



CANADA

SUBMISSION TO THE UNITED NATIONS COMMITTEE
AGAINST TORTURE, FOLLOW-UP, APRIL 2020

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First published in 2020

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: AMR 20/2099/2020

Original language: English

amnesty.org

**AMNESTY
INTERNATIONAL** 

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1. INTRODUCTION

In its 2018 review of Canada, the UN Committee against Torture (the Committee) identified four areas of concern to be included in an interim report by Canada within one year. That report was submitted on February, 21, 2020. Amnesty International is providing this submission with respect to the four areas identified for the interim report: diplomatic assurances, adequate redress for the torture and ill-treatment of Canadians detained abroad; immigration security certificates; and forced or coerced sterilization of Indigenous women.

2. PARAGRAPH 29: DIPLOMATIC ASSURANCES

There has been no law or policy reform in Canada concerning diplomatic assurances since the Committee's Concluding Observations were issued. Canada has not brought its positions on non-refoulement and diplomatic assurances into compliance with article 3 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention), the absolute prohibition of the refoulement of persons to states where there are substantial grounds for believing that they would be in danger of being subjected to torture.

The Committee has expressed that diplomatic assurances should not be used as a loophole to undermine the principle of non-refoulement.¹ The Committee's specific concerns regarding Canada's reliance on diplomatic assurances in the face of substantial risk of torture have not been meaningfully addressed. Canada continues to maintain the position that diplomatic assurances do not violate Canada's obligation under article 3, and that diplomatic assurances are not inherently contrary to the principle of non-refoulement.² The Supreme Court of Canada has ruled that diplomatic assurances may be used to determine whether there is a substantial risk of being subjected to torture upon extradition,³ and that, generally, deportation to a state where the person concerned would be in danger of being subject to torture might be justified in "exceptional circumstances."⁴

Amnesty International calls on Canada to:

- Discontinue relying on diplomatic assurances in cases where an individual is being deported, extradited or otherwise transferred to any territory under the jurisdiction of a state where he or she may face a substantial risk of torture.
- Amend Canadian law to fully comply with the *non-refoulement* obligations in article 3 of the Convention.

¹ Committee against Torture, *General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, UNGCAT, 62nd Session, UN Doc CAT/C/GC/4, 4 September 2018, para 20.

² See further: Government of Canada, *Comments by the Government of Canada: Committee against Torture, Draft Revised General Comment No. 1 on the implementation of article 3 of the Convention in the context of article 22* (Ottawa: 26 April 2017) at para 28, available online at: <https://www.ohchr.org/Documents/HRBodies/CAT/GCArticle3/Canada.pdf>

³ *India v. Badesha*, [2017] 2 SCR 127, 2017 SCC 44.

⁴ *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 3, 2002 SCC 1.

3. PARAGRAPH 39: ADEQUATE REDRESS FOR THE TORTURE AND ILL- TREATMENT OF CANADIANS DETAINED ABROAD

Amnesty International remains concerned that Canada has not fully implemented the Committee's recommendations regarding full and adequate reparation for Canadians who may have been victims of torture and ill-treatment while being detained abroad.

3.1 ABDULLAH ALMALKI, AHMAD ABOU-ELMAATI AND MUAYYED NUREDDIN

Amnesty International welcomed⁵ the compensation and official apology received in March 2017 by Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin for Canada's role in the torture and other human rights violations that they endured while detained abroad. Although a judicial inquiry was conducted into these cases, concluding that they had suffered human rights violations, including torture, due to crucial deficiencies on behalf of the Canadian authorities, that has not resulted in any Canadian criminal prosecution to hold those suspected of criminal responsibility accountable. Nor has Canada provided any information about measures taken to ensure that persons responsible have been held accountable.

Furthermore, the men continue to face travel restrictions. As Committee members may recall, Mr. Almalki was barred from travelling to Geneva to attend the review of Canada in November 2018 because, although he is not included in Canada's no-fly list, his freedom of movement is constrained by the extra-territorial application of a United States 'no-fly' list to large portions of Canadian airspace.

