AMNESTY INTERNATIONAL

AI Index: AMR 20/001/2013
17 May 2013

CANADA: FOLLOW-UP PROCEDURE TO THE FORTY-EIGHTH SESSION OF THE COMMITTEE AGAINST TORTURE

INTRODUCTION

Amnesty International welcomed the June 2012 Concluding Observations of the Committee against Torture ("the Committee") following its examination of Canada's sixth periodic report.[1] We submit this follow-up briefing to assist the Committee in identifying ongoing areas of concern related to the priorities for follow-up.

Amnesty International is deeply concerned about Canada's lack of progress in implementing the 2012 recommendations of the Committee. With the exception of Omar Khadr's return from the US Naval base in Guantánamo Bay in September 2012, following the Canadian authorities' long-delayed approval of his transfer, the recommendations presented in Paragraphs 12, 13, 16 and 17 of the Committee's Concluding Observations remain unimplemented. We have also commented on the recommendation in Paragraph 25 with respect to ratification of the Optional Protocol to the Convention.

Additionally, although not detailed in this letter, Amnesty International reiterates that it has serious and pressing concerns about the lack of progress in implementing the other recommendations presented by the Committee, but which were not identified as priorities for follow-up.

PARAGRAPH 12: SECURITY CERTIFICATES

"The Committee recommends that the State party reconsider its policy of using administrative detention and immigration legislation to detain and remove non-citizens on the ground of national security, inter alia, by extensively reviewing the use of the security certificates and ensuring the prohibition of the use of information obtained by torture, in line with relevant domestic and international law. In that regard, the State party should implement the outstanding recommendations made by the Working Group on Arbitrary Detention following its mission to Canada in 2005, in particular that detention of terrorism suspects be imposed in the framework of criminal procedure and in accordance with the corresponding safeguards enshrined in the relevant international law (E/CN.4/2006/7/Add.2, para. 92)."

[1] Concluding observations of the Committee against Torture, 25 June 2012, UNdoc.CAT/C/CAN/CO/6, http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CAN.CO.6.doc.

Canada has failed to follow the Committee's recommendations with respect to the *Immigration and Refugee Protection Act*'s security certificate system and the related special advocate regime.

In October 2013, the Supreme Court of Canada (SCC) will assess the lawfulness of the current security certificate system.[2] Among other issues, the SCC will review the Federal Court of Appeal's ruling that the current scheme is constitutional.[3] In 2007, the SCC had unanimously ruled that the previous regime was unconstitutional on the basis that it violated s.7 of the *Charter*, by limiting people's right to know and answer the case against them.[4] This is the first time the Court will assess the validity of the new system, dating from 2008, which introduced special advocates.

The 2008 regime is similar to its predecessor but introduces so-called "special advocates". "Special advocates" are lawyers who are appointed by the court; they are not the person's actual "lawyer of choice". Under the legislation, they are supposed to protect the interests of a named person in certificate proceedings when information or evidence is being heard in closed hearings – i.e. the government is relying on secret evidence against the person in the absence of that person and his or her counsel of choice. Once a "special advocate" in Canada has had access to any secret evidence in a case, the "special advocate" is prohibited from communicating with the individual named in the certificate, his or her lawyer of choice, or any other person, unless the advocate seeks and receives exceptional permission to do so from the presiding judge.

This upcoming case, *Minister of Citizenship and Immigration v. Harkat* (leave to appeal granted in November 2012), concerns Mohamed Harkat. Harkat is an Algerian national who was granted refugee status in Canada in 1998. On 10 December 2002 he was arrested on a security certificate issued on the recommendation of the Canadian Security Intelligence Service (CSIS). He has for many years challenged his security certificate, CSIS monitoring and detention in Canadian courts.

