

Avoid Complicity, Provide Protection:

International Human Rights Standards

Applicable to the Review of the Conduct of Canadian Officials

in the Cases of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin

Outline of the Submissions
of Amnesty International

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Preface

- 1 This is an outline of the more detailed written submission and oral presentation that Amnesty International intends to make to the Commission at the time of the Hearing on Standards of Conduct, to be held January 8 and 9, 2008.
- 2 Amnesty International has reviewed and considered in detail the questions that are outlined in the Notice of Hearing. For reasons of clarity and coherence, this outline is not structured in a way that follows the specific order and phrasing of those questions. The outline does, however, offer Amnesty International's views as to the key international human rights standards applicable to the questions that have been posed.
- 3 Amnesty International has already expressed concern about making these submissions at a time when we have received no factual disclosure from the Commission. We are, of course, aware of relevant information already on the public record, particularly through the report from the inquiry into the case of Maher Arar. We have taken account of that information in preparing this outline. We do, however, reserve the right to amend this outline and other submissions to take account of factual information disclosed at a later date.

The Cases

- 1 On November 12, 2001 Ahmad Abou-Elmaati was arrested upon arrival at the airport in Damascus, Syria, where he was traveling to join his new wife. He was held in incommunicado detention, his arrest never acknowledged publicly by Syrian authorities, his whereabouts never disclosed to his family. He has described being subjected to brutal torture and extensive interrogation in Syria until January 25, 2002 at which point in time he was secretly transferred to Egypt. He remained in detention in Egypt, where he indicated that the torture continued and in fact intensified. His Egyptian jailors refused to release him, despite a number of court orders requiring his release, until he was finally freed on January 11, 2004.
- 2 On May 3, 2002 Abdullah Almalki was arrested upon arrival at the airport in Damascus, Syria. Having heard that his grandmother was ill, he was returning to Syria for the first time since his family had emigrated to Canada 15 years earlier. He remained in prison until March 10, 2004. Like Mr. Elmaati, he has described being tortured extensively and interrogated relentlessly. He was never allowed legal representation or consular assistance.
- 3 On December 11, 2003 Muayyed Nureddin, a Canadian citizen of Iraqi descent, was arrested when he sought to cross the border between Iraq and Syria, en route back to Canada after a visit with his family in northern Iraq. He was imprisoned until January 13, 2004, given no consular or legal assistance, and like Mr. Elmaati and Mr. Almalki, describes being interrogated and subjected to torture.
- 4 These cases arise in connection, of course, with that of Maher Arar. On September 26, 2002 Maher Arar was pulled aside by an immigration officer while transiting through JFK Airport in New York City. Over the coming 12 months he was imprisoned in the United States, then briefly in Jordan and finally in Syria. He was never told what specific allegations had been made against him. He endured extensive interrogations in the

United States and Syria, none of which were carried out in the presence of legal counsel. He was never given a chance to confront his accusers, or refute the allegations. He was severely tortured in Syria and held in abysmal prison conditions without access to natural or artificial light for months on end. Mr. Arar's experience, and the many ways in which deficient Canadian conduct was responsible for the serious human rights violations he suffered, are extensively documented in the reports issued by the Commission of Inquiry that examined his case.

In all of these cases it is clear that there was extensive involvement of Canadian officials, the nature and scope of which has not yet been fully disclosed. This extended to ongoing exchanges between Canadian and foreign officials after the men had been detained, again the full nature and scope of which has not yet been fully disclosed. We do know that Canadian officials did provide Syrian officials with a list of questions that the RCMP had prepared for Mr. Almalki, while he was imprisoned in Syria. We do know that information obtained from interrogations of Mr. Elmaati in Syria was used in legal proceedings in Ontario court to obtain a telephone warrant.

