

**Confronting a Human Rights Scourge:
Canada and the Global Struggle to End Torture**

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No one shall be subjected to torture. No one. Anywhere. Anytime.

There are very human rights that are stated in such clear and absolute terms as the global ban on torture. In fact the strict, unconditional language in the UN Convention against Torture is only repeated in one other human rights treaty – the Convention on Enforced Disappearances. No exceptional circumstances whatsoever may be invoked as a justification for torture.

Whatsoever may be an impressive word; but the contrary and very painful truth is that the absolute certainty of the ban on torture is matched by a glaring gap between promise and reality.

In September I was part of an Amnesty International delegation allowed in to a maximum security prison in the Mexican state of Nayarit. I have, in my decades of human rights work, never before been through so many levels of security – that is saying something given that I have travelled to Guantánamo Bay three times. It took us one full hour to make it through all of the checkpoints, body scans, pat downs, ultraviolet light, and confiscation of jewelry.

You would think we were on our way to see a notorious kingpin in a Mexican drug cartel. But we were there to interview a prisoner of conscience and victim of torture, Amilcar Angel Colon Quevedo. Imprisoned because he was a Honduran migrant from that country's Afro-Caribbean Garifuna community, trying to reach the United States so that he could afford cancer treatments for his dying young son. Brutalized and demeaned at the hands of captors and guards. The absolute ban on torture offered him no protection.

First, at the hands of the police. He was beaten repeatedly in the ribs. He was forced to walk for hours on his knees. He was kicked and punched in the stomach. Then he was transferred to the military.

He was blindfolded and held in a room where he could hear nothing but the screams of others around him. He was told that the same thing would happen to him. A plastic bag was put over his head to the point of asphyxiation, repeatedly. He was stripped and forced to lick clean the shoes of other detainees and was made to strike a number of humiliating poses. All while racial insults were hurled at him.

This went on for 16 hours. Finally he relented and signed a statement saying that he was part of a criminal gang. That ended nothing. His nightmare of injustice continued for close to six years. Never charged. Never brought to trial. No matter how often he protested that he made the statement only to end the torture. No matter that there was never a shred of evidence to suggest he was anything other than a migrant trying to reach the United States. No matter the heartbreak of learning that the young son whose life he was so desperately trying to save had died six months after he was arrested in Mexico.

Worldwide, AI campaigned for his freedom. And in October, about 5 weeks after our visit, freedom did prevail. The Mexican Attorney General dropped the case. Within hours Angel Colon was free; and he is now back in Honduras with his family.

Angel's experience is but one of the hundreds, in fact thousands, of accounts from Mexico, where levels of torture have risen 600% over the past decade. And Mexico is but one country among very, very many.

What this reflects is this: torture continues to haunt every corner of our planet. Routinely, brutally, secretly, brazenly, cruelly and always with impunity – men, women and young people everywhere face the agonizing and debilitating terror of torture daily.

That is why Amnesty International has launched a new campaign: Stop Torture. Because we cannot fail to respond to that unacceptable, unforgivable gap between obligation and reality.

Let me give you just one quick fact that highlights how wide the gap is. Amnesty International has documented torture in 141 countries over the past five years. That's roughly $\frac{3}{4}$ of the world's states. $\frac{3}{4}$ of the world's.

So this is a very necessary campaign.

And notably it is the fourth time in our fifty plus years that we have launched a major campaign against torture.

We did so in the 1970's because it had become clear to us that torture was lurking behind virtually every human rights case we took up, but the world wasn't talking about it or aware of it at all. Too uncomfortable to discuss. Too much of a taboo to understand. Too graphic to talk about.

We set out to change that. To make sure that the public – and of course governments – understood that torture was widespread, pervasive and - debilitating.

We came back to it in the 1980's because we knew that laws against torture had to be more clear, more forceful and more universal. And we succeeded again. Most significantly 30 years ago states adopted the Convention against Torture, now ratified by 115 states – only 38 countries have not yet signed on. And the adoption of the Convention sparked a wave of national constitutions and laws around the world, all banning torture. That was around the time our own Charter, and its ban on cruel or unusual treatment or punishment was adopted.

