

Presentation of Canada's Fourth and Fifth reports Committee against Torture

Introductory Speech May 2005

Canada is pleased to present its Fourth and Fifth reports to the Committee against Torture today. These reports provide an update on the legislative, programme and policy framework that governments in Canada have put in place to implement the *Convention Against Torture*. We have endeavoured to make our reports comprehensive, yet concise. We hope that by sharing best practices we can help others and thereby achieve more globally. We also look forward to discussing our ongoing challenges with you today and welcome suggestions from the Committee as to how we can enhance our respect for the obligations found in the *Convention*.

I would like to mention the close collaboration that took place between the federal government, and the governments of the provinces and territories in preparing Canada's Fourth and Fifth reports under the *Convention Against Torture*. The Continuing Committee of Officials on Human Rights is the principal mechanism for federal-provincial consultation and information sharing on international human rights treaties. The Committee has made a significant and successful effort to bring Canada up to date on its reporting obligations, and ensure more timely submission of reports. We appreciate that the Committee agreed to review both the Fourth and Fifth Reports together, which together cover the period April 1996 to July 2004

I would also like to note the role of non-governmental organisations in preparing Canada's reports. It is Canada's practice to seek the views of relevant NGOs with respect to which issues should be covered in reports under the *Convention Against Torture* and other international human rights treaties. The comments received from these NGOs are included in our Fourth and Fifth reports to the Committee.

Further, prior to appearing before you here today, I held a meeting with many organizations who have a particular interest in issues under this *Convention*, in order to ensure that they were aware of Canada's presentation and had the opportunity to share their views on challenges pertaining to our implementation of the *Convention*. I would like to take this opportunity to thank them for their fine work in the area.

The Canadian *Criminal Code* provides a definition of torture that is in accordance with the definition contained in Article 1 of the *Convention against Torture*. It is no defence to a charge of torture that the accused was ordered by a superior or a public authority to perform an act of torture or that the torture is alleged to have been justified by exceptional circumstances, including a state of war, a threat of war, internal political instability or any other public emergency. Any act falling within the *Convention's* definition of torture is a criminal offence in Canada. In addition, the Canadian *Criminal Code* explicitly states that any statement obtained as a result of torture is inadmissible as evidence in any proceeding over which the Canadian Parliament has jurisdiction. As well as having robust anti-torture laws,

Canada maintains strong protections for individuals accused of any crimes, as demonstrated by the rights of the accused enshrined and entrenched in the *Canadian Charter of Rights and Freedoms*.

The Canadian government does not sanction torture or cruel, inhuman or degrading treatment. If torture does occur, victims have full access to the courts in order to pursue their claims should the need arise and may be entitled to various remedies, including compensation. In addition, some Canadian jurisdictions have passed legislation that compensates victims who receive bodily injuries from crimes. For example, the *Victims of Crime Act* of Nunavut provides for the establishment of a Committee which, among its responsibilities, is to promote courteous and compassionate treatment of victims. The Committee may also make recommendations to the government relating to the development of policies with regard to services to victims. The term “victims” means persons who, individually or collectively, have suffered harm including physical or mental injury, emotional suffering or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws.

Canada has also demonstrated its strong support for combating impunity for acts of torture through the *Crimes Against Humanity and War Crimes Act*. The *Crimes Against Humanity and War Crimes Act* creates offences for crimes against humanity, including torture. It also affirms that any immunities otherwise existing under Canadian law will not bar extradition to the International Criminal Court or to any international criminal tribunal established by resolution of the Security

Council of the United Nations. This *Act* also allows for the investigation and prosecution in Canada of subjects who have committed offences outside of Canada, but now live in Canada.

In addition to being a criminal offence and contrary to government policy, there are a number of stringent mechanisms in place both federally and provincially to guard against torture occurring in places of detention. These include the courts, human rights commissions, police oversight agencies, and ombudsman offices. For example, in the Canadian federal prison system there is a Correctional Investigator, independent of the Corrections Service, who acts as an ombudsman for detained federal offenders. A Rights, Redress and Resolution Directorate in the Correctional Service of Canada assists in monitoring and evaluating policies and practices in regard to the treatment of prisoners.

All newly recruited Canadian prison officials are trained and instructed on the appropriate conduct related to interventions in regard to the use of force. This training aims at ensuring compliance with and preventing violations of the Canadian *Criminal Code*, as well as Canada's domestic and international human rights obligations. In addition, the new correctional officer recruits are trained to use verbal intervention and negotiation, in place of physical force, where appropriate.

In regard to the use of force in a federal prison, all instances must be reported to

the institutional head for review. Where the institutional head has reason to suspect that the amount of force used may have been excessive, then the institutional head is to call for an investigation. All use of force incidents are referred to the Office of the Correctional Investigator for review.