Amnesty International is concerned about the Government's continued efforts to maintain the current security certificate system. Amnesty International has long criticized the use of closed material procedures; with or without "special advocates" such procedures inherently involve the use of secret evidence against the affected person, and consequently contravene basic standards of fairness and open justice.[5]

Especially given the restrictions on their activities and ability to get further information, including from the affected person, "special advocates" are not in the same position to explore the origin of or otherwise challenge secret evidence that may have been obtained through torture or other similar ill-treatment, as would be the affected person and his or her lawyer of choice.

The combined effect of the concerns above, together with the Supreme Court of Canada's unfortunate comments in the *Suresh* judgment leaving open the door to sending someone face a risk of torture on 'national security' grounds in exceptional circumstances, increase the risk that contrary to Article 3 of the *Convention against Torture* a person arrested on a security certificate could eventually be deported from Canada, notwithstanding a real risk of torture, ill-treatment or persecution. Amnesty International continues to call on the government to bring its security certificate system and its legislated provisions with respect to *non-refoulement* to a serious risk of torture in line with international law, including the *Convention against Torture*.

---

[2] *Minister of Citizenship and Immigration v. Harkat*, Court No. 34884 (Supreme Court of Canada).
[3] *Harkat v Canada (Citizenship and Immigration)*, 2012 FCA 122.
[4] *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9.
[5] See e.g. Amnesty International, *Left in the Dark: The Use of Secret Evidence in the United Kingdom*, AI Index EUR 45/014/2012 (15 October 2012), http://www.amnesty.org/en/library/asset/EUR45/014/2012/en/546a2059-db83-4888-93ba-8b90cc32a2de/eur450142012en.pdf.

PARAGRAPH 13: IMMIGRATION DETENTION

"The Committee recommends the State party to modify *Bill C-31*, in particular its provisions regulating mandatory detention and denial of appeal rights, given the potential violation of rights protected by the Convention. Furthermore, the State party should ensure that:
(a) Detention is used as a measure of last resort, a reasonable time limit for detention is set, and non-custodial measures and alternatives to detention are made available to persons in immigration detention; and
(b) All refugee claimants are provided with access to a full appeal hearing before the Refugee Appeal Division."

No progress has been made regarding mandatory detention and the denial of appeal rights for non-citizens. Indeed, since the Committee's Concluding Observations were issued, *Bill C-31* became law as the *Protecting Canada's Immigration System Act*.

Amnesty International notes that the mandatory detention regime originally envisaged by the Bill was altered to become reviewable by immigration authorities after two weeks, as opposed to the original period of one year provided by the draft legislation. However, regardless of when review of the detention is authorized, the Act continues to provide for mandatory detention for certain categories of foreign nationals. In this regard, Amnesty International notes that mandatory detention solely for immigration purposes is inconsistent with international human rights law and standards. As a result, the organization continues to urge the government to repeal these provisions of the *Protecting Canada's Immigration System Act*.

Amnesty International was deeply disappointed that Canada disregarded the Committee's recommendations with respect to "safe countries of origin." On 15 December 2012 and 15 February 2013, the government designated a total of 35 countries as so-called safe countries. The list includes countries where torture is widespread such as Mexico.[6] Refugee claimants coming from "safe" countries are treated differently in a number of ways, including being denied access to an appeal hearing if their claims are rejected. Using a "safe country" list contravenes Canada's obligations under article 3 of the UN Convention relating to the Status of Refugees, namely that the provisions of that Convention shall apply "to refugees without discrimination as to race, religion or **country of origin.**" [emphasis added]

The combined impact of the list and no access to an appeal hearing increases the risk of *refoulement* in breach of article 3 of the Convention against Torture. Amnesty International continues to call on the government to repeal these provisions of the *Protecting Canada's Immigration System Act* and ensure that all refugee claimants have access to an appeal hearing.

