International Civil Liberties Monitoring Group
(ICLMG)

Outline of Submission
Concerning the standards of conduct that the Commissioner should apply in determining the matters set out in par. (a) of the Inquiry's Terms of Reference

to the

Commission of Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almaki, Ahmad Abou-Elmaati and Muayyed Nureddin

December 14th, 2007

(the ICLMG has been granted "Intervenor Status" by the Commission)

Outline of Submission by ICLMG to the Inquiry, concerning the standards of conduct that the Commissioner should apply in determining the matters set out in par. (a) of the Inquiry's Terms of Reference to be to be considered at a hearing to take place on January 8 and 9th , 2008 at the Bytown Lounge, 111 Sussex Drive, Ottawa, Ontario.

A. In response to the five questions submitted by the Commission

1. Sharing information with foreign authorities

(a)(i) (iii) -- During the period 2001-2004, in what circumstances would it have been appropriate for Canadian officials responsible for investigating activities that may on reasonable grounds be suspected of constituting threats to the security of Canada, to share information concerning Canadian citizens with authorities of a foreign state?

Answer – It would be appropriate only in the following circumstances:

1. When the sharing in question was clearly within the legislative mandate of the agency for which the Canadian officials were employees (RCMP, CSIS and others);

2. When the sharing was with foreign agencies explicitly identified as acceptable by Canadian law, memorandum of understanding, protocol, policy or directives;

3. Information should not be shared with foreign agencies that have a history of not respecting the rule of law, using torture and maintaining conditions of imprisonment and interrogation that are contrary to Canadian and international law;

4. When the information to be shared has been authorized by a properly trained senior officer for its relevance to the investigation in question;

5. When the information to be shared has been tested for reliability and accuracy and when it is in accord with relevant laws respecting personal information and human rights (the Charter, CHRA, Privacy Act, Access to Information);

6. When the sharing and its consequences are consistent with international human rights standards, and in particular with the:
    - Universal Declaration of Human Rights (1948)
    - International Covenant on Civil and Political Rights (1966)
    - Convention Against Torture (1984)

- Convention on the Elimination of all Forms of Racial Discrimination (1965)
- U.N. Code of Conduct for Law Enforcement Officials (1979)
- U.N. Body of Principles for the protection of all persons under any form of detention or imprisonment (1988)
- U.N. Basic Principles for the Treatment of Prisoners (1990)
- U.N. Declaration on the protection of all persons from enforced disappearance (1992)
- Vienna Convention on Consular Relations (1963)
- Geneva Conventions (1949)

7. When the proper caveats restricting the use of shared information have been clearly written and attached to the shared information. Caveats might – inter alia- refer to access, distribution, punishment, and forms of rendition;

8. When the sharing has been approved by the proper chain of command after verification of the information as to relevance, reliability and accuracy;

9. When the sharing is subject to an effective oversight and review process.

N.B. : In answering the above (and following) questions ICLMG makes the following interpretive comments:

1. These questions refer to Canadian officials. We take this to mean at the very least officials with CSIS, RCMP, CBSA and CSE. The O'Connor Report stated that there were 24 federal agencies in Canada involved directly, or indirectly, in the security and intelligence business. The Report also stated that there were 247 agreements by which Canadian agencies shared intelligence internationally and within Canada.

2. These questions ask whether certain behaviour by Canadian officials was "appropriate". They do not ask whether it was "legal" or even "deficient" as used in the Terms of Reference. "Deficient" means lacking in some essential, or inadequate in quality. "Appropriate" means suitable, proper, fitting. Consequently when the Commission uses "appropriate" in these questions, we took it to allow for a broader and even higher standard, one that is not restricted to hard law and one that would include international human rights standards, policies, directives, instructions and best practices.

3. These questions refer to the period 2001 to 2004. We don't understand the rationale for this limited period. We are not aware of any great difference in standards before, during or after this period.

4. We found it difficult to propose standards of conduct in answer to the

Commission's questions relating to the officials' behaviour without knowing the factual findings determined to date by the Commission. If we knew exactly what had been done and by whom, we would have been more precise in putting forward appropriate standards governing that type of behaviour. In the absence of such findings, we had to speculate and make presumptions.

(a)(i) (iv) -- During the period 2001-2004, in what circumstances, if any, would it have been appropriate for Canadian officials responsible for investigating activities that may on reasonable grounds be suspected of constituting threats to the security of Canada, to provide the authorities of a foreign state with information concerning the travel plans of Canadian citizens?

Answer – Information concerning travel plans is still information and consequently this question is subject to the same answer as the previous one relating to the sharing of information.

(a)(ii) (iii) & (iv) -- During the period 2001-2004, in what circumstances, if any, would it have been appropriate for Canadian officials responsible for conducting criminal investigations into the possible commission of terrorism offences, to -- (iii) share information – or – (iv) to provide the authorities of a foreign state with information concerning the travel plans of Canadian citizens?

Answer - This would be the RCMP or other joint operation police forces. With respect to "sharing", as we stated in our note #1 above, we don't see any essential difference whether it was done by CSIS or the RCMP. The same conditions would apply as in the first question above.

