr Adil Charkaoui. The latter, a Montreal resident, has been allowed out on remand but obliged to wear a permanent electronic tag, so that the GRC can locate him, and is subject to a number of bans on his movements and on people with whom he is able to associate. Mr Charkaoui, together with his four companions of misfortune, is fighting the provisions of the new legislation and the restrictions to which they are bound.

Legislation amending the Law on Immigration and on the Protection of Refugees (C-3) introduced the figure of the special lawyer whose role consists of protecting the interests of the person named in the security certificate during in camera hearings. It received royal approval on 13 February 2008. This new law, as has been illustrated, does not really guarantee the comprehensive defence of the targeted individual. Firstly the special lawyer is mandated by the court and not chosen by the defendant. He is not allowed to inform his client of all the indictments and evidence against him. Underpinning all this is the ongoing question of Canadian national security that explains why these trials are held in secret. It should, however, be pointed out that the defendant can at any time choose to leave the country. There is no reference within the new legislation to any detention time limits.

## **3. The case of Omar Khadr**

Omar Khadr is a young Canadian citizen born to Pakistani parents. He became an overnight “international celebrity” when, in July 2008, newspapers around the world published a series of stills from a video showing him during his interrogation in 2003 at Guantanamo Bay by a Canadian official (the SCRS, Canadian Secret Intelligence Service). Omar Khadr was ten or eleven years old when his father, having returned to Pakistan to live where he was closely connected to the Bin Laden family, sent his son to an Al Qaeda training camp in Afghanistan. He spent the next 4 or so years there. Then, called to arms, he is believed to have killed an American soldier with a grenade in 2002. He was himself seriously wounded in the attack. On being captured by American military personnel he was treated for his wounds, interrogated and

then sent to the American base at Guantanamo Bay. He is still there today, now aged twenty one. He is awaiting trial before a military commission that is due to take place in October 2008. The Canadian government continues not to request his repatriation, unlike all the other western countries on behalf of their citizens incarcerated in Guantanamo Bay, arguing that he will be tried in a country that applies the rule of law and that justice must be done. There is a consensus of opinion within the Canadian population, and in particular among the many non-governmental organisations, and elsewhere in the world in favour of a pardon of the young man. Mr Robert Badinter, former French Justice Minister and architect of the abolition of the death penalty in France, gave a full analysis together with other legal experts of the case of young Omar Khadr in *Le Monde*<sup>2</sup>. For M. Badinter<sup>3</sup>, Omar Khadr is what is known as a child soldier. First and foremost he is a *victim*: forced by his father to enrol into Al Qaeda's ranks at the very young age of eleven where he evidently had no choice and could not objectively understand what he was being drawn into. He was indoctrinated by his immediate entourage, his family, before being further manipulated within Osama Bin Laden's organisation. His "crime" dates back to 2002 when he was only fifteen years old. His years of imprisonment in Guantanamo Bay have been especially harsh: it is reported that before the interrogation that was so publicly shown in the video that travelled the world, he had previously been deprived of sleep for three weeks. In addition he was shackled. It is widely known that sleep deprivation is considered a form of torture and that the victim reaches the point of wanting to sleep so badly that he is ready to admit to any crime whatsoever. That is why Americans regularly use it<sup>4</sup> in their secret interrogations in Guantanamo Bay and certainly in Afghanistan and equally in Iraq. Young Khadr's trial before a military tribunal runs the risk of being unfair, in particular because these courts do not recognise the presumption of innocence. ACAT Canada fears that within this framework, Omar Khadr's trial will be nothing other than a formality leading to certain conviction and life imprisonment. In reality, young Khadr is a clear example of a child soldier who under international law should first and foremost be considered a victim and not the guilty party. He needs to receive medical and psychological treatment and be fully rehabilitated.

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<sup>2</sup> *Le Monde*, 23 January 2008, p.20.

<sup>3</sup> "As a Canadian citizen, the most natural place for Omar Khadr to be judged is before a Canadian youth court. By being forced to appear before a special military commission that has been put in place by the United States to try foreign terrorist suspects, Khadr will be deprived of those guarantees afforded to all defendants in accordance with international conventions".