Furthermore, Amnesty International was deeply disappointed at the introduction of another piece of draft legislation, *Bill C-43: The Faster Removal of Foreign Criminals Act*, which was introduced on World Refugee Day, 20 June 2012. The organization considers that some of the provisions of the Bill if enacted and implemented in their present form would lead to human rights abuses, including some arising from violations of the Convention. At the time of writing this submission, this bill is currently at the stage of first reading in the Senate. Clauses 8, 9, 10, 18 and 24 of the Bill will eliminate appeal procedures for certain categories of foreign national criminals or suspected criminals, allow for entirely discretionary decisions to deny entry, and restrict the application of discretionary ministerial relief (from the strict application of certain legal provisions). Contrary to international law, a large number of offences caught by *Bill C-43* do not reach the level of a particularly serious crime or of being a danger to Canada, and decisions to deny entry or refuse relief can be made without reference to any actual danger an individual poses. In Amnesty International's view, denying individuals the right to

[6] Amnesty International, *Known abusers, but victims ignored: Torture and ill-treatment in Mexico* (2012), AMR41/063/2012, http://www.amnesty.ca/sites/default/files/2012-10-12mexicotorturereport.pdf.

appeal an unfair or unreasonable decision will increase the chances of them suffering torture, ill-treatment or other forms of serious harm upon removal.

PARAGRAPH 16: TORTURE AND ILL-TREATMENT OF CANADIANS DETAINED ABROAD

"In the light of the findings of the Iacobucci Inquiry, the Committee recommends that the State party take immediate steps to ensure that Abdullah Almalki, Ahmad Abou Elmaati and Muayyed Nureddin receive redress, including adequate compensation and rehabilitation. Furthermore, the Committee urges the State party to promptly approve Omar Khadr's transfer application and ensure that he receives appropriate redress for human rights violations that the Canadian Supreme Court has ruled he experienced."

(i) Iacobucci Inquiry

Amnesty International is profoundly concerned that Canada has not implemented the Committee's recommendations with respect to protecting the rights of Canadians detained abroad or providing for an effective remedy, including reparations.

In 2008, a judicial inquiry headed by former Supreme Court of Canada Justice Frank Iacobucci reported that with regard to the cases of Abdullah Al-Malki, Ahmad Abou El-Maati and Muayyed Nureddin, Canadian authorities were "deficient"[7] in a number of crucial ways which contributed to grave human rights violations, including torture, against them. Canada was required by Article 13 of the *Convention* to establish the Iacobucci Inquiry, and the prior O'Connor Inquiry relating to Maher Arar, in order to provide a prompt and impartial examination of their allegations. Both Inquiries found that Canada was complicit in the torture of these citizens in Syria and additionally, with respect to Mr. El-Maati, Egypt.

Despite these findings, as confirmed by the Committee, the Canadian government still formally denies that torture occurred, denies that it was complicit, and refuses to provide redress to Abdullah Al-Malki, Ahmad Abou El-Maati and Muayyed Nureddin. Instead, the government continues to force these men into protracted litigation in an effort to obtain redress(see Appendix).

The attached Appendix provides a detailed chronology of the history of the litigation launched by these three men. Seven years after the court cases were commenced, including close to five years now since the release of the Iacobucci Inquiry report which confirmed the torture of each of these men and the numerous ways that "deficient" Canadian government conduct contributed to that torture and other human rights violations, they are no closer to obtaining redress. Positions taken by the government in the course of the litigation have served only to delay and obstruct efforts to ensure prompt and adequate redress. At the current pace, the prospect of them receiving that redress still appears to be many years distant.

Furthermore, Amnesty International is deeply troubled by the government's dismissal of the Committee's 2012 recommendations with respect to these men as "irrelevant" in a June 2012 court hearing. In that hearing, the Justice Department's counsel also rhetorically asked a Superior Court Justice why his court was hearing the case "if the UN really has the last word."[8]

(ii) Omar Khadr

With respect to the case of Omar Khadr, Amnesty International welcomed his long-delayed return to Canada. This took place in September 2012, close to one year after he had become