Sources of Applicable Standards

The actions of the Canadian government should at all times be in accordance with Canada's obligations under international human rights law, including the obligation to uphold the prohibition of the use of torture and ill-treatment. Under Canadian and international law Canada can under no circumstances be complicit, or otherwise participate, instigate, consent to or acquiesce in the use of torture. Furthermore, Canada has a positive obligation to prevent torture from occurring and to protect the rights of Canadian citizens.

The sources of applicable standards governing the conduct of Canadian officials obviously extend beyond international human rights obligations as well, to the Charter of Rights, Canadian law and relevant agency and departmental directives, policy and good practice. Amnesty International's outline focuses only on Canada international human rights legal obligations.

The sources of Canada's international human rights obligations are many, including principles of customary international law and numerous treaty-based obligations. For the purposes of this outline Amnesty International particularly relies on the International Covenant on Civil and Political Rights (ICCPR), acceded to by Canada in 1976, and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), ratified by Canada in 1987.

Amnesty International adopts the submission made by Human Rights Watch as to the reach of Canada's obligations under these two treaties, notably that obligations under the ICCPR are not territorially bound and do extend to individuals subject to Canada's jurisdiction, which most certainly includes Canadian citizens, when they are outside Canada. The ICCPR, as interpreted and applied by the International Court of Justice, the UN Human Rights Committee and other bodies, gives rise to a very clear obligation on Canadian officials not to expose persons to a serious risk of torture or ill-treatment.

There are obligations under the UNCAT that are also directly applicable, regardless of any territorial or jurisdictional limitations, including obligations regarding *refoulement*,

proper training, use of information obtained by torture and providing opportunities for survivors of torture to obtain redress and compensation. Importantly, the definition in article 1 of the UNCAT is widely-recognized internationally as the most authoritative description of what sort of treatment constitutes torture. Amnesty International also submits that the provisions of the UNCAT, as interpreted and applied by bodies such as the UN Committee against Torture, are highly persuasive in providing content to related obligations under the ICCPR.

Amnesty International urges that at a minimum, the standards identified and elaborated in the report from the Arar Inquiry be applied in the present inquiry, supplemented further by international human rights law requirements, as outlined by Amnesty International and other participants.

In keeping with these standards, Canadian officials have a heightened obligation when working on cases involving Canadian citizens being detained in countries where there are substantial grounds to believe that those detained for national security reasons will face a risk of torture, to work to protect the rights of their citizens. Amnesty International submits that the documentary record very clearly establishes that to be the case with both Syria and Egypt.

The following principles should guide the standards employed by Canadian officials in cases where a Canadian citizen detained abroad faces a serious risk of torture.

The Prohibition Against the Use of Torture is Absolute

The prohibition on the use of torture and other cruel, inhuman or degrading treatment is well established by treaties and customary international law. The earliest expression of this universal prohibition can be found in Article 5 of the Universal Declaration which states that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The International Covenant on Civil and Political Rights and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment further strengthen customary law by codifying this prohibition.

The prohibition on torture is absolute and has attained the status of *jus cogens*. It is a peremptory norm from which there can be no derogation, including in times of war, or in the face of terrorist threats.

Under no circumstances can Canada engage in activities that would render it complicit or otherwise participate, instigate, consent to or acquiesce in the use of torture. The prohibition is intransgressible.

The terms “with the consent or acquiescence” in Article 1 of the Convention Against Torture have been interpreted to include omissions or failures of public officials to act “when they had or should have had reasonable grounds to believe that torture was taking or had taken place.”