<sup>4</sup> Sources : (a) "Torture – a moral taboo since the time of the Spanish Inquisition and illegal since the United Nations' Convention Against Torture came into force in June 1987 – became policy under Mr. Bush's watch, although information so gleaned is inherently unreliable". (Erna Paris, historian for the *Globe and Mail*, a Toronto daily paper, 10 March 2008 edition, entitled "A litany of abuse, a legacy of shame".)

(b) "The recycled chart is the latest and most vivid evidence of the way Communist interrogation methods that the United States long described as torture became the basis for interrogation at Guantanamo Bay, Cuba, and by the Central Intelligence Agency." (In the *New York Times*, 7 February 2008, entitled «China inspired interrogations at Guantanamo Bay».

(c) "Painful and degrading mistreatment – yes, including torture – have been the now well-documented legacy of Guantanamo Bay". (In the *Globe and Mail*, 15 July 2008, p. A-13, by Ed Broadbent, former leader of the New Democratic Party in Canada, and Alex Neve, director of Amnesty International, Anglophone Canadian section).

#### **4. Canadian police methods**

As regards Canadian police methods, it is necessary first of all to highlight the use of a new electric stun gun called Taser. This weapon, which is being used on an increasingly regular basis by Canadian police, is proving especially effective, to such an extent that in a number of cases, instead of simply neutralising the suspect, it has killed him<sup>5</sup>. However, the Canadian government has still not withdrawn the Taser gun. The debate continues, including powerful lobbying of the Canadian police force and government by the company Taser International that manufactures the weapon. The Taser gun is very unpopular with the public because of its lethal consequences when things go wrong. Its use is especially dangerous, and even fatal, on individuals with heart problems or those undergoing psychiatric treatment because of heart weakness or heightened tension in police presence. When it is used the shock is often fatal. It is also worth mentioning the use of irritants of strong arm tactics for crowd control during demonstrations, vaporised chilli pepper sprays, tear gas and long batons.

#### **5. Declaration on the rights of indigenous peoples**

The Declaration on the Rights of Indigenous Peoples by the UN was finally adopted on 13 September 2007 in New York by 143 votes against four and 11 abstentions. It is most surprising that Canada did not sign up to this declaration. In justifying its refusal, the government mentioned the presumed limitations of the UN text which is not believed to meet Canadian requirements as regards the rights of indigenous peoples. This reply seems unreal and covers up the true reasons for government opposition: the territories occupied or owned by indigenous peoples in Canada are vast and ancient treaties give rights to indigenous peoples but they are not always respected. Energy and land issues are too important for Canada to wish to share this manna with the local populations. The government is unwilling to discuss the environmental consequences of hydroelectric or petroleum plants and forestry and mining concessions and still less the economic benefits that should also be shared out with indigenous Canadian communities who are crying out for help. Living conditions for local populations are appalling. It's Canada's third world. Social problems are excessively serious.

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<sup>5</sup> Sources :

“Taser causes its eighteenth victim” - Louise Leduc, in the Montreal daily *La Presse*, 24 July 2008. The article talks about Canada's eighteenth victim during an altercation between the police of Winnipeg and a young 17 year old man. The reporter also mentions two Taser victims in Quebec: Claudio Castagnetta from Quebec city and Quilem Registre, from Montréal.

“No one will be charged following Claudio Castagnetta's death” – Taken from Canadian Press – the equivalent to Reuters in Canada – on 22 August 2008.

## **Recommendations to the Canadian State:**

- Following the case of *Maher Arar*, begin to examine in detail the analogous cases of *Abdullah Almalki*, *Ahmad El-Maati* and *Muayyed Nureddin*, with a view to releasing them, rehabilitating them and offering them financial compensation for their ill treatment.
- Abolish the practice of *security certificates* and try suspected terrorists under existing Canadian laws
- Repatriate *Omar Khadr* immediately before his trial in Guantanamo Bay and bring him before a special youth court.
- Put in place a moratorium of the use of Taser guns and hold a public and independent enquiry into the effects and the use of the stun gun.
- Reconsider the country's position concerning the United Nations Declaration on the Rights of Indigenous Peoples and set out to sign it in the short or medium term.
- Ratify the optional Protocol to the Convention against Torture (OPCAT) and implement it swiftly.