[7] Justice Iacobucci's mandate was to ascertain whether Canadian conduct had been "deficient".
[8] Mike Blanchfield, "Federal lawyers dismiss UN criticism of Canada on torture, rights violations," 7 June 2012, Available at http://www.winnipegfreepress.com/breakingnews/federal-lawyers-dismiss-un-criticism-of-canada-on-torture-rights-violations---157903775.html, and confirmed with counsel for Abdullah Al-Malki, Ahmad Abou El-Maati and Muayyed Nureddin.

eligible for transfer to Canada pursuant to his plea agreement. Since his return to Canada Omar Khadr has been detained in the maximum security Millhaven Institution. However, Amnesty International remains seriously concerned about other aspects of this case. The organization has received reports that he may not be receiving the nature and range of programs to which he is entitled under binding international human rights norms regarding child soldiers. Furthermore, there does not appear to be any intention on the part of the government to investigate the credible allegations that he suffered torture and ill-treatment while in American custody in Afghanistan and at Guantánamo Bay, or to provide adequate remedies or reparations, such as rehabilitation.[9] Finally, Canada has ignored the Supreme Court of Canada's finding that Canadian officials were complicit in Khadr's human rights violations in Guantánamo Bay,[10] and has failed to provide appropriate redress. Amnesty International continues to urge Canada to fulfill its international legal obligations with respect to Omar Khadr.

PARAGRAPH 17: INTELLIGENCE INFORMATION OBTAINED BY TORTURE

"The Committee recommends that the State party modify the Ministerial Direction to CSIS to bring it in line with Canada's obligations under the Convention. The State party should strengthen its provision of training on the absolute prohibition of torture in the context of the activities of intelligence services."

Amnesty International is concerned that Canada has not complied with the Committee's recommendation to modify the Ministerial Directive to CSIS, which permits the use and sharing of information that was likely extracted through torture. The Directive also allows information to be shared with foreign agencies even if doing so is likely to lead to torture. The Directive does limit such instances to "exceptional situations" involving a serious threat to national security. Amnesty International has repeatedly underscored that the Directive contravenes the absolute ban on torture.

It has since emerged that, rather than taking steps to comply with the Committee's recommendation, Canada had sent almost identical directives to the Royal Canadian Mounted Police and the Canadian Border Services Agency.[11] The government has taken no steps to revise these directives to bring them into conformity with international human rights requirements.

In a related context, the government has also maintained, in an ongoing case currently before the Ontario Court of Appeal, that, in order to successfully resist being extradited, a person whose extradition is being sought must establish on a balance of probabilities that torture-derived evidence will be used in their trial.[12] However, Amnesty International considers that Canada's obligations under international human rights law compel Canada to refuse extradition for anyone who has established that there is a *real risk* of admission of evidence derived through torture.[13]

---

[9] Amnesty International, "USA Repatriates Youngest Guantanamo Detainee to Canada," 1 October 2012, http://www.amnesty.org/en/news/usa-repatriates-youngest-guant-namo-detainee-canada-2012-10-01.

[10] *Canada (Prime Minister)* v. *Khadr*, 2010 SCC 3.

[11] Associated Press, "Ottawa allows RCMP, border agency to use torture-tainted information," 24 August 2012, Available at http://www.theglobeandmail.com/news/politics/ottawa-allows-rcmp-border-agency-to-use-torture-tainted-information/article4497677/

[12] *Attorney General of Canada (On Behalf of the Republic of France) and Minister of Justice of Canada v. Hassan Naim Diab*, Court File Nos. C53812, C5541 (Court of Appeal for Ontario).

[13] See, *inter alia*, *El Haski v. Belgium,* App. No. 649/08, judgment, European Court of Human Rights, 25 September 2012.

PARAGRAPH 25: RATIFICATION OF OPTIONAL PROTOCOL

"In light of the State party's pledges to the Human Rights Council in 2006 and its acceptance of recommendations by the Universal Periodic Review working group (A/HRC/11/17, para. 86(2)), the Committee urges the State party to accelerate the current domestic discussions and to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible."

