REVIEW OF CANADA'S SIXTH REPORT ON THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Canada's responses to the list of issues adopted by the Committee against Torture in advance of the examination of Canada's Sixth Periodic Report on the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT/C/CAN/6)

2012

Introduction

1. The following report responds to the list of issues prepared by the United Nations Committee against Torture in advance of the review of Canada's Sixth Periodic Report on the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention). The responses do not repeat information contained in the Sixth Report. They provide information updated generally to December 2011. The responses focus on issues of core relevance to the Convention's protections, while referring the Committee to additional information recently provided by Canada to other human rights treaty bodies that have examined the same issues.

Understanding Canada's federal system – policing, prosecutions and corrections

2. By way of general background to the responses, it is important to understand how Canada's federal system works in respect of policing, criminal prosecutions and corrections.

3. In Canada, police services exist at federal, provincial, territorial and municipal levels. Although these various police services report to government ministers (federal, provincial or territorial), they enjoy a significant degree of operational independence with respect to decisions to investigate criminal activity and the conduct of those investigations. The Royal Canadian Mounted Police (RCMP) is the federal police force, which also provides policing services under contract to the three territories, eight provinces (Ontario and Québec have their own provincial police forces), more than 190 municipalities, 184 Aboriginal communities and three international airports. Many provinces also have their own regional or municipal police forces.

4. The laying or maintaining of criminal charges is subject to oversight by government prosecution services (usually referred to as "Crown prosecutors"). For certain types of crimes carrying significant public stigma, such as terrorism and hate propaganda offences, the *Criminal Code* specifically requires, as an additional safeguard, the consent of the relevant Attorney General. Crown prosecutors in Canada are tasked with ensuring that criminal charges do not proceed unless there is a reasonable prospect for conviction. Prosecutors are subject to ethical, procedural and constitutional obligations and are expected to discharge their duties with fairness, objectivity and integrity.

5. In Canada, sentences of two years or more are served in federal penitentiaries and are administered pursuant to the provisions of the federal *Corrections and Conditional Release Act*. Provincial and territorial governments have exclusive responsibility for the administration of sentences of less than two years, offenders sentenced to probation, as well as for young offenders. The Correctional Service of Canada (CSC) is the federal agency responsible for administering sentences of a term of two years or more, as imposed by the courts. Provinces and territories each have their own agencies responsible for administering corrections institutions within their jurisdiction.

ARTICLE 2

Question 1: The State party's report covers the period from August 2004 to December 2007. Please update the Committee with detailed information on the relevant new developments in the legal and institutional framework as well as the relevant new political, administrative and other measures taken to prevent acts of torture, including any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

6. Canada continues to rely on strong protections in the *Canadian Charter of Rights and Freedoms* (the Charter), the *Criminal Code*, the *Immigration and Refugee Protection Act* (IRPA) and the many other legal and operational measures outlined in Canada's Sixth Report and previous reports as the principal means by which Canada implements its international obligations with respect to the prevention, prosecution and punishment of torture and other cruel, inhuman or degrading treatment or punishment (CIDT) within Canada.

7. The Government of Canada emphasizes that Bill C-3, *An Act to Amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act*, which came into force in February 2008 and was discussed in the Sixth Report, made significant changes to the IRPA to enhance procedural fairness during security certificate proceedings through the use of Special Advocates. Section 83(1.1) of the IRPA also explicitly prohibits reliance in such proceedings on information that is "believed on reasonable grounds to have been obtained as a result of the use of torture within the meaning of section 269.1 of the *Criminal Code*, or cruel, inhuman or degrading treatment or punishment within the meaning of the Convention."

8. Since 2007, there have also been significant changes to law enforcement oversight mechanisms, policies and practices in a variety of areas, including regarding the use of Conducted Energy Weapons (including Tasers) in several jurisdictions. Laws and policies governing correctional institutions have also been amended in several jurisdictions.

9. For example, the Government of New Brunswick amended Section 18 of the *New Brunswick Corrections Act* in 2009 to remove any reference to "hard labour", although the provision was never enforced.