As such, it is submitted that when Canadian officials send questions to be used in the interrogation of a Canadian citizen being held on national security grounds in a country with a record of widespread torture, and where they should have known that the person concerned faced a serious risk of torture or ill-treatment, the Canadian government is in

breach of its obligations under international human rights law. Such actions could result in Canada being held responsible for the commission of an internationally wrongful act.¹

The standards employed by Canada should respect not only the obligation to refrain from carrying out or being complicit or otherwise participate, instigate, consent to, or acquiesce in the use of torture and ill-treatment, but also respect Canada's positive obligation to prevent, punish, and redress acts of torture. The European Court of Human Rights has recognized an obligation not to use torture and a corresponding duty to prevent torture.²

As noted by the International Criminal Tribunal for the Former Yugoslavia, "States are obliged not only to prohibit and punish torture, but also to forestall its occurrence: it is insufficient merely to intervene after the infliction of torture, when the physical or moral integrity of human beings has already been irremediably harmed. Consequently, States are bound to put in place all those measures that may pre-empt the perpetration of torture."³

The prohibition against torture imposes on states an obligation erga omnes, one that is owed to all member of the international community.⁴

Thus there is a heightened positive duty for the Canadian government to take measures to ensure that its officials understand the nature of the prohibition and take steps to ensure that intelligence investigations do not violate the prohibition. It also requires that those who carry out consular duties meeting with detainees are trained to look for torture and take every opportunity to urge detaining states to respect the basic human rights of Canadian citizens. The erga omnes nature of the norm necessitates that Canadian officials actively intervene to prevent torture for occurring and to call on states to uphold their obligations.

Providing or Exchanging Information and Travel Plans

Under no circumstances can Canadian officials provide or exchange information, travel plans or questions about individuals of interest in national security investigations to other governments where there are substantial grounds to believe that doing so may reasonably put those individuals at risk of torture or ill-treatment.

Amnesty International, Human Right Watch and the US State Department have all issued reports condemning Syria and Egypt for their regular use of torture and ill treatment against political prisoners and those being held for national security reasons.⁵

¹ Article 16 of the International Law Commission's Articles on State Responsibility, which is recognized as a codification of customary international law.

² European Court of Human Rights, *Z v. United Kingdom*, judgment of 10 May 2001; *A v. United Kingdom*, judgment of 23 September 1998 at 22.

³ *Prosecutor v. Furundzija*, (10 December 1998), Case No. IT-95-17/I-T (International Criminal Tribunal for the Former Yugoslavia), at paragraph 148.

⁴ *Ibid.*, at paragraph 151.

⁵ See for example: Amnesty International, Egypt: Systematic abuses in the name of security, April 2007; Egypt: No protection – systematic torture continues, November 2002; Syria: Amnesty International's campaign to stop torture and ill-treatment in the 'war on terror', December, 2005; Syria: Torture, despair and dehumanization in Tadmur Military Prison, September 2001; US State Department, Country Reports

- Where Canadian officials know, or should have known, that there are substantial grounds to believe that an individual will face torture or other cruel, inhuman or degrading treatment or punishment, Canada cannot provide the detaining state with information or travel plans that might serve as the basis for an arrest leading to unlawful imprisonment, torture and other serious human rights abuses. Depending on the circumstances, doing so could even result in officials being legally complicit, having participated in, instigated, consented to or acquiesced in the subsequent use of torture by the foreign officials.
- In the case of these three men, Canada should have known that there were substantial grounds for believing that the three men would face torture.
- Widely and publicly available country reports indicated that torture was used regularly in national security cases in both Egypt and Syria. Furthermore, Canadian officials sent questions to Syria, to be used in the case of Mr. Almalki, and sought to exchange information with the Syrian officials even after Mr. Elmaati had informed Canadian consular officials in Cairo that he had been tortured during his detention in Syria.
- When considering if information or travel plans can be given or exchanged to a foreign state, Canadian officials must evaluate the situation in light of their human rights obligations and the prohibition of the use of torture. The obligation extends to situations where Canadian officials knew that the individual was in danger of being tortured and also to situations where they “ought to have known.”⁶
- The obligations extend beyond the risk of torture to the risk that the information poses to causing or contributing to enforced disappearances, secret and/or arbitrary detention, unfair trials and other serious human rights violations.
- In assessing if there are substantial grounds, both the general situation of torture and ill-treatment in the country, and the specific situation of the individual (including his characterization of a ‘national security’ detainee and the special risks such detainees face in the country), are relevant.
- The Committee Against Torture has also cautioned states to be vigilant in their monitoring of possible cases of torture as, “the absence of a consistent pattern of gross violations of human rights does not mean that a person could not be considered to be in danger of being subjected to torture in his or her specific circumstances.” As a result, Canadian officials must in all cases involving detained Canadians conduct a risk assessment to determine what level of risk of torture they face.⁷
- Canada has a close national security relationship with the United States. As a result intelligence information is passed between both states. Canada’s interactions with the United States should be premised on the recognition that the United States, through its use of rendition, secret detention, and detention centres such as Guantánamo Bay, has been widely criticized for serious human rights violations associated with the ‘war on terror’. Any restrictions that may need to be applied to information-exchange with the