Third time out was 2000/2001. That campaign aimed to expose the circumstances and conditions that make torture possible. We pointed to discrimination. We highlighted the secrecy and silence that shrouds torture. And we spoke of the complete impunity that shields torturers from facing justice.

No sooner had we wrapped up that third campaign when September 11th hit and we were faced with setbacks and unprecedented challenges. Governments that had been champions of the important gains in the global struggle to end torture were no longer so reliable anymore. Instead, led by the US and including Canada in the ranks, these once unyielding advocates against torture now committed, encouraged, tolerated or willingly benefited from torture; all – allegedly – because that was the only way to defeat terrorism and keep us safe.

And here we find ourselves; 13 years after 9/11. Well over a decade of responding to the rollback on torture. And it is clear that we need to bring the might of a global Amnesty International campaign to this issue once again.

And it is not just about national security and terrorism. Yes it is about those notorious excuses for torture; but it is much wider than that. As Angel Colon's experience tells us. Or, to make this very current, as the case of Saudi blogger Raif Badawi show starkly underscores. Facing 1000 lashes, absolutely a form of torture, to be meted out 50 at a time over 20 weeks – simply because he believes in freedom of expression.

The first campaign was to build awareness about torture. The second was to strengthen the law against torture. The third was to understand and tackle what makes torture happen. This time out we are focusing on the concrete steps that can be taken to stop torture. It is all about the safeguards needed to prevent torture from happening in the first place.

Torture is never excused because it so fundamentally destroys the very essence of dignity and integrity on which the entire concept and system of human rights protection rests. Allowing torture widens divisions and leaves behind a growing list of victims and survivors. It maims. It dehumanizes. It traumatizes. It kills.

Individuals are brutalized. Families are terrified. Communities are terrorized into silence. And in the end torture only lays the ground for more human rights violations; and deeper insecurity.

That is why, everytime the ban on torture has been included in international human rights instruments, governments knew there could be no exceptions. Because torture, for any reason, is the very antithesis of human rights.

No exceptions also because torture doesn't work. People will say anything, confess to anything, to bring the agony of torture to an end. That is what Angel Colon told us in that Mexican prison. I have heard that repeatedly from many hundreds of torture survivors I have interviewed over the years, in Canada and around the world.

No exceptions as well because torture doesn't stop. There is no such thing as just a little bit of torture. We'll only use it against the fictitious terrorist mastermind we have in custody to obtain information about the imminent terrorist attack we are sure he has planned. Even if that was okay, that is quite simply not how it works. Once it is allowed against anyone; it can and will be used against anyone. The torturer's reach only expands. It does not stay confined. In more than 50 years of human rights reporting we have seen that everywhere that torture rears its ugly head.

If it is okay to torture the terrorist mastermind, it is okay to torture his presumed accomplice. It is okay to torture the accomplice's spouse to find out where the mastermind is hiding. It is okay to torture the accomplice's spouse's cousin, someone who grew up with him, or who goes to the same mosque. It does not end.

During the campaign, Amnesty International here in Canada will put pressure on the Mexican government, and governments around the world to end torture and adopt reforms to prevent it.

But we will also turn to our own government. Not because torture is rampant in Canada. Of course not. But there is much that Canada can and must do to significantly strengthen its contribution to ending torture. Let me share four areas of concern: detention practices, complicity, justice and oversight.

First, while torture in Canada's jails is by no means widespread and systematic, there is one area in which we do absolutely have to talk of prisons, Canada and torture in the same breath. It is the high use in Canada of solitary confinement, which we call administrative segregation – hoping that calling it something different makes it something different?