3.2 OMAR KHADR

Amnesty International welcomed the compensation and official apology provided by the Canadian government to Omar Khadr in July 2017.⁶ While Amnesty International appreciates the Committee's desire for transparency with regards to the terms of the settlement reached in his case, the privacy imperatives to keep the settlement confidential should not be underestimated. Amnesty International notes that continued publicity of Omar Khadr's

⁵ *Amnesty International welcomes compensation and apology for Canada's role in the torture and other human rights violations endured by Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin*, 17 March 2017, available at <https://www.amnesty.ca/news/amnesty-international-welcomes-compensation-and-apology-canada%E2%80%99s-role-torture-and-other-human>.

⁶ *Amnesty International welcomes official announcement from Canadian government about compensation and apology for Omar Khadr*, July 7, 2017, available at <https://www.amnesty.ca/news/amnesty-international-welcomes-official-announcement-canadian-government-about-compensation-and>.

case exposes him to persistent harassment from members of the public, and that such consequences should be taken into consideration by the government before it divulges any new information.⁷

Amnesty International has frequently stated that Omar Khadr is entitled to a full investigation to identify and hold accountable any Canadian officials who may have been complicit in the torture and other human rights violations that he has suffered.⁸ Additionally, Amnesty International continues to call upon the Canadian government to press the United States to carry out its own full investigation into the responsibility of US officials for the torture and other violations experienced by Omar Khadr while being held in custody in Afghanistan and Guantánamo Bay.

3.3 ABOUSFIAN ABDELRAZIK

Canadian citizen Abousfian Abdelrazik continues to face protracted litigation and obstruction from the Canadian government, which refuses to provide him with full redress for its role in the human rights violations he experienced in Sudan between 2003 and 2006. Canadian authorities were complicit in the circumstances leading to Mr. Abdelrazik being arbitrarily imprisoned without charge or trial, tortured, held in solitary confinement and subjected to other human rights violations in Sudanese custody. Notably, Mr. Abdelrazik could not return to Canada until 2009 because the Canadian government refused to provide him with a passport to which he was lawfully entitled, until it was required to do so by the Federal Court. The Court determined that agents of the Canadian Security and Intelligence Service had played a role in the circumstances which led to his arrest, imprisonment and the human rights violations that he suffered in Sudan.⁹

More than nine years after his legal claim was commenced, more than 10 years since returning to Canada, and more than 15 years since his ordeal began, Mr. Abdelrazik is no closer to obtaining reparation. In September 2018, the Federal Court “reluctantly” adjourned Mr. Abdelrazik’s trial after a last-minute request by Canada brought on the opening day of an 8-week trial. The judge noted that this delay would cause him “particular prejudice”.¹⁰ In its interim report, the government states that the adjournment was requested to bring forth an application that would allow review of previously-made redactions to government documents, to “ensure that as much information as possible is released to Mr. Abdelrazik”.¹¹ However, Mr. Abdelrazik made no request for additional information and has had practically no involvement in this secret review process, which has yet to be completed more than 18 months after the Court granted the adjournment.

Contrary to what Canada has stated in its interim report, there is no indication that the government intends to provide Mr. Abdelrazik with any additional information. Mr. Abdelrazik’s counsel has noted that no hearing dates have been scheduled for the review application and that no further information has been provided to Mr. Abdelrazik. Consequently, it is likely that Mr. Abdelrazik’s trial may be delayed to 2021 or later.

The government’s position throughout the litigation has demonstrated a lack of good faith, an intent to unduly delay the proceedings and a blatant disregard for the state’s obligation to ensure prompt and adequate reparation for victims of torture and ill-treatment.

Amnesty International calls on Canada to:

- Carry out investigations leading to appropriate criminal prosecutions with respect to any Canadian officials who may bear responsibility for the torture and other human rights violations experienced abroad by Abdullah Almalki, Ahmad Abou-Elmaati, Muayyed Nureddin and Omar Khadr; and press for similar investigations by the US government with respect to Omar Khadr’s case.
- Enact reforms to guard against the extra-territorial application of the US no-fly list in Canada.
- Promptly provide effective reparation, including compensation and an official apology, to Abousfian Abdelrazik for the role played by Canadian officials in the torture and other human rights violations he

⁷ See for example, Nadine Yousif, “Businesses harassed after Omar Khadr revealed as new owner of Edmonton strip mall,” 13 March 2019, Available at <https://www.thestar.com/edmonton/2019/03/13/businesses-harassed-after-omar-khadr-revealed-as-new-owner-of-edmonton-strip-mall.html>.