10. In 2010, the Government of Manitoba banned the use of the Restraint Chair in youth custody facilities as a result of a review that found that even with very tight restrictions on usage, their use could be subject to abuse.

11. In 2010, the Alberta Solicitor General published the Law Enforcement Framework, which outlined key strategies including:

    - All Alberta municipalities will have adequate, transparent and meaningful community input into local policing priorities and needs.

- The police public complaint process will be responsive and timely thereby enhancing oversight to Alberta police officers and police services.

12. A description of these and many other new developments in Canada is provided below in response to the specific issues raised by the Committee.

Question 2: Please provide updated information on the legal safeguards and other measures taken to ensure that all detained persons are afforded, in practice, fundamental legal safeguards from the very outset of detention, including the right of access to a lawyer and a medical doctor of their own choice, as well as the right to inform a relative, to be informed of their rights and be promptly presented to a judge. Please specify the functioning and financing of the legal aid system implemented in Canada. Is a statement of detainee rights available at all places of detention for consultation by detainees?

13. Canada understands that the Committee is interested in these safeguards as measures that may assist in preventing torture and CIDT, as well as serving other important purposes. More detailed information on these safeguards may be found in Canada's periodic reports on the *International Covenant on Civil and Political Rights*.

Legal safeguards

14. Section 9 of the Charter protects the "right not to be arbitrarily detained or imprisoned." Section 10 of the Charter guarantees rights for persons who have been arrested or detained, including the right to be informed promptly of the reasons for detention, the right to retain and instruct counsel without delay and to be informed of that right, and the right to be promptly presented to a judge for review of the validity of detention. When a youth is detained, the police have additional obligations under the *Youth Criminal Justice Act* to ensure that the youth is properly accorded the right to retain and instruct counsel. Law enforcement agents are trained on the need to respect these rights in practice. Should there be a failure to do so in a particular case, individuals can seek legal redress through the courts.

15. The scope and content of these safeguards are extensive and are constantly being refined through decisions of Canadian courts. For example, in 2009, the Supreme Court of Canada clarified that the obligation for police to inform anyone detained of their right to counsel upon arrest or detention "without delay" means that they must inform the person of their rights immediately, subject only to extenuating circumstances such as concern for the safety of officers or the public.[1] In 2010, the Court decided three cases relating to the right to retain and instruct legal counsel during the course of police questioning that may occur after the initial detention.[2] The Court held that the right to counsel affords not only a right to an initial consultation with a lawyer, but also a right to further consultations, where there

[1] *R. v. Suberu*, 2009 SCC 33, [2009] 2 S.C.R. 460, online: scc.lexum.org/en/2009/2009scc33/2009scc33.html.
[2] *R. v. Sinclair*, [2010] 2 S.C.R. 310, online: scc.lexum.org/en/2010/2010scc35/2010scc35.html. See also: *R. v. McCrimmon* [2010] 2 S.C.R. 402, online: scc.lexum.org/en/2010/2010scc36/2010scc36.html and *R. v. Willier*, 2010] 2 S.C.R. 429, online: scc.lexum.org/en/2010/2010scc37/2010scc37.html.

is a change in circumstances that suggests that the choice faced by the detainee has been significantly altered.

16. In the federal corrections context, an inmate's right to access legal counsel (for example, on arrest, on placement in administrative segregation, or if the offender is the subject of a proposed involuntary transfer or an emergency transfer) is set out in section 97 of the *Corrections and Conditional Release Regulations*. Also, the Correctional Service of Canada's *Commissioner's Directive* on "Immediate Needs and Admission Interviews" states that "the Institutional Head shall ensure that each offender is submitted to the Immediate Needs Interview within 24 hours of admission, and prior to placement in open population," and that the person completing the interview will "facilitate a telephone call between the newly admitted inmate and his or her lawyer or an individual identified on his or her authorized call list to inform them of the admission to a penitentiary" (www.csc-scc.gc.ca.).