Solitary confinement is of increasing and very serious concern to the international community. In 2011, the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment presented a global report on this topic to the General Assembly. He defined solitary confinement as “the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day.” He noted that being confined in isolation produces severe – and sometimes irreversible – physical and psychological effects: anxiety, depression, anger, intolerance of social interaction, cognitive and perceptual distortions, paranoia, psychosis, self-mutilation, and suicide attempts. He concluded that in many circumstances it amounts to torture or ill-treatment. He determined that solitary confinement that extends beyond 15 days is ipso facto torture or ill-treatment and must be prohibited.

The practice of solitary confinement has become widespread in Canada; far beyond the UN's suggested limits. According to the Office of the Correctional Investigator, “While the law requires that segregation be used as a last resort and for the shortest period possible, it has become a standard tool of population management to maintain the safety and security of the institution.” On any given day, for example, about 850 of the 14,700 offenders in federal institutions are in segregation units, and the proportion in provincial institutions may be even higher. The average length of stay in segregation between 2006 and 2011 was 40 days, and over 10% of segregated inmates stayed more than four months.

And the tragic human cost mounts. Ashley Smith, whose death in custody was the subject of a Coroners Inquest. Edward Snowshoes, whose suicide in prison was the subject of extensive Globe and Mail reporting.

The UN Cttee against Torture, in a 2012 review of Canada's record of compliance with the UN Convention against Torture has called on the government to overhaul policy and practice in this area. That was declined.

More recently, after a year of deliberation, the government similarly rejected the Ashley Smith Coroners Inquest recommendation that solitary confinement be reined in. So now it is to the court. BCCLA and John Howard have recently launched a lawsuit tackling Canada's torture disgrace head on.

Second; I now want to turn to complicity. Torturers are able to do what they do and get away with it because they are supported and protected by others. Governments are able to carry out and get away with torture because they are supported and protected by other governments. Safe to say that without complicity, torture would not happen.

And sadly, Canada has been and continues to be complicit in torture, or to allow possible complicity in torture, in other countries. That must finally be addressed and resolved.

For instance, it is disgraceful and unacceptable that six years after a judicial inquiry headed by former Supreme Court of Canada Justice Frank Iacobucci catalogued a long list of ways that the action and inaction of Canadian officials contributed to the overseas torture of Canadian citizens Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria and Egypt over a decade ago, those three men have been forced into protracted and demeaning litigation simply to obtain the apology and compensation for Canada's complicity, that is their basic right.

It is not acceptable that we ever stand in the way of survivors of torture obtaining the justice and redress that is their fundamental right. It is beyond the pale when we refuse to remedy, and apologize for, torture that we have made possible.

Concerns about Canadian complicity in torture also include the disturbing revelations of Ministerial Directions issued to such agencies and departments as CSIS, RCMP, CBSA, CSEC and the military when it comes to the sharing of what is often termed torture-tainted information in our intelligence relationships with other countries.

Those agencies are given the green light to make use of intelligence that was likely to have been obtained through torture in other countries. They are also allowed to provide intelligence information to foreign agencies even if that is likely to cause torture in other countries. It is as if the judicial inquiries into the cases of MA, AA, AE and MN simply never happened.

Justice Dennis O'Connor could not have been more clear. Recommendation #14 coming out of his 2006 report from the Arar Inquiry, examining Canada's involvement in the torture of Canadian citizen Maher Arar in Syria while he was unlawfully detained there in 2002/2003:

Information should never be provided to a foreign country where there is a credible risk that it will cause or contribute to the use of torture.

These Ministerial Directions go in exactly the opposite direction, authorizing what should instead be unconditionally forbidden. The UN CAT has called on Canada to revise the Ministerial Directions. Last fall the government told the Committee they are content with the Directions and won't be making any changes.

We have, as well, the government's staggering institutionalized complicity in the serious human rights violations, including torture and ill-treatment, experienced by Omar Khadr. Human rights violations that began from the moment of his capture and refusal to treat him as a child soldier, on the battlefield in Afghanistan in the summer of 2002 – over 12 years ago. And which included various episodes of torture and ill-treatment while held initially at the notorious US air base at Bagram, Afghanistan and continued after he was transferred to Guantánamo Bay in October 2002.