Amnesty International is disappointed that Canada has yet to ratify the *Optional Protocol to the Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment*. This inaction persists, despite the Committee's recommendation to ratify (in 2005 and 2012), and notwithstanding the Canadian government's two international-level pledges to work towards ratification (when standing for election to the UN Human Rights Council in 2006 and when going through the Council's Universal Periodic Review process in 2009).

Amnesty International had most recently again urged the Canadian government to announce readiness to ratify the Optional Protocol in conjunction with the April 2013 Universal Periodic Review of Canada's human rights record by the UN Human Rights Council. At the review, carried out on 26 April 2013, at least 18 governments raised the question of ratification of the Optional Protocol. In response the Canadian delegation responded that the government is "still considering" ratification.

Amnesty International is deeply concerned that over ten years since the Optional Protocol was adopted by the UN General Assembly, and seven years since Canada's first UN level pledge to "consider" ratification, there has been so little progress towards that goal.

APPENDIX

Re: Paragraph 16 – Chronology of Civil Actions re: Abdullah Almalki, Ahmad Elmaati and Muayyed Nureddin

2004-01-13	Nureddin released from Syrian custody
2004-01-14	Elmaati released from Egyptian custody
2004-02-05	Order in Council appointing Commissioner O'Connor, mandates a public inquiry
2004-03-09	Almalki released from Syrian custody
2004	Following their release, Almalki, Elmaati and Nureddin (the "Plaintiffs") applied for intervenor standing in the O'Connor Inquiry but were denied. However, all three were interviewed by the Inquiry, and monitored its proceedings. Formal participation as observers with counsel in attendance was only granted to Elmaati and Almalki and only towards the end of the Commission hearings.
2004-06-10	Nureddin Action commenced in Toronto
2005-10-14	Report of Professor Stephen Toope, Factfinder to the Oconnor Inquiry, finds (at p. 5) based on interviews with each of the Plaintiffs that their descriptions of torture in Syria were believable, convincing, and likely to be true.
2006-01-09	Elmaati action commenced in Toronto
2006-03-07	Almalki action commenced in Ottawa
2006-10-12	Release of *O'Connor Report*, which makes findings establishing that Maher Arar was tortured in Syria, and that Canadian officials were complicit in his detention and torture.
2006-12-11	Order in Council appointing Commissioner Iacobucci to examine the cases of the Plaintiffs, mandates an internal inquiry rather than a public inquiry, and directs the Commissioner to "take all steps necessary to ensure that the inquiry is conducted in private". As a result, during the inquiry the Plaintiffs did not receive any copies of relevant documents, including the Exhibits reviewed by the inquiry, and their counsel was not allowed to interview or cross-examine any of the witnesses called before the inquiry.
2007-01-26	Prime Minister Stephen Harper issues official apology to Arar and his family, and announces payment of compensation in the amount of $10.5 million
2008-01/03	Case Management Orders made at and around this time provide that all three actions be held in abeyance pending release of the *Iacobucci Report*, including provisions that within 120 days of its release, "the parties will participate, in good faith, in a mediation".
2008-10-28	Release of *Iacobucci Report*, which (despite the restrictions on the Commissioner's mandate and on the participation of the Plaintiffs and their counsel) makes findings establishing that the Plaintiffs were tortured in Egypt and/or Syria, and that Canadian officials were complicit in their detention and torture. In making those findings, the Report specifically found that the accounts of their torture by all three Plaintiffs were credible, based in part on expert examination and reports by an independent clinical psychologist, a clinical psychiatrist and a forensic psychiatrist, all retained by the inquiry.
2009-04-16	Minutes of Settlement and Agreement on Schedule are signed by the parties in all 3 actions, which (1) permit the Plaintiffs on consent to file Amended Statements of Claim; (2) resolve motions formerly threatened by Canada regarding the Plaintiffs' Statements of Claim, and (3) establish the procedures for preliminary document production and mediations.

