



# Amnesty International

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The Right Honourable Stephen Harper  
Prime Minister of Canada  
80 Wellington Street  
Ottawa, Ontario  
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October 27, 2008

Dear Prime Minister,

Amnesty International welcomed the release, last week, of Commissioner Frank Iacobucci's report from the *Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin*. We are writing at this time to urge your government to take immediate action to respond to the many human rights concerns identified in the report.

Commissioner Iacobucci's report is a strong and important one.

- Following comprehensive interviews and input and assistance from a variety of experts, he has unequivocally ruled that all three men were subjected to torture in Syria and, in Mr. Elmaati's case, Syria.
- He has highlighted at least twenty-five examples of deficient conduct on the part of Canadian officials; deficiencies which contributed to the very serious human rights violations experienced by these three men.
- Notably, he has concluded that the labels that Canadian officials frequently used to describe these three men in dealing with foreign governments, such as being Islamic extremists with links to al-Qaeda and posing imminent threats, were inaccurate, inflammatory, and lacking investigative foundation.
- He has signaled serious concerns regarding at least ten other matters, about which for varying reasons he felt unable to reach a finding of deficient conduct but nonetheless considered to be worrying and problematic.

Given the gravity of these findings it is of utmost importance that your government takes immediate action. Amnesty International urges that you take measures in four key areas: redress, accountability, reform and global leadership.

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## **(1) Redress**

Commissioner Iacobucci has laid out a disturbing litany of human rights violations experienced by these three men and the multiple ways in which the conduct of Canadian officials contributed to those violations. They have a clear right now to redress for the wrongs they have suffered. The right to redress is clearly established in international human rights law and is a well-established practice in the Canadian justice system when faced with miscarriages of justice.

We have the recent example of Maher Arar's case. Your government recognized the importance of promptly offering Mr. Arar and his family a forceful apology and appropriate compensation. What was at stake in his case is also at stake in these three cases: deficient conduct by Canadian officials indirectly contributing to serious violations of the rights of three Canadian citizens. The response should be similar.

We call on your government to:

- *immediately issue an official apology to Mr. Almalki, Mr. Elmaati, Mr. Nureddin and their families; and*
- *ensure that these three men and their families receive appropriate compensation for the human rights violations they have experienced.*

## **(2) Accountability**

When governments fail to ensure that individuals responsible for human rights violations face justice and are held accountable, the resulting message of impunity only increases the risk of similar violations in the future. In recent years governments, led by Canada, have gone far in strengthening laws and institutions which aim to hold human rights violators accountable for their wrongs. Laws and institutions are only part of the struggle to end impunity. It is of course crucial that real action be taken in individual cases.

Commissioner Iacobucci's findings, combined with those from Commissioner O'Connor in the Arar Inquiry, make it clear that numerous Canadian officials within a variety of departments and agencies are responsible for the wrongdoing that led to the injustices suffered by Abdullah Almalki, Ahmad Abou-Elmaati, Muayyed Nureddin and Maher Arar. To this point in time, however, there have been no steps taken to ensure accountability for any of those wrongs.

Commissioner Iacobucci makes it clear that in his view the Canadian officials responsible for the deficiencies he has identified did not act out of malice. Amnesty International has no reason to disagree with that observation. Malice is, however, not the test for accountability. It is critical that there be a comprehensive and impartial review of both Commissioner Iacobucci and O'Connor's findings to determine whether there are individuals who should face disciplinary action and whether there are individuals who should face criminal prosecution.

We call on your government to:

- *empower appropriate bodies, independent of the departments and agencies whose activities have been criticized, to review the findings from this inquiry as well as the Arar Inquiry, leading to appropriate disciplinary, criminal or other action with respect to accountability.*

**(3) Reform**

These three men, as well as Maher Arar, have all frequently highlighted that they felt these inquiries were necessary not only because of their own desire for justice but also to press for reforms that will help ensure others do not suffer the same fate.

Commissioner Iacobucci's report does not include any recommendations, as that was not part of his mandate. In the course of reaching his various findings, however, his analysis implicitly points to obvious recommendations. Commissioner O'Connor's two reports are both full of recommendations. Most notably, perhaps, the second of his two reports proposes a comprehensive new model for review of the national security activities of the RCMP, CSIS and other departments and agencies.

It is vitally important now that a reform agenda be adopted that implements all of these recommendations and makes the changes needed to address the serious concerns identified in both inquiry reports. Public Safety Minister Stockwell Day, in responding to Commissioner Iacobucci's report, has stated that Commissioner O'Connor's recommendations have in fact all been implemented. He has also stated that there has been considerable progress towards designing a new model for review, about which there will apparently be a public announcement in the near future. All of that comes as news to the individuals and organizations that have followed these issues closely.

Amnesty International and many other organizations and experts made detailed submissions to Commissioner O'Connor's policy review process. We welcomed his detailed and comprehensive recommendation, made two years ago, regarding the need for an independent review mechanism with the capacity to oversee the integrated nature of national security investigations and to audit ongoing investigations. We firmly continue to be of the view that the government should adopt and implement what Commissioner O'Connor has proposed.