The Supreme Court of Canada ruled, in January 2010, that Canada had been complicit in Omar Khadr's torture at Guantánamo Bay, without actually calling it torture. Here is how the Court put it: "The interrogation of a youth detained without access to counsel, to elicit statements about serious criminal charges while knowing that the youth had been subjected to sleep deprivation and while knowing that the fruits of the interrogations would be shared with the prosecutors, offends the most basic Canadian standards about the treatment of detained youth suspects."

That is code for the Court saying that Omar Khadr was subject to torture when his US captors used sleep deprivation against him; and that Canada became complicit in that torture when Canadian officials showed up willing to benefit from that mistreatment. And don't underestimate the brutality of sleep deprivation as a tool of torture. It sounds rather innocuous, sort of a version of extreme insomnia.

Menachem Begin, the Israeli prime minister from 1977-83, was tortured by the KGB in his youth. In his memoir he says that what finally pushed him to lose his will to resist was when he was deprived of sleep.

"In the head of the interrogated prisoner, a haze begins to form. His spirit is wearied to death, his legs are unsteady, and he has one sole desire: to sleep... Anyone who has experienced this desire knows that not even hunger and thirst are comparable with it. I came across prisoners who signed what they were ordered to sign, only to get what the interrogator promised them. He did not promise them their liberty; he did not promise them food to sate themselves. He promised them - if they signed - uninterrupted sleep!

And, having signed, there was nothing in the world that could move them to risk again such nights and such days."

That is what Omar Khadr endured. That is what Canadian officials knew he endured. And those officials, rather than complain about and rebuke his jailors in the strongest of terms, went along with it, ready and willing to make use of any information gleaned from a sleep deprived youth.

The SCC went on to say that Omar Khadr has a right to a remedy for the Canadian government's violation of his Charter rights through this complicity in sleep deprivation. Almost five years later that has not happened. Instead Canada stalled for a full year in processing and approving Omar Khadr's application for a prisoner transfer back to Canada, a transfer that had been okayed by US officials.

And once back in Canada the government has opposed efforts to ensure that Omar Khadr is detained somewhere other than a maximum security prison. The Alberta Court of Appeal has sided with Omar Khadr (Canadian courts have almost universally and unanimously, at all levels, ruled in Omar Khadr's favour in the numerous times his case has been adjudged, including twice at the SCC.) But once again the government is going back to the SCC, this time to fight about the security level of the prison in which Omar Khadr should be held; all of which hinges on whether we recognize he was 15 when this all happened..

And on and on goes this absurd legal drama. But let me highlight this. I have followed Omar's case very closely, including three trips to Guantánamo Bay to observe the proceedings in his case. And I have often found it hard to decide which was more troubling, the insistence of the US government to detain and treat him in a manner that violated so many of his rights; or the defiant refusal of his own government, Canada, to take even one small step in defending his rights. In Omar Khadr's case we have the spectacle of Canada not only being complicit in his torture, but being totally unashamed about that fact.

Another unresolved concern about complicity in torture lingers from the past; that is the question of Canada's approach to battlefield transfer of prisoners. You may recall that this was a rather prominent issue a few years ago, when there was great consternation about how the Canadian military was dealing with prisoners apprehended during fighting in Afghanistan. Prisoners were being handed over to Afghan officials even though there was near certainty that many would then face torture in Afghan jails. At the time the issue provoked a near constitutional crisis in Canada, including prorogation of Parliament, a vote of contempt in the House of Commons against the government, resignation of a Minister and more.

But it is important to remember that all of the dramatic politics aside, at its heart the issue at stake was complicity in torture; and that was never resolved. We, along with the BCCLA, had taken the govt to Court to end the transfers and put in place some other approach to detention that didn't involve complicity in torture. The government fought the case, vigorously to say the least. And while preliminary decisions on a number of motions had largely agreed with our concern that the risk of torture was a real one, the case fell on a fundamental legal question – jurisdiction. Canadian courts ruled that the Charter, which was the legal basis to our case, did not apply to Canadian soldiers once they left Canada. And without the Charter to rely on we had no avenue through which to put all of our international legal arguments before the Court.