2009-06	Standing Committee of Parliament on Public Safety and National Security, Recommendation 3 at p. 19, recommends compensation to Almalki, Elmaati and Nureddin.
2009-06-30	Canada files Statements of Defence in the 3 actions, as required by the April 16, 2009 Minutes of Settlement, which deny that the Plaintiffs were tortured, and if torture occurred, deny complicity by Canadian officials.
2009-06-30	Canada releases to the Plaintiffs the first disclosure of documents, consisting of approximately 500 documents referred to in the *Iacobucci Report*
2009-12-03	Plaintiffs request case conferences the Ontario Superior Court, and advise that the mediations have been cancelled after counsel for Canada advised the Plaintiffs that they had received instruction to take positions in the mediations that eliminated any possibility of settlement.
2009-12-03	House of Commons Resolution supports the recommendations of the Standing Committee of Parliament.
2010-01-18	The Ontario Superior Court in Toronto initiates proceedings for the preparation of a Discovery Plan dealing with documentary production and oral examinations for discovery. The parties and the Court proceed on an agreement in principle that the same terms should be applied in all 3 actions, with decisions in the Toronto actions (Elmaati and Nureddin) being applicable in the Ottawa action (Almalki) subject to the approval of the Ottawa Court.
2010-02-10	Canada commences an Application (DES-1-10) in the Federal Court of Canada, insisting that Court (and not the Ontario Superior Court of Justice) review its claims for national security privilege under s. 38 of the *Canada Evidence Act*. The Application relates only to those of the documents previously produced which have such redactions (approximately 270 of the 500 documents)
2010-11-08	The Federal Court releases Reasons for decision, requiring Canada to disclose certain information redacted by Canada in the 270 documents reviewed in DES-1-10. Canada immediately appeals that decision with respect to approximately 30 of the documents to the Federal Court of Appeal.
2011-05-16	After 16 months of proceedings and negotiations, the Toronto Court approves a Discovery Plan in the Elmaati and Nureddin actions, which sets a schedule for completion of document production in all three actions by January 2, 2012. Canada opposed the inclusion of any terms to monitor progress of the document production process, and the approved Plan does not contain any such provisions. Despite having argued that this extended schedule was necessary, in part, because of the large numbers of documents in the Almalki action, Canada also refuses to extend all of the same Discovery Plan terms to the Almalki action.
2011-05-18	Plaintiffs request that the Federal Court continue its proceedings to review the balance of Canada's claims for national security privilege under s. 38 of the *Canada Evidence Act*.
2011-06-13	Federal Court of Appeal releases public Reasons for decision on the appeal from the Federal Court decision in DES-1-10, which appear to dismiss Canada's appeal on all material grounds argued in Canada's public Notice of Motion.
2011-07-25	Canada commences further proceedings in Federal Court (DES-1-11) regarding its claims to privilege with respect to the balance of its documents. An initial tranche of 1,325 documents with s. 38 redactions are filed with the Federal Court application.