⁸ Amnesty International, “Amnesty International welcomes ruling that Omar Khadr has served his sentence, urges federal government to refrain from appeal,” 25 March 2019, Available at <https://www.amnesty.ca/news/amnesty-international-welcomes-ruling-omar-khadr-has-served-his-sentence-urges-federal>.

⁹ See “Factual background” in *Abdelrazik v Canada (Minister of Foreign Affairs)*, 2009 FC 580, [2010] 1 FCR 267, at paras 8 to 41.

¹⁰ *Abdelrazik v. Canada (Minister of Foreign Affairs)*, Order of Federal Court Justice Martine St-Louis, 18 September 2018 at p. 4-5.

¹¹ Canada’s Interim Report to the Committee against Torture, February 2020, at para. 6.

experienced in Sudan; and ensure the accountability of Canadian officials complicit in those violations through a criminal investigation and prosecution, and/or judicial and administrative sanctions.

4. PARAGRAPH 47(C): SECURITY CERTIFICATES

The immigration security certificate remains unfair as it denies individuals subject to certificates an adequate opportunity to know the case against them and mount an effective defence. The addition of Special Advocates to the process has not rectified those shortcomings. The Special Advocate looks out for the interests of the individual subject to the certificate but does not act as their legal counsel. Furthermore, unless given exceptional authorization by a Federal Court judge, the Special Advocate is not allowed to have contact with the individual subject to the certificate after being given access to the evidence that is not being disclosed to that individual.

In May 2019 Amnesty International provided a submission¹² to the ongoing review of Mohamed Harkat's case, updating an earlier submission provided in March 2016, which disagrees with the Canadian government's conclusion that he "would not face a substantial risk of torture, cruel or unusual treatment or punishment ... if returned to Algeria." The submission notes that:

Amnesty International is of the view that if Mohamed Harkat were to be returned to Algeria, he would be at risk of being detained in circumstances which could include prolonged solitary confinement, as well as forms of treatment that constitute torture or other ill-treatment. Amnesty International also considers it likely that Mr. Harkat would be subjected to an unfair trial, particularly given the degree to which he has been publicly identified and described by Canadian officials as a terrorism suspect and "security threat".

Amnesty International calls on Canada to:

- Abolish the immigration security certificate process.
- Refrain from deporting Mohamed Harkat to Algeria, where he would face a serious risk of torture, ill-treatment and other human rights violations.

¹² Amnesty International, Letter to Barbara Jackman, Counsel to Mohamed Harkat, 17 May 2019, available at <https://icimg.ca/wp-content/uploads/2019/09/2019-05-17-Harkat-Mohamed-final.pdf>.

5. PARAGRAPH 51(A): FORCED OR COERCED STERILIZATION OF INDIGENOUS WOMEN

In the 14 months since the Committee's recommendations were made, the Canadian government has failed to launch an investigation into the forced and coerced sterilization of Indigenous women in Canada, and has not met with survivors to discuss options for redress and justice. Canada has taken some steps to end sterilization without consent but lacks a coordinated and comprehensive approach to fully address the issue. In its interim report Canada states it is still “engaging with provincial and territorial governments, associations of health professionals, and Indigenous partners on next steps to address this issue.” Amnesty International remains concerned that Canada does not yet have a plan in place to fulfil its international human rights obligations with respect to this serious issue.

5.1 IMPARTIAL INVESTIGATION

The Committee recommended that Canada ensure that all allegations of forced or coerced sterilization be impartially investigated. In its interim response, Canada notes that sterilization without consent is a crime under the *Criminal Code* and that crime is investigated by law enforcement, while noting that there is a need for police authorities to take a “proactive, empathetic, culturally aware and trauma-informed approach in supporting victims.”