And so it stands. An issue that almost certainly will arise again. And which we will have to find a way to address. The answer to concerns that our troops may be complicit in torture cannot come down to: that may be so, but no worry, the Charter doesn't apply here.

One last area of complicity I want to flag is with respect to deportation. Important to underscore that international law is not only very clear about the prohibition on torture but is equally clear that it is unconditionally forbidden to hand someone over to a serious risk of torture through deportation or extradition. In refugee law terms this is the notion that there is unequivocal protection against *refoulement* to torture. But not so in Canadian law.

Canadian law leaves open the possibility that a deportation can go ahead, even in the face of a clear risk of torture, if the government asserts that there are serious security or criminality issues involved in a case. That has been challenged and, sadly, upheld by the SCC in its 2002 Suresh ruling.

The Court ruled that the normal rule is that no one can be sent back to a serious risk of torture; but that there may be “exceptional circumstances” which would justify a deportation to torture --- without defining what those circumstances might be. Over the 12 years since, there have been many contentious legal battles around this thorny issue. Many deportations have gone ahead. There are concerns that deportees from Canada have indeed been tortured upon return, in countries such as India and Sri Lanka.

It is an issue that will almost certainly end up back at the SCC, to specify and define what constitutes “exceptional circumstances” for justifying torture in Canadian law and also, one hopes, offering an opportunity to encourage the Court to revisit its Suresh ruling and bring Canadian law and practice into conformity with our international obligations.

So there is work to be done in reining in solitary confinement and addressing complicity. Canada also falls short in ensuring the criminal accountability of torturers and justice for survivors of torture. International law is strong on both of those fronts. With respect to criminal responsibility, torture is recognized to be an international crime, subject to universal jurisdiction. That means that all states have the obligation to ensure any and all torturers face justice. And Canadian law, through provisions in the Criminal Code, has recognized universal jurisdiction for torture since the late 1980's. A suspected torturer, present in Canada, must be brought to justice – either through extradition to face a fair trial somewhere else or through prosecution in Canada – even when the torture did not happen in Canada, the accused torturer is not Canadian and the victims and survivors of the torture are not Canadian.

So the law is good. Nonetheless Canadian practice over the close to 30 years since those provisions were enacted in the Criminal Code has overwhelmingly been to turn to immigration remedies – deportation – over the criminal law. There has yet to be a universal jurisdiction of an accused torture in Canada. There have been many deportations of accused torturers from Canada. Pushing the problem off of our door step contravenes torture and is a missed opportunity to confront the impunity that fuels torture.

It isn't just about criminal law, however. Torture survivors, or the families of those who have succumbed to torture, have a right to redress for what they have endured.

There have been several attempts by individuals in Canada to turn to the Canadian courts to pursue lawsuits against foreign governments for torture experienced abroad. All have failed because of Canada's State Immunity Act which shields foreign governments from civil suits in Canadian courts except when it deals with commercial matters. So it is possible to sue a foreign government in Canada for breach of contract that happened abroad but not for damages arising from torture outside of Canada.

Most unfortunately just last month that was upheld by the Supreme Court of Canada in the case of Zahra Kazemi, a suit brought by the son of an Iranian-Canadian photojournalist who was imprisoned, raped, tortured and died in an Iranian prison back in 2003. The Court concluded that the SIA trumped all other arguments including the jus cogens nature of the ban on torture, and the importance of victims of torture being able to access a remedy. The justices (a 6:1 ruling) were not necessarily comfortable with the result but held in the end that any exception to what they concluded were very clear words in the SIA would have to come from Parliament.

And that is where our eyes turn, a concerted push for reforms to the SIA carving out an exception for lawsuits seeking redress for crimes under international law, such as torture, genocide, crimes against humanity, war crimes and disappearances.