An area of concern in regard to the criminal justice system is the over-representation of Aboriginal people within it. More needs to be done to reduce and eliminate the over-representation of Aboriginal men, women and children in detention. Aboriginal alternative justice institutions and mechanisms must also be officially recognized and fostered with the full participation of Aboriginal communities. Research by Correctional Service Canada and others has indicated that reconnection, or sometimes connecting for the first time, with their Aboriginal identity is an important factor for Aboriginal people who have been involved in the criminal justice system. Correctional Service Canada aims to provide a range of services for Aboriginal offenders from the moment they arrive at an institution to the end of their sentence. Some examples are: Aboriginal-specific programs and units, cultural healing facilities (healing lodges, villages or centres), and culturally-specific programs that deal with basic healing, family violence and substance abuse.

The Office of the Correctional Investigator has for a number of years focused on the concerns of Aboriginal Offenders in the federal correctional system.

Programs highlighted in our reports are step in the right direction, and the

government of Canada remains committed to working in partnership with Aboriginal people, communities and organizations, a relationship that is built on partnership and with initiatives that are developed in collaboration. Dealing with Aboriginal justice and corrections issues is an important part of this commitment. With respect to Aboriginal justice, we would like to mention an initiative that has been developed in Newfoundland. The new Supreme Court Judicial Center officially opened this April in Labrador. The design of the courthouse encompasses many concepts which support the unique cultural aspects of Labrador and the Aboriginal culture. The facility incorporates an Aboriginal healing room and a circle motif in the courtroom reflecting openness to Aboriginal traditions.

While some initiatives have met with success, Canada is aware that it still has significant challenges to overcome in regard to Aboriginals in the criminal justice system.

The government of Canada and the governments of nine of the provinces have in place civilian oversight agencies that are independent of the police in order to review complaints made by members of the public against the police. For example, the Commission for Public Complaints against the Royal Canadian Mounted Police (RCMP) is an independent, civilian agency with a mandate to receive complaints from the public about the conduct of members of the RCMP. Its role is to conduct an independent inquiry and reach objective conclusions based on available information. The Commission may also initiate investigations, public hearings and hearings in the public interest. Since 2001, there have been 13

hearings. Of those, 4 are ongoing cases.

Members of the Royal Canadian Mounted Police receive training in order to minimize the need for the use of force and to ensure that, even when force is necessary, it does not exceed that which is reasonably required in the circumstances.

We would also like to mention that the Canadian Forces have published materials and instruct members at various rank levels on the treatment of prisoners of war, the sick and wounded, and civilians. Human rights standards have also been incorporated into the Canadian Forces law of armed conflict and Code of Conduct training curriculum.

Canada takes allegations of torture seriously, especially where it is alleged that Canadian officials may have been implicated, however indirectly, in incidents of torture. This is demonstrated by the announcement of the Deputy Prime Minister in January 2004 that a public inquiry would be undertaken into the actions of Canadian officials in relation to Maher Arar, a Canadian who holds dual citizenship with Syria, who was stopped while travelling through New York City and deported by the United States to Syria. When this individual returned to Canada, he said he had been tortured during his incarceration and accused American officials of sending him to Syria knowing that they practise torture. The Inquiry is mandated to inquire into the role of Canadian officials with respect to the specific circumstances of that case. The Commission is also mandated to recommend an arm's length review mechanism for the activities of the Royal

Canadian Mounted Police with respect to national security. In October of 2004, the Inquiry released a policy review consultation paper and presented some options for a review mechanism for public consideration and dialogue.

Canada has adopted laws and policies to protect the security of our democracy and the safety of the Canadian people from threats to national security, including acts of terrorism. In 2001, Canada, through Bill C 36, the *Anti-terrorism Act*, amended the *Criminal Code*, in part creating offences that specifically addressed terrorist activity. It also amended or created several other statutes to allow Canada to combat terrorism more effectively. One of the key principles behind this legislation was that of human security. This includes both protecting the values and institutions of democracy and protecting human rights. As a result, the *Anti-terrorism Act* was carefully drafted with safeguards to ensure that it was consistent with the *Canadian Charter of Rights and Freedoms*. One of the safeguards is an important requirement that Parliament comprehensively review the provisions and operation of the *Act* after three years. The Parliamentary review is currently underway and being conducted by two separate committees – one in the Senate and another in the House of Commons. In fact, it is our view that Canada's *Anti- terrorism Act* serves as a useful model to the world on how to create effective counter-terrorism legislation - that is, counter terrorism legislation that is consistent with, and supportive of, fundamental human rights. I will give greater details on this Review when responding to the List of Issues prepared by this Committee.

Canada has a longstanding humanitarian tradition of protecting those in genuine

need and granting fair consideration to those who arrive seeking its protection. Refugee claims are assessed against the consolidated protection grounds of: the *Geneva Convention relating to the Status of Refugees*; the danger of torture; the risk to life and the risk of cruel and unusual treatment or punishment.

Canada's tradition of protection includes protection from refoulement. A mechanism known as the Pre-Removal Risk Assessment (PRRA) is available to persons facing removal from Canada, to help ensure that people are not removed to countries where they would be at risk. When considering if a person is at risk, officials of Citizenship and Immigration Canada (CIC) use the definition of risk of persecution as defined in the *Geneva Convention relating to the Status of Refugees*, risk of torture as defined in the *Convention against Torture*, and risk to life, or risk of cruel and unusual treatment or punishment.