on Human Rights Practices, Syria and Egypt; *Human Rights Watch*, Egypt: Torture and Coerced Confessions Used in High-Profile Terrorism Investigation, *December 11, 2007*.

⁶ *Ahmed Hussein Mustafa Kamil Agiza v. Sweden*, Decision CAT/C/34/D/233/2003, 24 May 2005.

⁷ *Ibid*, at pg. 34.

United States should be rightly recognized to be the direct result of the pattern of violations of international law and fundamental human rights which has come to light, and not characterized as somehow being a problem created by the existence of the rights themselves. As soon as those violations cease, a foundation would exist to re-establish normal co-operation.

Diplomatic Assurances Do Not Remove the Risk of Torture

- In regards to the provision of information, travel plans, or questions to the United States or states such as Syria and Egypt in return for diplomatic assurances that torture will not be used, serious concerns arise as to the legality of this practice. Assurances are inherently unreliable, not legally binding, and provide no recourse for the persons.⁸ This has been noted by the Supreme Court of Canada⁹ and the Federal Court of Canada.¹⁰
- The UN Special Rapporteur on Torture has noted that diplomatic assurances are usually sought from states where the practice of torture is systematic and that states cannot resort to them as a safeguard in situations where there are substantial grounds for believing that a person will be subjected to torture or ill-treatment.
- Syria and Egypt are two countries that systematically violate the conventions provisions and as such Canada should under no circumstance provide information, travel plans or questions to their officials for the purpose of intelligence investigations in return for diplomatic assurances. The Committee Against Torture has definitively stated that diplomatic assurances coming from Egypt are not sufficient to protect against the risk of torture.¹¹

Prohibition Against the Use of Information Obtained from Torture is Absolute

- The prohibition on the use of information derived from torture or ill-treatment is well entrenched. Using such material violates Article 15 of the Convention Against Torture and Article 7 of the ICCPR.¹²
- Canadian officials must engage in due diligence and vigorously conduct credibility assessments when receiving information from foreign authorities, with special concern paid to the possibility that the material is the product of torture.¹³
- In cases involving national security detainees being held in countries where there are substantial grounds to believe that such types of detainees will face torture or ill-treatment, Amnesty International submits that the starting point for the assessment should be a presumption that the information is the result of torture unless Canadian officials can satisfy themselves of the contrary. That is the case in both Syria and Egypt.
- The onus is on Canadian officials to confirm that the information is not the product of torture.¹⁴ That analysis must be driven by a contextual understanding of the physical and

⁸ *Amnesty International*, Justice Denied, Justice Delayed, at pg.70

⁹ *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3.

¹⁰ *Sing v. Canada (Citizenship and Immigration)*, 2007 FC 361.

¹¹ *Ahmed Hussein Mustafa Kamil Agiza v. Sweden*, Decision CAT/C/34/D/233/2003, 24 May 2005.

¹² CAT Article 15 & ICCPR Article 7.

¹³ *Arar Recommendations*.

psychological use of torture. For example, if a detainee was physically beaten for two weeks on his arrival at a detention centre, and provides information in his fourth week, in a session where torture is not used, that information almost certainly still bears the taint of torture and its use is therefore impermissible.