2011-08	Canada's implementation of the Confidential Order of the Federal Court of Appeal dated June 13, 2011 reveals for the first time that, despite its public Reasons dismissing Canada's appeal, that Court nevertheless reversed the Federal Court of Canada's decision with respect to all of the documents in issue for undisclosed reasons.
2011-09-19	The Federal Court appoints *amici* to assist it in the review of documents produced by Canada with redactions for national security privilege under s. 38 of the *Canada Evidence Act*. Despite objections by counsel for Canada, the terms of this Order include provisions to expedite the process, by mandating the *amici* to act "as if they were in camera counsel for" the Plaintiffs in conducting a pre-hearing review of the documents. Despite similar objections by counsel, the terms also include provisions to identify information which (if it is not produced to the Plaintiffs) should nevertheless be disclosed to any trial judge in these actions, for the purposes of determining whether Canada's refusal to produce evidence of its complicity in a violation of the Plaintiffs' constitutional rights should result in its Statements of Defence in these actions being struck out.
2011-10-13	The Federal Court of Appeal dismisses the Plaintiffs' motion for reconsideration of its decision to allow Canada's appeal from the Federal Court's decision in DES-1-10 for undisclosed reasons.
2011-11-07	Canada brings a motion to vary the schedule in the Discovery Plan approved in the Elmaati and Nureddin actions, in order to extend the date for completion of its document production in all three actions from January 2 to September 30, 2012. For Reasons released on December 5, 2011, the Court grants Canada's motion, extending the time as requested, but makes that Order peremptory to Canada, requiring that in default of meeting that deadline Canada is to "show cause" why its statement of defence should not be struck out. In doing so the Court specifically referred to Articles 13 and 14 of the UN *Convention Against Torture* ("CAT"). Again, despite having argued that this extension schedule was necessary, in part, because of the large numbers of documents in the Almalki action, Canada now refuses to extend this term of the Discovery Plans to the Almalki action.
2012-01-19	The Supreme Court of Canada dismisses the Plaintiffs' Application for leave to appeal the Federal Court of Appeal's reversal of the decision in DES-1-10 for undisclosed reasons.
2012-03-31	Canada delivers Lists of Documents in the 3 Actions, which together list fewer than 12,000 documents. The *Iacobucci Report* (which was narrower in scope than the civil actions in that it did not address Canada's investigation of the Plaintiffs prior to their detention) recites that the inquiry was provided with 40,000 documents, and still requested that Canada produce others.
2012-03-31	27 months after the resumption of litigation, and just 6 months before its document production deadline, Canada has yet to produce approximately 5,000 (almost one half) of the documents in referred to in its March 2012 Lists.
2012-06-01	The UN Committee Against Torture releases its Report entitled "Concluding Observations" on Canada's sixth periodic report under the CAT. In the context of Articles 2, 5, 11 and 14 of the CAT, paragraph 16 of that Report expressed serious concern about Canada's refusal to provide an official apology and compensation to Almalki, Elmaati and Nureddin despite the findings of the Iacobucci Inquiry showing that "Canadian officials were complicit" in their torture abroad.

2012-06-22	Plaintiffs' counsel send the first of several letters to counsel for Canada exposing deficiencies in Canada's production of documents. This letter lists and provides copies of hundreds of relevant government of Canada documents that have been produced by the Plaintiffs, but which are not listed in Canada's March 2012 lists.
2012-07-04	Canada successfully opposes the Plaintiffs' motion to extend the amended Discovery Plan terms to the Almalki action before the Ottawa Court. On the argument of the motion, the Plaintiffs had filed the recent report of the UN Committee Against Torture, arguing that the delay in these actions risks violation of Articles 13 and 14 of the CAT. During oral argument, Canada's lawyer asked rhetorically why the Superior Court is hearing the claims of complicity in torture "if the UN really has the last word" on that issue. In terms of the necessary procedural protections and standards in these cases, he said that "we don't find them in the Convention Against Torture" but rather in Canadian law. The Ottawa court does not apply the "show cause" term of the Discovery Plan in that action, and does not refer to the CAT or the report of the Committee Against Torture in its decision.
2012-07-19	Plaintiffs' counsel send the second of several letters to counsel for Canada exposing deficiencies in Canada's production of documents. This letter requests production of four categories of relevant government of Canada documents that are referred to in other documents produced by Canada, but which are not listed in Canada's March 2012 lists, relating to the investigation of the Plaintiffs prior to their detention.
2012-08-22	Counsel for Canada took the first of several steps required to produce to the Plaintiffs some of the additional relevant documents requested in the letters of June 22, 2012 and following. On this date, Canada obtained an order from the provincial court, allowing it to release to the Plaintiffs and others an edited copy of an Information to Obtain warrants to search the homes and properties Almalki and Elmaati families and others. That ITO was obtained on January 21, 2002, in part using information obtained from Elmaati's torture in Syria. Another application for the release of similar proceedings in relation to the Almalki matter was not commenced until March 2013, and a third application to the Superior Court of Justice, relating to wiretaps authorized in October 2001 has yet to be commenced.
2012-08-30	32 months after the resumption of litigation, and just one month before its document production deadline, Canada has yet to produce over 3,000 (more than one quarter) of the documents in referred to in its March 2012 Lists.
2012-09-13	Counsel for Canada and the Plaintiffs begin meeting to discuss production of other documents, including all transcripts and interview notes of witnesses who gave evidence in closed session to the Iacobucci inquiry. Production of those interview notes and transcripts was requested at the first such meeting on September 13, 2012.
2012-09-27	In a letter to the Ontario Courts, Canada acknowledges it will be a month late, just in completing its production of the documents in its Lists. It does not acknowledge or refer to the requests for additional production of other documents and categories by Plaintiffs' counsel, which are still outstanding.
2012-12-21	Canada produces 7,873 new documents, not listed in its March 2012 Lists but requested in the Plaintiffs' July 19, 2012 letter, relating to audio monitoring and interception of calls and conversations of Elmaati and Almalki and their families between October 5 and November 16, 2001