Despite pointing to policies and protocols in place to improve relationship-building between police and Indigenous peoples, Canada's response fails to recognize that existing oversight and accountability mechanisms for police services are inadequate and fail to elicit the confidence of Indigenous peoples in Canada.¹³ In particular, policing services have responded poorly to the needs of Indigenous women, girls and two-spirit people.¹⁴ The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (the National Inquiry) highlighted that:

“the failure of police services to ensure there is justice and protection for Indigenous women, girls, and 2SLGBTQQIA people through adequate and bias-free policing services, effective oversight and adjudicative mechanisms, and meaningful and accessible remedies for violence contributes to the systemic harm they continue to experience. This treatment is discriminatory and creates environments where Indigenous women, girls, and 2SLGBTQQIA people are underprotected, but targeted for police interventions when exercising their rights.”¹⁵

Given the well-established mistrust and poor relationships between police and Indigenous communities (particularly when it comes to gender-based violence), it is unacceptable to place the onus on Indigenous peoples to report incidents of forced and coerced sterilization to the police. Regardless of the steps taken towards a more

¹³ National Inquiry into Missing and Murdered Indigenous Women and Girls, “*Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*” Vol 1a, June 2019, p. 690, <https://www.mmiwg-ffada.ca/final-report/>. The findings of the National Inquiry also emphasized that when crimes occur against Indigenous peoples, they do not receive the same access to or outcomes from the justice system as non-Indigenous peoples.

¹⁴ *Ibid*, p. 694, 689. “The National Inquiry heard extensive testimony from families and supporters of MMIWG2 and policing representatives (including members of the RCMP and various municipal and provincial police forces).” Policing representatives also emphasized how “the Canadian justice system and its version of policing are at odds with Indigenous ideas about justice.”

¹⁵ *Ibid*, p. 690.

culturally aware, trauma-informed, victim-centered approach, police and law enforcement services continue to have the ability to infringe and violate the human rights of Indigenous women, girls and two-spirit people without adequate recourse or remedy.¹⁶

Additionally, Canada's response does not address widespread under-reporting to law enforcement of all forms of gender-based violence in Canada and fails to consider how best practices in addressing this under-reporting, such as independent file review of sexual assault allegations,¹⁷ could be adapted and used to investigate allegations of sterilization without consent.

Following its study into forced sterilization of women in Canada, the House of Commons Standing Committee on Health¹⁸ wrote to the Minister of Health in July 2019 noting that due to under-reporting and mistrust with police, "witnesses recommended that alternative accountability and reporting mechanisms be set up to provide a culturally safe environment for Indigenous women to report experiences of coerced sterilization."¹⁹ The Standing Committee also called on Canada to "establish an arms-length advisory panel to investigate the scope of coerced or forced sterilization of women in Canada," and to "work with provinces and territories, Indigenous organizations and health care stakeholders to develop culturally competent and culturally safe accountability and reporting mechanisms for Indigenous peoples wanting to bring forth complaints against health care providers or organization and that the panel."²⁰

Amnesty International calls on Canada to:

- Conduct a formal investigation into allegations of forced or coerced sterilizations, with particular attention to cases involving Indigenous women and girls.
- Ensure the formal investigation is centred on the voices of First Nations, Métis and Inuit women and in particular, survivors of forced and coerced sterilization, is trauma-informed, culturally-relevant, and uses non-policing investigative tools.
- Create a trauma-informed, culturally-relevant mechanism for survivors to report allegations of forced or coerced sterilization, with reporting options that do not involve police.
- Ensure that appropriate and long-term health and healing supports are provided to all survivors who report that they were sterilized without their consent.
- Task the Canadian Institute for Health Information (CIHI) with compiling all relevant information about sterilization.

5.2 NON-REPETITION

The Committee recommended that Canada adopt legislative and policy measures to prevent and ensure accountability for sterilization without consent, particularly by defining the requirements of free, prior and informed consent regarding sterilization.

Canada's interim report fails to recognize that due to mistrust between Indigenous peoples and police, some survivors of forced or coerced sterilization may prefer non-policing accountability mechanisms. Medical bodies have a significant role in ensuring the accountability of their members, but Canada's interim report did not reference any initiatives to increase the transparency and accessibility of medical body accountability mechanisms.