Successful refugee claimants and PRRA applicants may apply for permanent residence in Canada as protected persons. Serious criminals and those whose presence constitutes a danger to the security of Canada are prohibited from applying for permanent residence, however, they may benefit from a stay of removal pending future review of circumstances.

As an immigrant and refugee-accepting state, Canada, like other states, faces challenges, in terms of protecting national security and public safety, when dealing with foreign nationals present in its territory who pose a security or similar serious threat to Canada while there are substantial grounds to believe they would be in

danger of being subjected to serious human rights violations including torture if they are returned to their country of origin. We understand that the Committee is interested in how we address this challenge, as demonstrated by the List of Issues it sent to the Canadian government.

Since long before the terrorist attacks of September 11, 2001, immigration removals – or security certificates - have been an important tool available to the government in reducing public safety and security risks created by non-Canadians. In 2002, the Supreme Court of Canada noted in the case of *Suresh* that removal to a country where there is a substantial risk of torture would violate international law. In upholding the legislation, the Court stated that the appropriate approach under the relevant domestic constitutional provision, was one of balancing, and suggested that this balance would almost always weigh against expelling a person to face torture elsewhere. Other means must generally be found to address security concerns. The Supreme Court stated that only in exceptional circumstances might the Canadian Constitution permit removal of a person to a substantial risk of torture for reasons of national security. Defining the ambit, if any, of an exceptional discretion to deport to torture must await future cases.

The government of Canada is committed to protecting Canada's security while at same time preserving the principles of freedom and human rights that are at the core of our society's beliefs. The government intends to develop a range of alternatives to removal that are both consistent with domestic and international human rights standards and effective in protecting our collective security. Security

certificates are being examined in the context of the parliamentary review of the anti terrorism legislation. Canada is working internally consulting with other states with a view to augmenting the alternatives currently available under Canadian law for dealing with persons who pose serious security threats but risk torture or death if deported. Canada welcomes the views of this Committee on this challenging issue.

INTERNATIONAL

Canada, as a member of the community of nations, is concerned about torture globally, and is active internationally to ensure respect for the inherent dignity of each human being.

Canada is committed to international efforts to prevent and eliminate torture. Canada ratified the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* on June 24, 1987, one of the first states to do so. Canada has also made the declaration under Article 22 recognizing the competence of the Committee Against Torture to consider individual complaints under the *Convention*. Since 1987, forty-two complaints have been filed against Canada. All but one of these complaints alleged a violation of Article 3 of the *Convention*. Eight complaints are still pending, three were suspended, twenty-nine were declared discontinued, inadmissible or without merit. In two cases, the Committee was of the view that the removal of the complainant would violate

Article 3 of the *Convention*. In the first case, in 1996, Canada has not deported the individual. With respect to the more recent case, decided in 2004, the officials are reassessing the risk of return of the complainant to Mexico. The views issued by the Committee will be taken into consideration and the Committee will be informed of the result of this assessment.

I mentioned that Canada is concerned about torture globally and it is concerned by a number of cases of Canadians or immigrants in Canada who have allegedly been subjected to torture abroad. These latter cases have generated particular public and governmental concern in Canada. NGOs have raised with the government the inability of these individuals or their family members to receive civil redress from the perpetrators or the responsible state. Long established principles of state immunity from civil suit, recently affirmed in the *United Nations Convention on Jurisdictional Immunities of States and their property* limit victim's ability to sue for damages. Recent jurisprudence in the United Kingdom has suggested that individuals, when sued for torture might not be able to hide behind the shield of state immunity. Although we don't pretend to have a solution, this is an issue that deserves the attention of and should be examined by the international community, since multilateral approaches are much to be preferred. Any views the Committee might wish to express on this issue would be of great assistance to Canada and other nations grappling with this very difficult problem.

Canada supports the work of the Committee Against Torture as well as the work of

the UN Special Rapporteur on the Question of Torture. Canada has extended an open invitation to all UN human rights bodies to visit Canada.

Finally, we would like to mention that Canada's support to victims of torture includes annual contributions to the United Nations Fund for Victims of Torture.

CONCLUSION

Canada is strongly committed to the promotion and protection of human rights and to the prohibition and elimination of torture and other cruel, inhuman or degrading treatment or punishment in Canada and globally. We welcome the opportunity to discuss with you today the measures that have been developed to reflect this commitment. We look forward to your comments with respect to those measures and your recommendations as to additional measures we could consider taking to enhance our compliance with the *Convention*.

In conclusion, we wish to express our gratitude for the excellent work of this Committee. Your role in monitoring the actions of states is a valuable safeguard and a step towards the eradication of practices incompatible with a civilized, humane world. We look forward to engaging in an open dialogue with the members of this Committee.

We will begin this dialogue by addressing the List of Issues this Committee sent to

the Canadian government. The answers will be given by different members of the delegation.

We will then be pleased to take additional questions the members of this committee may have. Thank you.