Under No Circumstances Can Canada Send Questions, Attend Questionings by Foreign Authorities or Directly Question Canadians Detained in National Security Cases in Syria or Egypt

- Article 1 of the Convention Against Torture explicitly refers to those acts “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” As such, Canadian officials cannot send questions to foreign officials, knowing or ought to have known that they will lead to a serious risk of torture. In such circumstances, Canadian officials also should not attend the questioning of detained Canadians by foreign officials, and should generally refrain from seeking to question individuals directly.
- Such actions directly contravene the prohibition of the use of torture and result in Canadian officials taking advantage of the use of torture by foreign states to achieve Canadian intelligence objectives. Canada is benefiting from the detaining states abdication of their obligations to protect human rights. In doing so Canada undermines its own obligation to protect the rights of its citizens.
- Attending the questioning of detainees or questioning detainees in foreign detention centres where the Canadian detainee has already, or faces the threat of torture, lends legitimacy to the actions of the detaining state.
- The Arar report raises serious concerns about Canada’s possible complicity, participation, instigation, consenting to or acquiescing in the torture of Mr. Almalki. Justice O’Connor noted that questions were sent in January 2003 from the RCMP via DFAIT, the Canadian Ambassador in Syria, and the consul in Damascus, to General Khalil of the Syrian Intelligence Ministry. The questions were intended to be asked of Mr. Almalki. In sending the questions, Canadian officials took advantage of, accepted, and effectively implicitly approved of the imprisonment and interrogation of Mr. Almalki in this way.
- Mr. Almalki was being detained by Syria, a country with a well-documented history of gross human rights violations and the use of torture. The risk of torture faced by Mr. Almalki was heightened by the fact that he was being held on national security grounds. Canadian officials ought to have known that there were substantial grounds for believing that he was in danger of being tortured or ill-treatment and under no circumstances should they have sent questions to be asked of him, or sought to attend or question him or the other men directly. Their focus should have been on ensuring he would be protected from torture. Any effort to question him should have been deferred to such time that he was back in Canada or in some other situation where he was no longer at risk of torture.

¹⁴ UN Special Rapporteur on Torture, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Report*, 14 August 2006, A/61/259, pg. 10-18.

Consular Services

- Canadians around the world turn to their embassies and consulates in their times of need. DFAIT itself states that its mandate is to help Canadian's abroad.¹⁵ In carrying out their duties, Canadian consular official should at all times be guided by recognition of a legal obligation to take measures to prevent the torture, ill treatment and the serious violation of the human rights of Canadian's detained abroad.
- The obligation, enshrined in Canadian and international law is a positive one. As has been noted already, the prohibition of torture is a jus cogens and erga omnes norm and thus there can be no derogation, even it times of war or when facing terrorism threats.
- Canadian consular officials should afford all Canadians in like situations with equal treatment. They should carry out their actions with a respect for the presumption of innocence and should take every measure possible to advocate for the respect of detained Canadians' human rights.
- In countries where gross human rights violations have been well documented, and where there are substantial grounds to believe that a Canadian national faces a risk of torture, cruel, inhuman and degrading treatment, the responsibility of Canadian consular officials to act to prevent such abuse will necessitate more concerted and frequent attention and action.
- Consular officials should in all cases urge foreign states holding Canadian citizens to respect the Vienna Convention on Consular Rights. The following specific standards should govern in situations where there are substantial reasons to believe a detained Canadian citizen faces a serious risk of torture or ill-treatment. These standards are premised on the following principles:
 - Ø Canada has an obligation to take measures, including diplomatic measures, on behalf of Canadian citizens overseas.
 - Ø The principle that a state has the duty to protect their nationals abroad against foreign states has been recognized by the German constitutional court, the US Seventh Circuit Court of Appeals, and the Federal Court of Australia.¹⁶
 - Ø In those cases the courts placed a duty on states to enquire into the circumstances of their citizen's detention, deploy diplomatic measures to bring them back, and protect the rights of nationals abroad.
 - Ø In the Canadian case of *Purdy v. Canada*, the British Colombia Court of Appeal ordered Canadian authorities to release information that could help defend a Canadian citizen against criminal charges in the United States.¹⁷
 - Ø Canadian consular officials have a positive obligation to take measures to prevent torture from occurring and to advance the human rights of detained Canadian citizens.
 - Ø Canadian consular officials should in all cases where there is credible evidence of a violation of fundamental human rights, or the threat thereof, make diplomatic

