



Téléphone: (41-22) 917 91.39
Internet www.ohchr.org
Email: jnataf@ohchr.org

Adresse:
Palais des Nations
CH-1211 GENEVE 10

REFERENCE: JMN/dd/fg/follow-up/CAT

29 April 2009

Excellency,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the United Nations Committee Against Torture (CAT), I refer to the examination of the fourth and fifth periodic report of Canada (CAT/C/55/Add.8 and CAT/C/81/Add.3, respectively), at its 643rd and 646th meetings (CAT/C/SR.643 and 646), held on 4 and 6 May 2005. The Committee adopted its Concluding Observations (CAT/C/CR/34/CAN), in which it requested further comments by the Government of Canada in relation the specific issues of concern listed in paragraphs 5 (d), (e) and (g).

The Committee recalls its request, expressed in the final paragraph of its Concluding Observations, that the State party's next report be submitted by 23 July 2008. Noting that the State party has not, to date, filed its sixth periodic report within these timelines, it invites the State party to submit this report at its earliest opportunity. In order to maintain a regular dialogue on issues of mutual concern, the Committee takes this present opportunity to respond to the State party's provision of follow-up information and to identify concerns which remain live in the light of the information supplied and of intervening developments.

On behalf of the Committee, allow me to thank you for your constructive response provided under cover of note verbale of 8 June 2006 (CAT/C/CAN/CO/5/Add.1) providing comments by Your Excellency's Government on those paragraphs. The additional comment provided has assisted the Committee in its ongoing analysis of the specific issues of concern in question. There remain issues where, in the Committee's view, the responses do not fully respond to the Committee's concerns, or in respect of which intervening events have rendered incomplete. Accordingly, on behalf of the Committee as Rapporteur for Follow-up, I would be grateful for the supplementary clarification of Your Excellency's Government on the following outstanding matters, in order to amplify the information available to the Committee in its analysis of the progress made regarding implementation of these aspects of the Convention.

.../...

H.E. Mr. Paul MEYER
Ambassador Extraordinary and Plenipotentiary
Permanent Mission of Canada
To the United Nations Office at Geneva
Avenue de l'Ariana 5
1202 Geneva

Paragraph 5(d): Consular access to nationals detained abroad

In paragraph 5(d) of the Conclusions and Recommendations, the Committee called on the State party to insist on unrestricted consular access to its nationals in detention abroad, with facility for unmonitored meetings and of appropriate medical expertise, if required. The Committee welcomes Canada's expectation, expressed in its reply, that it expects that private consular access to its nationals detained abroad will be granted as requested. The Committee would appreciate receiving information on the measures taken by the State party, notably vis-à-vis States that have been obstructive to the full exercise of this right, to ensure that such consular access is provided in practice, including the facility for unmonitored meetings and with appropriate medical expertise where there are indications this may be necessary. The Committee would also welcome the State party's indication as to what efforts it has undertaken to vindicate the rights of itself and of its nationals in this respect after release of nationals to whom access was improperly restricted while in detention.

Closely connected with this issue of the State party's interaction with its nationals detained abroad, the Committee notes that the Supreme Court of Canada ruled in *Minister of Justice et al. v Khadr* that official Canadian interaction with Mr. Khadr at the Guantanamo Bay involved it in a process that violated Canada's international obligations. In light of that finding, the Committee would welcome the State party's advice as to the steps it is taking to assist Mr. Khadr's defense before military commission, or to repatriate him to Canada. The Committee would also welcome the State party's advice whether its officials have had interaction with other Canadian nationals detained abroad on terrorism-related charges or as combatants, and, if so, what consular services have been provided in those cases.

Paragraph 5(e): Absolute nature of prohibition of torture; extradition and removal subject to diplomatic assurances

The Committee notes the State party's response that "there was no case of extradition or removal involving a risk of torture to subject to receipt of diplomatic assurances since September 2001." The Committee notes however that it is a matter of public record that in numerous cases since September 2001 it has been engaged in the negotiation of diplomatic assurances in cases where there were allegations of potential torture or other mistreatment in the receiving State. The Committee would accordingly welcome the State party's clarification as to whether its reply should be understood to mean (a) that, because in its view diplomatic assurances in a particular case have eliminated or reduced to a sufficient level the risk of torture, the cases of persons removed subject to such assurances did not involve a risk of torture; or (b) that, in light of legal action or further assessment no persons covered by such assurances have in fact been removed.