17. Similar regulations and policies exist at the provincial and territorial levels. For example in the province of Ontario, Police Orders on arrest and detention state that all arrests shall be made in compliance with legal/constitutional/case-law requirements and, whenever reasonably practicable, with due consideration to the dignity of the person being arrested. The Orders further outline conduct, rights, and obligations of police and detained persons, including arrest conditions/techniques, right to counsel, medical assistance, foreign nationals, military members and release procedures. Under the Policing Standards Manual, the guideline on Prisoner Care and Control provides further guidance to police services on the issue of prisoner care, including accessing a lawyer and medical care.

18. In Ontario, video cameras have also been installed in cells in all Ontario Provincial Police detachments as an additional measure to ensure the highest standard of professionalism in investigating internal and external concerns pertaining to member conduct or service.

19. In Québec, a pilot project on remote appearances (e.g. by video link) that enables prompt appearance of detainees outside normal court hours was introduced in 2008.

20. In terms of other measures to promote practical implementation of these safeguards in vulnerable communities, the Government of Canada provides funding to the provinces and territories to support the provision of Aboriginal Courtwork services. The Aboriginal Courtwork Program (ACW) is designed to help ensure that Aboriginal persons in contact with the criminal justice system receive fair, equitable, culturally-sensitive treatment. Aboriginal Court workers assist Aboriginal people to understand the court process and their legal rights. They can obtain legal counsel for Aboriginal accused, deal with communication problems and provide assistance to help contact relatives, social service agencies or Aboriginal service agencies. There are approximately 190 Courtworkers who provide services in 455 communities across the country. In Manitoba, for example, there are 13 Aboriginal Court Workers who provide service in 57 Manitoba Courts.

21. In the province of Saskatchewan, all inmates, including immigration detainees, receive an orientation on admission that includes information on basic rights, including how to contact legal counsel.

Access to a medical doctor

22. Police forces across the country have policies directing that detainees will be monitored regularly to ensure their security, well-being and responsiveness. If for any reason medical assistance is required by the detainee, such assistance will be provided by an available medical practitioner.

23. In the federal corrections context, the relevant Correctional Service of Canada directive provides that within 24 hours of initial arrival at any federal correctional institution, every offender must undergo a nursing assessment. The nurse must make any necessary referrals to the appropriate licensed health care professional.

24. In the provincial and territorial corrections context, there are also directives and guidelines regarding access to medical care for inmates. For example, in the province of Newfoundland and Labrador, medical practitioners provide necessary medical services to detainees at correctional facilities. When required, detainees are also brought to a medical facility for treatment that cannot be performed in a prison. The inmate may request a doctor of his or her choice, however this would be at the inmate's own cost. It would also require the agreement of the doctor to provide the service for the continuing treatment of the inmate in a prison setting.

25. The Government of New Brunswick contracts with attending physicians in each institution. Inmates may be incarcerated in locations that are some distance from their homes, making transportation, of either inmates or physicians costly. Upon admission, inmates are seen by the staff nurse for a health assessment within 24 hours and their prescription medications are reviewed by the institution's physician. Psychiatric/psychological services and clinical programs are also routinely available.

26. In the province of Saskatchewan, there is a medical doctor on contract in each high security facility who may consult with the inmates' own doctor or a specialist, and may choose to approve an escort into the community. Inmates in low security facilities have access to their own doctor.

27. In the Northwest Territories, the right of access to a medical doctor is to the doctor that provides services at the detention centre and access to specialists' services in hospital is provided according to need.

28. With respect to immigration detainees, they are covered by the Interim Federal Health Program (IFHP) for in-Canada health care if they are not covered by a private or public health care plan. The IFHP covers expenses related to urgent and essential services. After their arrival at an Immigration Holding Center or a provincial detention facility, immigration detainees are examined by medical staff. Nurses and medical doctors are also

available if there is a need for health consultations. In case of an emergency or treatments not available in the detention facility, immigration detainees are transferred to a health care facility. More information on the IFHP can be found at: www.cic.gc.ca/english/resources/manuals/ir/ir03-eng.pdf.