¹⁵ *A Guide for Canadians Imprisoned Abroad*, Foreign Affairs and International Trade Canada, 2007. Pg. 3.

¹⁶ *Hicks v. Ruddock* (2007) FCA 299 (8 March 2007), *Flynn v. Schultz*, 748 F.2d 1186, 1195 (7th Cir. 1984), and *Hess Berge* 55, 349 (1980).

¹⁷ *Purdy v. A.G. (Canada)*, 2003 BCCA 447.

representations on behalf of Canadian citizens. Such actions have been recognized by the UN Human Rights Committee as a legitimate tool of foreign policy.¹⁸

Principle of Equality Amongst Canadians.

- All detained Canadian citizens who face a serious risk of torture are entitled to be treated equally. That means the same degree of effort should be expended on behalf of each and every one with respect to frequency of diplomatic protests, forcefulness of attempts to gain consular access, persistence in seeking private visits, and the degree to which senior government officials become involved.
- As such Canadian consular officials should have taken in each case similar measures to request consular visits, gain access, work for their release, communicate with their families, and aid them on their release and in their return to Canada. There should have been equality and consistency with respect to assistance provided following their release as well, such as being able to seek safety at Canadian embassies and being provided escorts for travel back to Canada.

Canada Should At All Times Urge States to Respect the Vienna Convention on Consular Relations

- Canada, Egypt, and Syria are all signatories of the Vienna Convention on Consular Relations and as such are entitled to request of host states the right of consular access to their detained citizens.¹⁹
- Article 36 1(b) of the Convention states that consular officers will be informed without delay if one of their nationals is “arrested or committed to prison or to custody pending trial or is detained in any other matter.” When it becomes clear that a foreign government has failed to provide that prompt notification after detaining a Canadian citizen, Canadian officials should protest forcefully that breach of the Vienna Convention and insist that it not happen again.
- Article 36(c) of the Convention states that consular officials “shall have the right to visit a national of the sending state who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation.”
- This right expresses what the consensus was in 1963 as to the nature of consular services for detained citizens. At a bare minimum those who are detained should expect that their state will persistently and actively press detaining authorities to allow them to visit with the detainee.

¹⁸ *UN Human Rights Committee*, General Comment No. 31, *cit.* 2.

¹⁹ Vienna Convention on Consular Relations, 24 April, 1963, Accession, Egypt Jan 21st, 1965. Accession, Syria, Oct 13, 1978. Accession, Canada, 18 July 1974.

Canadian Consular Officials Actions Should be informed by their Obligation to Prevent Torture and the Presumption That Those Being Held on National Security Grounds in Egypt and Syria Face Torture

