



Lawyers' Rights Watch Canada

Monday, December 21st, 2015

Human Rights Program
Department of Canadian Heritage
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To the Human Rights Program, Department of Canadian Heritage

Re: Canada's Response to the List of Issues Prior to Reporting (LOIPR) from the UN Committee against Torture - LRWC and ICLMG views¹

Following the sixth review of Canada's performance in respect of its obligations under *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* (UNCAT) the Committee against Torture (CAT), in [Concluding Observations](#) published on 25 June 2012,² identified 18 specific subjects of concern and recommendations for remedial action needed to bring Canada into compliance with UNCAT.

Lawyers' Rights Watch Canada (LRWC) and the International Civil Liberties Monitoring Group (ICLMG) provided CAT with a report—the *Briefing to the Committee against Torture, 48th Session, May 2012 on the Omar Khadr Case*—identifying contraventions of UNCAT obligations by Canada in the case of Canadian citizen Omar Khadr.³

Several of the CAT's Concluding Observations (CAT/C/CR/34/CAN, 7 July 2012) mirrored the remedial action identified by LRWC/ICLMG as necessary to compliance with Canada's Convention obligations. In response to an invitation from the Continuing Committee of Officials on Human Rights (CCOHR) of the Department of Canadian Heritage, LRWC provided the CCOHR with an additional report outlining LRWC's recommendations for measures necessary to implement CAT recommendations. That report, *The Omar Khadr Case: Implementation of the Recommendations of the Committee against Torture*,⁴ was sent to CCOHR on 1 November 2012.

In July 2012 CAT recommended, *inter alia*, that Canada “ensure that [Omar Khadr] receives appropriate redress for human rights violations that the Canadian Supreme Court has ruled he

¹ For further information about some of the facts germane to the Omar Khadr case, the applicable law and relevant decisions of domestic courts and international tribunals, see: LRWC, online: [The Omar Khadr Case: Implementation of the Recommendations of the Committee against Torture](#), 1 November 2012; and Briefing to the Committee against Torture, 48th Session, May 2013 on the Omar Khadr case, LRWC and ICLMG, April 2012, online: http://www2.ohchr.org/english/bodies/cat/docs/ngos/LRWC_ICLMG_Canada_CAT48.doc

² Consideration of reports submitted by States parties under article 19 of the Convention – Concluding Observations of the Committee against Torture – Canada, CAT/C/CAN/CO/6, 25 June 2012.

³ Canada: Briefing to the Committee against Torture, 48th Session, May 2012 on the Omar Khadr case from Lawyers' Rights Watch Canada & The International Civil Liberties Monitoring Group, online: http://www2.ohchr.org/english/bodies/cat/docs/ngos/LRWC_ICLMG_Canada_CAT48.doc

⁴ *The Omar Khadr Case: Implementation of the Recommendations of the Committee against Torture*, LRWC, 1 November 2012, online: <http://www.lrwc.org/the-omar-khadr-case-implementing-the-recommendations-of-the-committee-against-torture/lrwc-views-on-cat-on-khadr-nov-1-12/>

experienced” (para. 16(b)). In the LOIPR, at para. 28(b), CAT poses the question, “Has [Omar Khadr] received appropriate redress for the human rights violations that he suffered, as ruled by the Canadian Supreme Court?”

LRWC and ICLMG request that, in responding to the LOIPR and reporting to CAT, the Government of Canada (GOC) treat the term “redress” as encompassing the full range of Article 14 duties identified by General Comment No. 3,⁵ including duties to fully investigate the torture and ill-treatment to which Omar Khadr was subjected during his imprisonment, to punish those responsible, and to adopt measures to prevent further occurrences, in accordance with the provisions of UNCAT.

CAT, in General Comment No. 3 (para. 2), has determined that the term “redress” in UNCAT Article 14 is a comprehensive reparative concept that “entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measure required to redress violations under the Convention.” The elements of full redress identified by the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* are also recognized at para. 6.⁶

These comprehensive duties to provide redress are triggered either when state actors commit torture or ill-treatment *or* where there are reasonable grounds to believe such acts have been committed by non-state actors and the state has failed to exercise due diligence to prevent, investigate, prosecute and punish such actors in accordance with UNCAT (General Comment No. 3, para. 7). This definition captures and makes Canada responsible to provide redress for the torture and ill-treatment suffered by Omar Khadr throughout his entire period of imprisonment by the United States.

UNCAT, Articles 12, 13 and 14 require states to ensure a prompt, effective and impartial investigation of all credible allegations of torture and ill-treatment (General Comment No. 3, para. 23-25). CAT has further determined (General Comment No. 3, para. 17) that a failure to promptly investigate allegations of torture “may constitute a *de facto* denial of redress and thus constitute a violation of the State’s obligation under article 14.”