Right to inform a relative

29. There is no constitutionally-protected right to contact a relative upon detention. Adult detainees are afforded the right to contact legal counsel. When a youth is arrested and detained in custody, however, the police are statutorily required, pursuant to section 26(1) of the *Youth Criminal Justice Act*, to provide notice to a parent or another appropriate adult. Police policies therefore provide for contacting a relative (as well as legal counsel) in the case of young persons. For example, RCMP policy directs that when a young person is arrested or detained, or compelled to court by summons or promise to appear, the officer-in-charge will contact the parent or guardian. Furthermore, policy directs that in addition to the young person having the right to legal counsel, he or she will also be provided the opportunity to contact a relative or friend for assistance.

30. Most provinces and territories also have a children's advocates' office. For example, Saskatchewan's Children's Advocates Office (CAO) is staffed by a team of advocates, investigators, and administrative and communications professionals. The mandate of the CAO is to ensure that the rights, interests and well-being of children and youth is respected and valued in Saskatchewan communities, legislation, policy and practice. The CAO is an independent office of the Legislative Assembly of Saskatchewan (www.legassembly.sk.ca/).

31. During their detention at an Immigration Holding Centre, immigration detainees may make free telephone local calls at any time to contact a relative, other than at times when operational needs do not allow it, such as after night curfew. They may make long distance phone calls at their own cost. If immigration detainees are detained in a provincial facility, they also have access to the phone to inform a relative of their situation.

Legal aid system

32. A strong legal aid system is one of the pillars supporting Canada's justice system. The Supreme Court of Canada has stated that section 10(b) of the Charter requires that a detained individual be told of the availability of any legal aid plan that is in place. While the administration of justice, and therefore the provision of legal aid, is a provincial constitutional responsibility, the federal, provincial and territorial governments work in close collaboration to ensure a strong and efficient justice system in Canada. Generally speaking, the Government of Canada contributes financial resources for criminal legal aid to provincial and territorial governments through either contribution agreements or a block-transfer mechanism. Provincial and territorial governments determine eligibility rules as well as the nature and scope of legal aid available to individuals in their jurisdictions.

33. For example, in the province of Ontario, Legal Aid Ontario (LAO) promotes access to justice for low-income individuals by providing legal aid services in a cost-effective and efficient manner. In September 2009, Ontario announced its largest-ever investment in LAO, an additional $150 million in funding over four years to protect the most vulnerable and help drive significant reforms in the family and criminal courts. The government set up five advisory groups to work on the details of the legal aid transformation. In January 2010, following the report of the advisory groups, the Government announced new measures to boost legal aid, including allocating additional funding for enhanced family law and poverty law services and, increasing the hourly fees for criminal, family, immigration and refugee and mental health lawyers by an average of five percent per year for the next seven years (www.legalaid.on.ca).

34. The Legal Services Board of the Government of Nunavut receives 85 percent of its funding from the Government of Nunavut and 15 percent from the Government of Canada. The Board provides legal services, education and information for the people of Nunavut and distributes funding to three legal aid regional centers throughout the territory. These centers provide assistance to all Nunavummiut within the legal system and work closely with Inuit court workers who provide education and information on a regular basis.

35. In some cases, individuals are unrepresented before the courts because they are unable or unwilling to obtain legal aid. In such instances, where counsel is deemed necessary to ensure a fair trial, the Court may order the prosecuting federal or provincial government to pay defence counsel fees.

36. Pursuant to section 25 of the *Youth Criminal Justice Act* courts or review boards presiding over a hearing, in addition to informing the young person of the right to counsel, are also obliged to help the young person get a lawyer. If the young person wishes to obtain counsel but is unable to, the court or review board shall refer the young person to a legal aid program. If there is no such program available or if the young person does not qualify for obtaining counsel through such a program, then the court or review board may, and if the young person requests must, direct counsel representation. Where such a direction is made, the Attorney General is responsible for ensuring the appointment of counsel to represent the young person.