We call on your government to:

- *publicly release a detailed progress report on implementation of the recommendations from the Arar Inquiry;*
- *identify other reforms needed to address the deficiencies identified by Commissioner Iacobucci; and*
- *establish the new model for review of the national security activities of the RCMP, CSIS and other departments and agencies proposed by Commissioner O'Connor in the Arar Inquiry.*

#### (4) **Champion the Global Campaign against Torture**

With these two reports, Canadians are now faced with harrowing descriptions of torture experienced by four Canadian citizens in two countries. It is a disturbing reminder that torture continues to be an ugly reality in our world. And it does. Torture is commonplace and widespread around the world. Recent assertions that it might occasionally be justified in responding to national security threats have set back the crucial global struggle to bring torture to an end.

Amnesty International has long documented the widespread use of torture in Syria and Egypt and the virtually complete impunity enjoyed by those who carry out and allow torture in those two countries. It is vitally important that Canada make a concerted effort now to ensure that those responsible for the torture of these three men and Maher Arar in Syria, and Ahmad Abou-Elmaati in Egypt, be identified and held accountable.

More broadly, Canada owes it to Abdullah Almalki, Ahmad Abou-Elmaati, Muayyed Nureddin and Maher Arar to lead a renewed global effort to eradicate torture: in Syria, Egypt and around the world. That requires launching initiatives within multilateral bodies like the United Nations, taking forceful positions in our relationships with other countries, and scrupulously ensuring that Canadian law, policy and practice does not in any way countenance or allow complicity in torture.

One important step would be for Canada to ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This important international treaty is designed to play a role in preventing torture from occurring through regular inspections of detention centres. It is an approach that could play an important role in preventing torture in countries such as Syria and Egypt. Canada clearly cannot press those countries to sign on, however, until we do so ourselves. The Optional Protocol was adopted by the United Nations almost six years ago. It is well past time for Canada to ratify.

We call on your government to:

- *lodge an official diplomatic protest with the Syrian and Egyptian governments regarding the human rights violations experienced by Messrs. Abou-Elmaati, Almalki, Arar and Nureddin in Syria and Egypt and insist that the individuals responsible for those violations be brought to justice;*
- *actively consider laying criminal charges against appropriate Syrian and Egyptian officials under the Canadian Criminal Code;*
- *ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and*
- *work with affected individuals and concerned organizations to develop a bold, comprehensive Canadian-led "Agenda to End Torture" which contains both domestic and international initiatives.*

## **Background**

It has been close to seven years since the arrest of Mr. Elmaati upon his arrival at the airport in Damascus, Syria. His arrest launched a nightmare of injustice and lawlessness for these three men as well as Maher Arar, whose case was of course the subject of a separate public inquiry; a nightmare that has not yet come to an end. Among them, Messrs. Almalki, Elmaati and Nureddin were unlawfully imprisoned for more than four years in Syria and in Mr. Elmaati's case, Egypt, during which time they were all severely tortured.

Concerned about the likelihood that Canadian officials played a role in what had happened to them, each of these men launched a call for justice and accountability soon after they were released and returned to Canada in 2004. Amnesty International and many other organizations joined them in that call. In October 2005 the UN Human Rights Committee urged Canada to carry out a review of their cases. Then Justice Dennis O'Connor backed the call for review in his September 2006 report from the Arar Inquiry. Your government's December 2006 announcement of an inquiry into the cases and the appointment of Frank Iacobucci to head that inquiry was obviously, therefore, a welcome and important step.

We were concerned, however, that the Terms of Reference given to Commissioner Iacobucci were unduly restrictive in requiring almost all of his work, not limited to national security matters, to be held behind closed doors. Commissioner Iacobucci reinforced the closed nature of the inquiry through numerous rulings. We followed the progress of the inquiry closely, as an organization with intervenor status and also through ongoing contact with the three men and their legal teams. It quickly became apparent that the secretive, restrictive nature of the inquiry was unfair to the three men and also failed to give proper regard to the strong public interest in the issues at the heart of the inquiry. While we welcome the report that has emerged from the inquiry, our concerns about the nature of the process are such that we are of the view that this is a model that should not be used again.

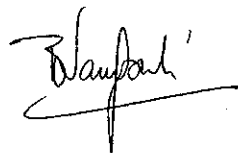
## **Conclusion**

Prime Minister, a nightmare of injustice began seven years ago with Ahmad Abou-Elmaati's arrest in Syria in November 2001. Now, with the release of Commissioner Iacobucci's report, Canada has a tremendous opportunity to show these three men, Maher Arar, their families and the Canadian public that the injustice will end and that the justice and human rights will prevail. In this letter we have laid out action we hope and expect that your government will now take towards that important goal. We look forward to hearing your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alex Neve".

Alex Neve.  
Secretary General  
Amnesty International Canada  
(English branch)

A handwritten signature in blue ink, appearing to read "Béatrice Vaugrante".

Béatrice Vaugrante  
Directrice Générale  
Amnistie internationale Canada francophone