The last area where Canada needs to considerably up its game when it comes to doing our part to end torture is with respect to oversight and review.

We know that one of the most important means of confronting torture is to ensure that oversight and review bodies and processes exist that seek to pierce the secrecy and silence that shrouds and surrounds torture. One reason that torture continues at such alarming rates is that it happens far, far away from watchful eyes.

We obviously have considerable mechanisms of prison oversight in place in Canada but there are some glaring gaps.

One brings us back to the area of complicity in torture that happens elsewhere, particularly in national security cases. Back in 2006 in one of the two final reports coming out of the groundbreaking Commission of Inquiry into the case of Maher Arar, Commissioner Justice O'Connor developed a detailed model for a comprehensive and integrated oversight and review system for Canadian law enforcement and security agencies involved in national security work. It flowed from clear recognition that the torture experienced by Maher Arar, and similar concerns about torture experienced by other Canadians, including Abdullah Almalki, Ahmad Elmaati, Muayyed Nureddin, Omar Khadr, Abousfian Abdelrazik – torture carried out by other governments but with varying and very troubling degrees of Canadian complicity or responsibility, has often gone unchecked because of woefully inadequate and even nonexistent review and oversight. Key for Justice O'Connor was recognition of the integrated nature of security operations.

That report is eight years old now, and gathers dust on Ministerial bookshelves in Ottawa. And it is likely more urgent than ever that it be dusted off and receive the serious attention it deserves. We are going through another round of national security law reform – Bill C-44, with increased powers for CSIS, already before Parliament. Another Bill to come this Friday, which is likely to contain provisions that infringe upon freedom of expression through a defence or glorification of terrorism offence. Increased powers and rights encroachment? That simply must be accompanied by improved accountability and oversight.

During our Stop Torture campaign we will also be highlighting how vital and how long overdue it is for Canada to sign on to an important torture prevention treaty, the Optional Protocol to the Convention against Torture that is all about review and oversight.

The Optional Protocol sets up a system for inspecting detention centres to spot the conditions that breed torture. It was adopted by the UN in 2002. We've had 12 years to get on board. Over 70 other countries have done so, including many of our closest allies. But not Canada.

When we stood for election to the UN Human Rights Council in 2006 we included a promise to consider ratifying the Optional Protocol among our election pledges. We were elected. We served a three year term. No progress on ratifying.

In 2009 we had our first go under the UN Human Rights Council's new universal periodic review process and coming out of that once again promised to "consider ratifying" the Optional Protocol.

But when our 2nd UPR came around, last year, still no progress. And no surprise therefore that the recommendation to ratify emerged as one of the most oft repeated of all recommendations made to Canada during last year's UPR, including from a long list of our best friends. But Canada thumbed its nose at all of those states. We've pulled back from those earlier promises to 'consider ratifying' and are now telling the world there is no 'current plan' to ratify.

We can't credibly push countries with records of rampant torture to sign on to this important treaty until we have done so ourselves.

The bottom line is this. Torture can and must be stopped. It will take commitment, leadership and action.

We need to remain vigilant and active in confronting torture around the world. In demanding for instance that there be justice for the torture Angel Colon has endured, and that the needed reforms to prevent torture in Mexico are enacted.

It means also, however, being absolutely scrupulous about ensuring that Canada's record is beyond reproach: in rejecting torture, refusing to ever be complicit in torture, and assuring that such crucial torture prevention safeguards as criminal accountability, access to justice and proper review and oversight are firmly in place.

And on that front there is still important work to be done.

You can get involved. Check out our campaign at [amnesty.ca/stoptorture](https://www.amnesty.ca/stoptorture). There are extensive materials to draw on. And there are always numerous actions on offer. Over the coming year, for instance, we are pressing as many Canadians as possible to sign on to our petition calling for Canada to ratify the Optional Protocol.

As long as torture continues, anywhere – we all remain diminished by it; and we all remain vulnerable to it.

Torture must be stopped. It can be stopped. And friends I know that at the end of the day, torture will be stopped.