37. In 2001, in the face of growing numbers of refugee claimants, Canada contributed $10 million in funding to six jurisdictions providing immigration and refugee legal aid services (British Columbia, Alberta, Manitoba, Québec, Ontario and Newfoundland and Labrador). The funding was increased to $11.5 million per year in 2002-2003, where it remains today.

38. In addition to the above, to help ensure that anti-terrorism measures taken after 2001 did not adversely impact the fair trial rights of the accused or unduly burden existing legal aid programs, the Government of Canada provided additional funding to provinces and territories to reimburse them for their legal aid costs in respect of the following types of cases:

- Charges laid under the *Anti-terrorism Act* or other public security and anti-terrorism legislation;
- Security Certificates issued under the IRPA;
- Proceedings under *Extradition Act* where the requesting state alleges the commission of a terrorist act.

39. More information on legal aid in Canada may be found on the federal Department of Justice website, including links to provincial and territorial legal aid services web pages, which contain detailed and user-friendly information about eligibility for legal aid in each province and territory, what type of services are provided, how and where to apply for it, and what to do if a person doesn't qualify for government-funded legal services for a criminal trial, but is concerned about his or her ability to pay for legal services, for example in a complicated case (www.canada.justice.gc.ca/eng/pi/pb-dgp/arr-ente/lap-paj.html).

Statement of detainee rights in places of detention

40. In order to ensure that detainees are effectively able to exercise their right to counsel, police forces and other agencies will provide detained persons with notification of their rights through a variety of means, both immediately upon arrest or detention and while they are detained. Those arrested and charged with a criminal offence will be provided with the standard oral criminal caution, informing them of their right to retain and instruct a lawyer without delay.

41. With respect to detention in police facilities, the national policy of the RCMP requires that notices in both official languages informing prisoners of their right to counsel be posted in conspicuous places in detention cell blocks. Further, in regions where a high percentage of prisoners are of Aboriginal origin, efforts are made to post similar notices in the Aboriginal language of the region.

42. In the Province of Ontario, under the Policing Standards Manual, the guideline on Prisoner Care and Control stipulates that a police service's policy should require the display of "right to counsel" posters. It is further required that the rights of persons being held are posted in all detachment booking areas and cell blocks. Finally, to ensure inmates are aware of their rights, duties and privileges, an Inmate Information Guide is required to be posted in the admission area and in every area of inmate accommodation. In institutions designated to provide French language services, the Guide is required to be posted in both English and French. On admission, staff provide inmates with the Guide and respond to any outstanding questions.

43. In the correctional context, offenders admitted to the federal correctional system are provided with information and counselling as required about the federal correctional system, including rights and responsibilities, the offender grievance process, the function of the Correctional Investigator's Office, and the Charter. In addition, institutions provide inmates with an Inmate Handbook, which includes information on what to do if inmates think their rights have been violated.

44. In the province of Newfoundland and Labrador, government policy is that inmates in correctional facilities be provided with an inmate handbook which explains their rights and responsibilities and provides information on correctional programs and services.

45. New Brunswick issues an offender handbook upon admission to custody which clearly outlines all offender rights and entitlements, including information about the New Brunswick *Human Rights Act*.

46. In Québec, a compendium of acts and regulations concerning defendants and offenders, which includes the *Québec Charter of Human Rights and Freedoms* as well as the *Public Protector Act*, is available for consultation in all places of detention. There is also a document entitled "Régime de vie" that contains information and rules to be followed in a Québec detention facility and enables inmates to know their rights and obligations, adapt to life in detention and establish good relations with the members of the staff, fellow inmates and other individuals with whom they have contact while incarcerated.

47. In the immigration context, when a person is arrested and detained upon entry into Canada, the individual is informed of his/her rights conferred by the *Vienna Convention on Consular Relations*, namely:

- The right to contact a representative of his/her government;
- The right to be informed promptly of the reasons for detention;
- The right to retain counsel.