The duty to ensure non-repetition requires the state to provide a wide range of preventative measures including: adequate education and training about UNCAT for public officials, including specific training about the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.⁷

LRWC and ICLMG request that the GOC provide CAT with full details of the efforts Canada has taken or plans to take to address:

- CAT recommendations relevant to the Omar Khadr case and the issue of redress as defined by CAT;

⁵ UN Committee Against Torture (CAT), *General comment no. 3, 2012: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: implementation of article 14 by States parties*, 13 December 2012, online: <http://www.refworld.org/docid/5437cc274.html> [accessed 16 December 2015]

⁶ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: resolution / adopted by the General Assembly, 21 March 2006, A/RES/60/147, online: <http://www.refworld.org/docid/4721cb942.html> [accessed 16 December 2015]

⁷ UN Office of the High Commissioner for Human Rights (OHCHR), *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol")*, 2004, HR/P/PT/8/Rev.1, online: <http://www.refworld.org/docid/4638aca62.html> [accessed 16 December 2015]

- LOIPR questions relevant to the Omar Khadr case and Canada's duties to ensure redress for the torture and ill-treatment of Omar Khadr;
- Recommendations outlined in the LRWC/ICLMG briefing to CAT and the LRWC report to the CCOHR; and
- The LRWC and ICLMG concerns set out below.

LRWC and ICLMG remain concerned that the continuing failure to prevent, investigate and punish torture and ill-treatment in the Omar Khadr case not only constitutes a continuing violation of the rights of Omar Khadr, but also encourages and enhances the danger of torture by state and non-state actors alike. We note that CAT in General Comment No. 3, para. 42 expresses concern that impunity “bars victims from seeking full redress as it allows the violators to go unpunished and denies victims the full insurance of their rights under article 14.”

In contravention of UNCAT duties and contrary to CAT recommendations of July 2012, the GOC has, since April 2012:

1. Continued to actively resist attempts by Omar Khadr to seek adjudication and redress through court proceedings, by contesting and appealing all orders sought and obtained by Omar Khadr's counsel⁸;
2. Failed to provide Omar Khadr with legal aid or any other resources to allow him to be fully represented as required by, *inter alia*, UNCAT Articles 2 and 14 (General Comment No. 3, para. 39);
3. Failed to investigate, determine, and punish the participation of Canadian officials in Omar Khadr's torture and ill-treatment that has been established by the Federal Court, the Federal Court of Appeal and the Supreme Court of Canada;
4. Failed to investigate, determine and punish through competent, independent and impartial investigative, prosecutorial and judicial authorities the participation of other Canadian officials and/or non-state actors in the supervision, direction, instigation, incitement, encouragement or counselling and planning of action/inaction that contributed to the subjection of Omar Khadr while imprisoned at Bagram and Guantánamo Bay to treatment prohibited by UNCAT Articles 2 and 7 and as referred to in the LOIPR para. 20;
5. Failed to establish an independent judicial body to determine the right to, and award redress to, Omar Khadr for torture and ill-treatment in Bagram and Guantánamo Bay prisons to which Canadian officials contributed by action or inaction as required by UNCAT Article 14 (General Comment No. 3, para. 10);
6. Supported and/or acquiesced to the use of the fruits of that torture and ill-treatment in the sentencing of Omar Khadr by the Guantánamo Bay Military Tribunal contrary to Article 15;
7. Supported and did not oppose the sentencing of Omar Khadr by the Guantánamo Bay Military Tribunal that violated common Article 3 of the four Geneva Conventions and the provisions of the *Geneva Conventions Act* and the *Crimes against Humanity and War Crimes Act*;
8. Insisted that Omar Khadr serve the balance of the illegal sentence notwithstanding that the imposition of the sentence by the Guantánamo Bay Military Tribunal was a grave

⁸ Successful actions brought by Omar Khadr since April 2012. *Khadr v Edmonton Institution*, 2013 ABQB 611, 18 October 2013; *Khadr v Edmonton Institution*, 2014 ABCA 225, 8 July 2014; *Khadr v Edmonton Institution*, 2014 ABCA 239, 27 July 2014; *Khadr v Canada*, 2014 FC 1001, 4 November 2014; *Khadr v Bowden Institution*, 2015 ABQB 261, 24 April 2015; *Bowden Institution v Khadr*, 2015 ABCA 159, 7 May 2015; *Bowden Institution v Khadr*, 2015 SCC 26, 14 May 2015. The ABQB decision in *Khadr v Bowden* was overturned by the ABCA, and that decision was upheld by the SCC.