Canada's interim response provided an overview of existing provincial and territorial legislation on informed consent. However, existing legislation has not prevented involuntary sterilization from happening, and Canada

¹⁶ *Ibid.*

¹⁷ For example, "Canadian Framework for Collaborative Police Response on Sexual Violence," Canadian Association of Chiefs of Police and Ontario Association of Chiefs of Police, https://cacp.ca/crime-prevention-committee-activities.html?asst_id=2059 and "Yukon advocates trained to review 'unfounded' sexual assault cases," CBC, 9 September 2019, <https://www.cbc.ca/news/canada/north/yukon-sexual-assault-case-review-1.5276434>.

¹⁸ House of Commons, Standing Committee on Health, Study on Forced Sterilization of Women in Canada, 2019, <https://www.ourcommons.ca/Committees/en/HESA/StudyActivity?studyActivityId=10467536>.

¹⁹ Letter from Bill Casey, Member of Parliament and Chair of the House of Commons Standing Committee on Health, to the Ministers of Health, Public Safety and Emergency Preparedness, and Indigenous Services, 2 August 2019, https://www.ourcommons.ca/content/Committee/421/HESA/WebDoc/WD10596408/421_HESA_reldoc_PDF/MinisterOfHealth-Final-e.pdf.

²⁰ *Ibid.*

failed to outline what specific steps it is taking to ensure that both patients and medical professionals are clear on the specific process to obtain free, full, and informed consent prior to any medical procedure, and in particular tubal ligations.

Rather, Canada focused on the need for culturally safe health services. Given ongoing systemic discrimination experienced by Indigenous peoples accessing public services, efforts to address this issue are welcome and much needed. However, Canada's report outlined a series of initiatives, and though steps in the right direction, they fall short of the comprehensive national response needed to address the severity of this pattern of human rights violations.

In addition, the initiatives mentioned in the report are inconsistent with the "informed choice" model advocated by the Native Women's Association of Canada. In its letter to the Minister in July 2019, the Standing Committee on Health noted that "Ms. Francyne Joe, President, Native Woman's Association of Canada recommended that health care providers move beyond an informed consent model to an informed choice model of health care decision-making. Informed choice refers to a decision-making process that relies on a full conversation with the patient in a non-urgent, non-authoritarian setting. It provides the patient with autonomy and control and relies on other forms of knowledge, including the values, lived experiences and relationships of the patient."²¹

Indigenous people who are pregnant must have reproductive choice, as well as reproductive safety. They must be able to give birth in a facility of their choosing, with medical professionals of their choosing, whether that be in a reserve community with an Indigenous midwife, or in an urban centre with an obstetrician. No matter what choice a person makes, they must be confident that they will not be sterilized without their consent.

Preventing involuntary sterilization, ensuring informed choice and culturally safe healthcare, and ensuring accountability for perpetrators requires a comprehensive national response. Canada has yet to outline any steps to develop this much needed strategy, which must include tools to monitor the impacts of policies and programs.

Amnesty International calls on Canada to:

- Clarify the process by which free, full, and informed consent must be obtained prior to any medical procedure, to ensure that women and healthcare providers across Canada are clear on the process for obtaining consent.
- Ensure that medical bodies make accountability mechanisms transparent and accessible to the public.
- Support healthcare providers in promoting a full range of sexual and reproductive health information and services across Canada.
- Ensure that Indigenous people who are pregnant have access to birthing facilities and practitioners of their choosing.
- Apply existing criminal legislation on torture and aggravated assault as warranted for investigating and prosecuting cases of forced or coerced sterilization.
- Explore amending the Criminal Code to make forced and coerced sterilization a specific offence to increase its visibility and better support prosecution of cases of sterilization without consent.
- Implement Truth and Reconciliation Commission Calls to Action 23 and 24 on increasing the number of Indigenous healthcare professionals and providing cultural competency training to all healthcare professionals.

5.3 JUSTICE AND REDRESS FOR SURVIVORS

The Committee recommended that Canada provide adequate redress to the families and survivors of forced and coerced sterilization. Canada has taken no steps to meet with or hear from survivors about their needs for redress and what an effective remedy could look like.

Amnesty International calls on Canada to:

- Appoint a special representative to meet with survivors and their families, to hear their requests and proposals for justice and reparations.

²¹ *Ibid.*

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