If the former is the correct understanding of the State party's reply, the Committee would reiterate its request for further detail on the State party's understanding of minimum requirements for such assurances, as well as the monitoring measures undertaken and enforceability of the agreement. If the second interpretation is the correct understanding, the Committee would welcome the State party's explanation as to why, in each case, the removal in question was not proceeded with.

The Committee notes the close nexus between these issues and the security certification proceedings. It further notes the judgment of the Supreme Court of Canada in *Charkaoui v Minister of Citizenship and Immigration et al.* that the procedure set out in the Immigration and Refugee Protection Act, which implicates threats to a detainee's life and freedom in the event of removal, was constitutionally inadequate. The Committee would welcome the State party's clarification of its amendments to this regime in light of the judgment, as well as its indication as to how many persons have been removed from Canada since 2001 under the original as well as amended regimes. The Committee would also welcome the State party's clarification as to whether there have been any cases where, as envisaged by the Supreme Court in *Charkaoui*, an extended period of detention under this regime was judicially found to have reached a point where it amounted to cruel and unusual treatment.

Lastly, in respect of the issue of the scope of the State party's non-refoulement obligation, the Committee notes that there is ongoing litigation in the State party's courts as to whether it is bound by an obligation of non-refoulement under international human rights law and its own Charter of Rights and Freedoms in circumstances where there may be a risk of torture to detainees that its forces in Afghanistan wish to transfer to Afghan authorities. Most recently, the Federal Court of Appeal in *Amnesty International Canada et al. v Chief of the Defence Staff for the Canadian Forces et al.* declined to accept any such obligation. The Committee would recall its consistent position that the non-refoulement obligation applies to the transfer of any person within a State party's effective control to another State party, and requests the State party to place before its

Supreme Court, on an appeal of this decision, the Committee's constant view on this issue, shared likewise by another human rights treaty body, the Human Rights Committee.

Paragraph 5(g): Institutional violence

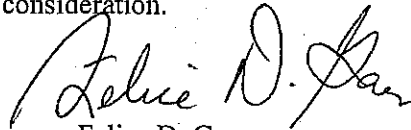
In reference to the recommendation made in paragraph 5(g), the Committee notes with appreciation that the State party is implementing several new programs, including the Integrated Correctional Intervention Strategy (ICIS), the Motivation Based Intervention Strategy (MBIS), and a drug interdiction strategy. The Committee would welcome additional year-by-year information on the impact these programs have in reducing major violent incidents within Canada's correctional facilities. It would welcome information on how training for correctional facility staff has changed with the implementation of these programs, and on the proportion of correctional facility staff that have undergone the necessary training to successfully carry out these programs.

The Committee remains concerned as to reports that the overcrowding of prisoners in Canadian correctional facilities continues to contribute to violent incidents within those facilities. Given that overcrowding and repressive conditions often serve to foment unrest within detention facilities and contribute to the incidence of violence, the Committee would welcome statistical data on the number of prisoners in Canadian prison facilities as well as the degree to which the number of prisoners in each facility exceeds design capacity and the steps being taken to ensure that its correctional facilities do not exceed these design capacities.

The Committee also notes that the Human Rights Committee, in its recent Concluding Observations of 20 April 2006 (CCPR/C/CAN/CO/5) on the State party's sixth periodic report under the International Covenant on Civil and Political Rights identified a number of issues also falling within the competence of this Committee. In respect of the matters raised in the present letter, that Committee itself sought follow-up information on the question of security certification procedures (paragraph 14). In view of the mutuality of the committees' concerns, this Committee would be grateful if the State party would also provide to it a copy of its responses made to the Human Rights Committee.

Upon receipt of additional information, the Committee will be able to assess whether further information may be required. The Committee looks forward to pursuing the constructive dialogue it has started with the authorities of Canada on the implementation of the Convention.

Please accept, Excellency, the assurances of my highest consideration.



Felice D. Gaer

Rapporteur for Follow-up on Concluding Observations
Committee against Torture