- breach of the Geneva Conventions and contrary to Canadian law, and that the known fact that the ‘conviction’ underlying the sentence was based on a coerced statement obtained by prolonged torture and ill-treatment and denial of due process;
9. Continued to wrongly inform the Canadian public that Omar Khadr had been convicted of serious offences and was therefore reasonably designated as a terrorist and a threat to Canadian security⁹;
 10. Subjected Omar Khadr, while in custody in Canada, to: isolation, solitary confinement, denial of access to education materials, denial of opportunity to write exams to advance his education standing, denial of timely medical attention and treatment to save his eyesight, and denial of contact with his family;
 11. Failed to establish and provide adequate education and training about the UNCAT to police, corrections, judges and others involved in the trial, custody, interrogation or treatment of any person subjected to arrest and detention, as required by UNCAT Article 10 and as referred to in the LOIPR, paras. 17 and 18;
 12. Failed to report fully and accurately to CAT on the active participation of Canada’s agents and officials in breaches of UNCAT in relation to Omar Khadr and to report on its refusal to meeting its ongoing obligations to Omar Khadr;
 13. Failed to ensure a competent medical examination of Omar Khadr focused on past torture and ill-treatment in compliance with Annex IV of the *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and to obtain a statement of opinion on such medical findings;
 14. Failed to take preventative measures and to “adopt effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigation, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture as defined in the Convention”;¹⁰
 15. Failed to “proceed to a prompt and impartial investigation” of the treatment of Omar Khadr at Guantánamo Bay and Bagram prisons, as required by UNCAT Articles 12, 13 and 14 (as per paras. 23-25 of General Comment No. 3), notwithstanding overwhelming evidence from a variety of knowledgeable sources of the use of torture and other treatment prohibited by UNCAT in Guantánamo Bay;
 16. Failed to ensure appropriate redress of the human rights violations suffered by Omar Khadr as required by UNCAT Article 14 and as referred to in the LOIPR, para. 28(b);
 17. Refused to award or consider awarding compensation to Omar Khadr as required by Article 14 and referred to in the LOIPR, para. 28(b);
 18. Failed to provide any “assistance to Mr. Khadr in order to prevent potential psychological sequelae deriving from the torture he experienced” as referred to in the LOIPR, para. 28(b);
 19. Failed to implement programmes for the “treatment of physical and psychological trauma, and other types of rehabilitation provided to victims of torture and ill-treatment” as referred to in the LOIPR, para. 29;
 20. Failed to adopt policies to ensure that confessions or other evidence obtained, or allegedly obtained, under torture or ill-treatment are not admitted in court proceedings

⁹ Examples of public statements made by Federal Ministers: “Early this morning, convicted terrorist Omar Khadr was transferred to Canadian authorities at CFB Trenton. Omar Khadr is a known supporter of the Al-Qaeda terrorist network and a convicted terrorist...” Vic Toews, Minister for Public Safety, in a press conference to announce Omar Khadr’s return to Canada (September 29, 2012); “This is an individual who, as you know, pled guilty to very serious crimes including murder and it is very important that we continue to vigorously defend against any attempts, in court, to lessen his punishment for these heinous acts.” Prime Minister Stephen Harper in a press conference the morning of Omar Khadr’s court appearance to challenge his maximum-security prison classification (September 23, 2013).

¹⁰ CAT General Comment No. 2 CAT/C/GC/2, 24 January 2008, para. 17.

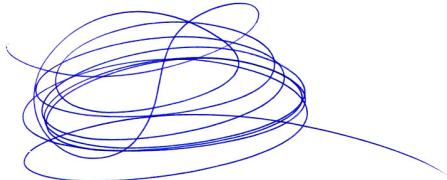
- and that judgements made by courts admitting such evidence will not be enforced within Canada;
21. Failed to provide information requested by para. 23 of LOIPR regarding the torture of Omar Khadr;
 22. Failed to establish and provide public disclosure of the facts (General Comments No. 3, para. 16) as determined by a competent and independent investigation and to publicly apologize and acknowledge and accept responsibility for providing redress as required by UNCAT.

Canada has contravened every aspect of its UNCAT duties in the Omar Khadr case. To remedy these sweeping contraventions, Canada must enact legislation to create a process by which complaints can be made and to ensure the investigation or complaints and the determination and implementation of redress prosecution of suspected perpetrators and full redress for the victims. Canada will also have to develop a programme for delivery and assessment of education and training about UNCAT duties to all public servants, including judges, charged with responsibility for detained people. Canada should develop this legislation and these programmes and policies in consultation with civil society organizations with expertise.

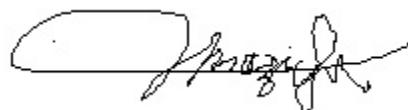
LRWC and ICLMG request involvement in the implementation of the Committee's recommendations noted above.

We look forward to hearing from you.

Respectfully submitted,



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