48. The person is then asked to sign a Notice of Rights Conferred by the Vienna Convention and to the Right to be Represented by Counsel at an Admissibility Hearing.

49. Upon arrival at an immigration detention facility, an orientation session is held and the facility's rules (general information, information about health services) are provided. The client is also given a plain-language pamphlet that contains information related to:

- the law;
- their rights (right to be represented by counsel, right to be informed of the reason for detention, right to contact embassy, right to be assisted by interpreter);
- medical assistance; and
- detention reviews.

50. Forty-eight hours following their arrest, a detention review is held before a member of the Immigration Division of the Immigration and Refugee Board (IRB). The IRB member explains the reasons why a detention review is held and when the individual is not represented by counsel, the member informs them of their right to retain counsel.

Question 3*:* Please inform the Committee of the status of proposed new legislation, Bill C-4, and the impact thereof on the State party's compliance with the Convention, in particular

in relation to the mandatory detention of any groups of individuals, including children, who enter Canada irregularly.

51. The Government of Canada re-introduced Bill C-4, the *Preventing Human Smugglers from Abusing Canada's Immigration System Act*, on June 16, 2011, in order to combat the threat posed by human smuggling. The human smuggling provisions of Bill C-4 were subsequently merged with other proposed changes to Canada's immigration and refugee system in the *Protecting Canada's Immigration System Act* (Bill C-31) tabled in Parliament on February 16, 2012.

52. With the new bill, Canada will continue to uphold its obligations under the Convention, including the commitment not to employ torture as defined in Article 1 or to expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing the individual would be in danger of being subjected to torture in accordance with Article 3. At the same time, Canada will be able to take specific measures to combat human smuggling, including by designating certain arrivals by groups of people as "irregular arrivals." This designation will have a number of effects, including with respect to certain aspects of detention, conditions of release from detention and applications for permanent resident status by individuals who are designated under the process set out in Bill C-31.

53. Only the federal Minister of Public Safety will have the authority to designate an arrival as an irregular one; the authority to designate an irregular arrival cannot be delegated. The proposed use of detention is not a penalty or a punitive measure. The objective of the mandatory detention provisions is to provide border authorities with sufficient time to determine the identity and admissibility of designated irregular arrivals. It is intended to prevent the release of persons whose identities have not been determined and who may be inadmissible for reasons of serious criminality, security or other grounds, and may therefore present an unacceptable risk to the safety and security of Canada. Individuals will be released from detention when they are granted refugee status. In addition, individuals may be released from detention on application to the Minister where, in the Minister's opinion, exceptional circumstances warrant release.

54. Furthermore, children below the age of 16 would be exempt from mandatory detention. Instead, they would be subject to existing IRPA principles according to which a minor child shall be detained only as a measure of last resort, taking into account other applicable grounds and criteria, including the best interests of the child.

55. With respect to the obligation to prevent acts of torture, cruel, inhuman or degrading treatment or punishment, detention facilities run by the Canada Border Services Agency comply with national detention standards that include the provision of health care (including medical services), food services (including satisfying any dietary and religious requirement), personal hygiene and a dedicated area for prayers. In addition, access to interpreters, visitors and counsel, as well as unlimited access to local calls, written communication and complaint mechanisms are addressed in the national standards.

Question 4: Please specify the steps taken by the Canadian authorities to implement the recommendations of the UN human rights mechanisms, including the Committee (para.5(b)), in relation to the use of security certificates under the Immigration and Refugee Protection Act (IRPA). In particular, with regard to the amendments to the IRPA which were made following the Supreme Court's judgement in *Charkaoui v. Minister of Citizenship and Immigration et al*. (CAT/C/CAN/6, paras.16-17), please provide information on:

(a) Whether detention of persons suspected of terrorism or any other criminal offenses is imposed in framework of criminal procedures and in accordance with corresponding safeguards enshrined in the international standards. If not, please indicate to what extent the State party will consider changing its policy of using administrative detention and immigration law to detain terrorism suspects;
(b) Whether a maximum length of administrative detention under security certificates has been determined. If not, please provide detailed information on measures taken to ensure that indefinite pre-trial detention without charge or trial is prohibited;
(c) Whether the detention of foreign nationals who are not permanent residents remains mandatory. If so, does the State party consider reviewing its practice so that the detention is decided on a case-by-case basis?;
(d) The basis on which the security certificates is reviewed. Please indicate whether the information and evidence used can be accessed by the person concerned;
(e) The State party's position on concerns raised in the Universal Periodic Review (UPR) process that special advocates have very limited ability to conduct cross-examinations or to seek evidence independently (A/HRC/WG.6/4/CAN/3, para.67); and
(f) Any other measures taken or envisaged to fully comply with the aforementioned Supreme Court's judgement. Please provide updated information whether there have been any cases where an extended period of detention under this regime was judicially found to have reached a point where it amounted to cruel and inhumane treatment.

Detention pursuant to criminal or administrative processes

56. Where individuals are arrested in Canada based on reasonable grounds to believe they have committed a terrorist offence or another criminal offence, any detention to which they are subject before, during and after trial is imposed in accordance with Canada's general law on criminal procedure. Such detention is also subject to corresponding human rights safeguards enshrined in domestic and international human rights law, as discussed in more detail in response to Questions 30 and 31 below. Non-Canadian citizens in Canada may be prosecuted for terrorist offences committed inside or outside Canada, if police and prosecutors determine that it is appropriate and feasible to do so, in light of the connection to Canada and the evidence available.[3]

57. The IRPA authorizes the federal Minister of Citizenship and Immigration and the Minister of Public Safety (the Ministers) to issue a certificate where they have reasonable grounds

[3] See for example: *R. c. Namouh*, 2010 QCCQ 943 (decision on sentencing upon conviction for terrorist offences): www.jugements.qc.ca/php/decision.php?liste=58591613&doc=A3179141C37B7C2145490255DABB9A63BCE31F13EC30FD0710929A954B24DB00&page=1.

to believe a non-citizen is inadmissible to Canada on the grounds of security, violating human or international rights, serious criminality or organized criminality.[4] The goal of this process is the removal of the person in question. The power to issue the certificate rests with the Ministers personally, and cannot be delegated.[5] The certificate provisions also authorize detention or release on strict conditions incidental to the deportation proceedings.

58. As discussed in Canada's Sixth Report, the IRPA security certificate provisions were amended significantly following the 2007 decision of the Supreme Court of Canada (SCC) in *Charkaoui v. Canada (Minister of Citizenship and Immigration*).[6] As explained by Canada in its 2009 Response to the Report of the Working Group on the Universal Periodic Review,[7] with the introduction of special advocates, Canada considers that procedural aspects of its system of security certificates in immigration are consistent with its international human rights obligations.

59. Certificates are used in relatively rare and exceptional cases: only 33 certificates have been issued since 1991, and no new cases have been initiated since 2008, when five previously initiated cases were re-filed after amendments to the IRPA that introduced special advocates into the proceedings. Currently, only three certificates remain in effect, one of which is on appeal to the Federal Court of Appeal.[8]

60. In *Charkaoui*, the SCC accepted that Parliament may also use immigration law to detain and deport non-citizens who pose a threat to national security. In doing so, it emphasized the importance of the rights to liberty and security of the person that may be at stake in such proceedings, and found that procedural protections accorded to the individuals concerned must therefore be proportionate and, in many regards equivalent to, those applicable to criminal proceedings.