- As has been noted, Canadian Consular officials have an obligation to act on behalf of Canadian citizens detained abroad. That obligation is not diminished when the individual holds dual nationality with the state that is detaining them.
- In light of the obligation to prevent torture, Canadian consular officials should approach each consular visit with an understanding that there are substantial grounds to suggest that the detained Canadian is experiencing torture. As a result they must from the outset in each consular visit actively look for signs of torture. This must be done with recognition that torture often does not always leave physical scars.
- In 2005 the UN Committee Against Torture in its concluding observations on Canada stated that in order to comply with the Convention, “the State party should insist on unrestricted consular access to its nationals who are in detention abroad, with facility for unmonitored meetings and, if required, of appropriate medical expertise.”²⁰
- The Optional Protocol to the Convention Against Torture and the European Convention Against Torture, both specify that every effort must be made to speak to the detainee in private. Every effort should be made to speak directly to the detainee, without the use of interpreters provided by detaining officials.
- Given the difficulty frequently associated with recognizing torture it would be preferable for two or more consular officials to be present at the visit, as is suggested in the European Convention. This would allow each of them to pick up on subtleties that the others missed.
- Under Article 10 of the Convention Against Torture, Canada has an obligation to “ensure that education and information regarding the prohibition against torture are fully incorporated into the training” of individuals such as consular officials.²¹ Such training should stress that in situations such as that of the three men, consular officials should approach their visits with the presumption that torture may be occurring. Therefore they should regard skeptically verbal assertions from the detained individual to the effect that they are not being tortured. As was noted in the Arar Report, Mr. Arar told Canadian consular officials that he was not being tortured when he in fact was.²²
- Such statements and possible indications of torture should be documented and sent to senior Department of Foreign Affairs and Trade officials for consideration as to what actions should be taken in response to the possible torture of a Canadian citizen.

²⁰ Committee Against Torture, *Concluding Observations/Comments on 4th and 5th periodic reports of Canada*, CAT/C/CR/34/CAN. 7 July 2005, paragraphs 4(b) and 5(d).

²¹ CAT Article 10

²² Justice O'Connor, *Report of the Events Relating to Maher Arar, Analysis and Recommendations, Commission of Inquiry Into the Actions of Canadian Officials in Relation to Maher Arar*, 2006, at pg. 44.

All Detained Canadians Should Be Presumed Innocent Unless and Until Proven Guilty

- Serious concerns were raised during the Arar Inquiry over the labeling of Mr. Arar as a terrorist. This labeling had very serious consequences, including very likely influencing the treatment that he received from Canadian consular officials who may have regarded him as potential threats to Canada. There is a very real possibility that those same concerns arise with respect to these three men.
- The presumption of innocence is well entrenched in Canadian law and should be respected by Canadian officials at all times, and should guide the approach taken in consular cases.²³

Consular Officials Should Work to Ensure that Basic Human Rights are Protected

- Canadian consular officials should remind foreign officials who are detaining Canadians of the prohibition of the use of torture and of arbitrary arrest or detention.²⁴ Pursuant to the International Covenant on Civil and Political Rights, Canadian consular officials should also request on behalf of the detained Canadian that formal charges be laid so as to end their indefinite detention.²⁵
- Canadian Consular officials also have an obligation to request the foreign states respect the right to a fair trial for all Canadians overseas and that they are afforded legal representation.
- If consular officials ever become aware of specific allegations that a detained Canadian has been subjected to torture, officials must immediately and forcefully insist that there be an impartial investigation of the allegations and that the detainee be provided with independent medical attention.

Communication, the Provision of Information and Assistance in Questioning Detained Canadians Between, DFAIT, the RCMP and CSIS

- Consular officials have an obligation to provide consular services and advance the protection of Canadian's human rights. Their actions should also be informed by the reality that when they meet with Canadian citizens who are being detained abroad, those individuals are often in a vulnerable state if and when they meet.
- Individuals detained abroad in such circumstances are seeking help from their government and as such should not have to fear that the information that they disclose, in their fragile state, will be shared with other government agencies or departments who and may later be used against them.
- In all instances where it appears likely that a Canadian citizen is being tortured, that information should be disclosed to relevant Canadian authorities and appropriate action taken to prevent the torture from continuing.

²³ Canadian Charter of Rights and Freedoms, section 11d.

²⁴ CAT, Article 3, ICCPR re Torture, Article 9, International Covenant on Civil and Political Rights.

²⁵ ICCPR Article 9