(b) -- If there were circumstances during the period 2001 to 2004 in which it might have been appropriate for the Canadian officials referred to in question 1(a) to share information concerning Canadian citizens with authorities of a foreign state or, in particular, provide the authorities of a foreign state with information concerning the travel plans of Canadian citizens, what considerations should the Canadian officials have taken into account before doing so?

Answer - If the circumstances were appropriate in accordance with the conditions set out above in question 1 (a), then we can't, at the moment, see what further considerations should be taken into account.

2. Questionning Canadian citizens detained in foreign states

(a) -- During the period 2001 to 2004, in what circumstances, if any, would it have been appropriate for the Canadian officials referred to in question 1(a) to
(i) send questions to the authorities of a foreign state to be used by the foreign authorities to question a Canadian citizen detained in the foreign state?

Answer – To send questions to a foreign agency for purposes of interrogation is equivalent to sharing information with a foreign agency and consequently the only appropriate circumstances would be those set out in answer to question no. 1.

(ii) attend in a foreign state to participate in the questioning by the foreign authorities of a Canadian citizen detained in the foreign state?

Answer - This still involves the sharing of information and the answer is the same as with the previous question.

(iii) attend in a foreign state to question directly a Canadian citizen detained in the foreign state?

Answer - If the questioning is done privately and there is no sharing of information with the foreign state, then a different set of standards would apply. This would be part of an investigation and the law and other rules relating to investigations would be applicable. These would include the mandate of the investigation, the authorization by superiors, guidelines with respect to relevancy, reliability and accuracy, methods of interrogation, human rights considerations, and considerations of the condition of the detainee.

(b) -- If there were circumstances during the period 2001 to 2004 in which it might have been appropriate for the Canadian officials referred to in question 1(a) to engage in some or all of the activities referred to in question 2(a), what considerations should the Canadian officials have taken into account before doing so?

Answer - The officials should get a comprehensive picture of the law and facts which led to the detention in the foreign state; the law and practice of the foreign state with respect to questioning by Canadian officials; the history of the foreign state with respect to torture, conditions of incarceration, police procedures, respect for the rule of law and due process, plus any bilateral agreements between Canada and the foreign state which would relate to the case. They should also check to see what international conventions have been ratified by the foreign state relating to human rights and diplomatic relations.

3. Provision of consular services to Canadian citizens detained in foreign states

(a) -- During the period 2001 to 2004, what standards of consular services would it have been reasonable for Canada to provide to a Canadian citizen detained in Syria or Egypt?

Answers

(i) The consular visits should be as often as required to protect the interests of the Canadian citizen. They should be private. They should be accompanied by medical examination. They should be thorough and subject to Canadian consular guidelines.

(ii) The efforts to locate the detainee should persist until he/she is found or a satisfactory answer is given with respect to location – and the same with respect to treatment. The consul should be aware of the international and national standards applicable and his/her rights under the Vienna Convention on Consular Relations.

(iii) As above.

(iv) As above.

(v) The detainee's family should be kept fully informed of all aspects of the detention and of the efforts by the consular services as set out above. They should also be informed of the Canadian consuls authority in such circumstances and what is, or is not, possible.

(vi) The consular service should continue to support and assist the released detainee until he/she is safely back in Canada.

(b) -- During the period 2001 to 2004, what considerations should DFAIT officials have taken into account in determining the nature and frequency of the consular services, including but not limited to the services referred to in question 3(a)(i) to (vi), to be provided to a Canadian citizen detained in Syria or Egypt?

Answer – The considerations would be similar to those set out in answer to question 2(b).

(c) -- During the period 2001 to 2004, what practices should DFAIT officials have followed when meeting a Canadian citizen who was detained or who had been detained in Syria or Egypt to assess whether the Canadian citizen was being or had been mistreated?

Answer - The answer to this question would be similar to the answers given to questions 3(a)(i) and (ii).

4. Disclosure of information obtained by consular officials

Answers to questions (a) and (b)

It would be appropriate for Canadian officials referred to in question 1(a) **to seek** from DFAIT officials disclosure of information that DFAIT officials had obtained from a Canadian citizen to whom they were providing or had provided consular services **only** in accordance with strict guidelines governing the exchange of such information between government agencies which would include authorization at a senior level; verification for relevancy, reliability and accuracy; consideration of human rights and privacy standards; caveats respecting the use of the information; and a process for oversight and review.

The same answer would apply to questions (c) and (d) with respect to the **disclosure** of such information by DFAIT officials to Canadian officials referred to in question 1(a).

5. Role of consular officials in national security or law enforcement matters

Answers to questions (a) and (b)

It would be appropriate for DFAIT officials to assist Canadian officials referred to in question 1(a) to engage in some or all of the activities referred to in question 2(a)(i) or (iii) **only** if the law and mandate of the cooperating agencies permitted such activity and the proper authorization had been obtained. Generally speaking officials are not authorized to act outside their agency's mandate and there are government guidelines for inter-agency cooperation.

Respectfully submitted,
Warren Allmand
for ICLMG
Montreal,

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