2013-01-14	At a conference call requested by the Plaintiffs with the Federal Court, the *amici* report that they have completed a first review of 4,084 of the approximately 5,500 documents produced by Canada with national security redactions. Counsel for Canada suggests that any consolidated hearing on all the issues in DES-1-11 was still 14 months away. Counsel for the Plaintiffs strongly protested that suggestion. Counsel for the Plaintiffs also refer to their request for production of witness interview and transcripts from the inquiries, and propose as an interim measure that they be produced in unredacted form to the *amici*.
2013-01-25	Plaintiffs' counsel send the third of several letters to counsel for Canada, formally requesting production of all transcripts and interview notes of witnesses who gave evidence in closed session to the Iacobucci inquiry, and requesting similar production with respect to witnesses heard *in camera* by the O'Connor Inquiry. Despite their obvious relevance and a mandatory requirement to disclose all documents, neither are even listed in Canada's March 2012 lists.
2013-02-21	After holding an *in camera* conference with counsel for Canada and the *amici*, the Federal Court releases a Communication providing, among other things, an explanation of factors contributing to the delay in the pre-hearing review process. The factors recited include (1) the volume of documents (as noted, many of which were only produced since March 2012); (2) failure by Canada to organize production chronologically or by topic; (3) duplicative and recurring information, requiring frequent cross-referencing to ensure consistency of review and position. The Court made immediate orders to improve transparency of the process, to require interim production of results to the Plaintiffs, and to allow greater communication between the *amici* and counsel for the Plaintiffs.
2013-03-19	Pursuant to a schedule established by the Toronto Court, the Plaintiffs have served a motion for order striking out Canada's statements of defence in all three actions, and in the alternative for production of documents Canada has refused to produce, including the witness interview notes and transcripts from the two inquiries. That motion will be heard in the Toronto Court on May 27 and 28, 2013. Again, counsel for Canada have refused to allow the same motion in the Almalki action to be determined at the same time, and no arrangements have yet been made by the Ottawa court for the hearing of that motion.
Today	Despite the concurrent findings of Canada's complicity in torture by two inquiries and by the United Nations Committee Against Torture, in these cases (1) after seven years of litigation, involving the Toronto and Ottawa courts, as well as the Federal Court, Canada has still not fulfilled its basic document production responsibilities to the Plaintiffs; (2) Canada claims to withhold relevant information in approximately one half (5,500) of the relevant documents it has produced due to national security privilege and, depending on appeals, completion of the Federal Court's review of those claims is still two or more years away; (3) Canada's refusal to produce the transcripts and interview notes relating to witness interviews for the two inquiries, if upheld by the Ontario courts, will require the substantial duplication of those examinations in a lengthy and complex oral examination process, and even if production is ordered, redaction and review of these documents will add many months (if not years) to the process before the Federal Court.