Maximum length of administrative detention

61. The IRPA does not specify a maximum period of detention pursuant to the Act. However, the IRPA specifies that detention is subject to regular periodic review (approximately every six months) and will be ended where it is no longer justified in the individual case in question.[9] In *Charkaoui*, the SCC held that detention or release on strict conditions pending deportation pursuant to the security certificate provisions does not violate the principles of fundamental justice or the Charter's protection against cruel and unusual treatment or punishment, even where that detention or release on conditions might continue for an extended period of time. The SCC was satisfied that, properly interpreted, the IRPA contains a robust process for periodic judicial review of detention or release on strict conditions, which permitted the courts to assess the relevant context and circumstances of

[4] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, section 77(1) (IRPA).
[5] IRPA, section 6(3).
[6] [2007] 1 S.C.R. 350, online: scc.lexum.org/en/2007/2007scc9/2007scc9.html.
[7] A/HRC/11/17/Add.1 at paragraph 41.
[8] *Harkat (Re)*, 2010 FC 1242, on appeal to the Federal Court of Appeal, online: decisions.fct-cf.gc.ca/en/2010/2010fc1242/2010fc1242.html.
[9] See for example: *Almrei (Re)*, 2009 FC 1263, online: decisions.fct-cf.gc.ca/en/2009/2009fc1263/2009fc1263.html.

the individual case, including: the reasons for detention; the length of detention; the reasons for delay in deportation; the anticipated future length of detention; and the availability of alternatives to detention.

Detention of foreign nationals who are not permanent residents

62. As discussed at paragraph 82 of Canada's Sixth Report, the Bill C-3 amendments to IRPA eliminated mandatory detention of foreign nationals named in security certificates. Foreign nationals now have the same detention review rights as permanent residents.

Review of security certificates

63. Security certificates are used where the Ministers determine that a permanent resident or foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality. A person who is subject to a security certificate has access to all non-confidential information on which issuance of the security certificate is based, as well as to summaries of confidential information.

64. In relation to information that is not disclosed to the subject because of a valid national security objection, which must be confirmed by the Federal Court, the subject's right to challenge that information is undertaken by the special advocates whom the subject selects, whose powers are enumerated in the IRPA and who protect the subject's interests with regard to non-disclosed information. Where information relating to a targeted individual was obtained by the Canadian Security Intelligence Service (CSIS), there is an obligation on CSIS to preserve the records and on the government to disclose all relevant information to the Court.[10]

65. The Federal Court is responsible for determining whether the certificate has been issued on a reasonable basis by the Ministers. The Court reviews the decision in relation to all the information presented to it. This includes "reliable and appropriate" information presented by the Ministers. As previously noted, "reliable and appropriate information" does not include "information that is believed on reasonable grounds to have been obtained as a result of the use of torture within the meaning of section 269.1 of the *Criminal Code*, or cruel, inhuman or degrading treatment or punishment within the meaning of the Convention" (section 83(1.1)).

66. If, after providing the subject of the certificate an opportunity to be heard, the Court determines the certificate to be reasonable, it becomes a final removal order.[11] The Bill C-3 amendments to IRPA introduced a right to appeal the Federal Court's final decisions on detention reviews or reasonableness to the Federal Court of Appeal.[12] Like appeals from judicial reviews in other immigration matters, the right to appeal depends on the Federal

[10] *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38, [2008] 2 S.C.R. 326, online: scc.lexum.org/en/2008/2008scc38/2008scc38.html.
[11] IRPA, sections 77-80 and section 83(1).
[12] IRPA, sections 79 and 82.3.

Court stating a certified question of general importance for appeal. Further appeals to the SCC are possible if leave is granted.

Special advocates

67. As explained at paragraph 81 of Canada's Sixth Report, special advocates are security-cleared lawyers who are independent from both government and the courts. Importantly, special advocates are authorized to participate and cross-examine witnesses and make oral and written submissions to the Court during closed hearings, in which the named person does not participate. Special advocates may challenge the relevance, reliability and sufficiency of any information that the court determines must remain confidential because disclosure would be injurious to national security or the safety of persons. In this way, special advocates act as a substantial substitute for full disclosure to the subject of the certificate. With the judge's authorization, they can exercise any other powers that are necessary to protect the interests of the individual named in the certificate. In *Almrei*,[13] for example, the judge noted the effectiveness of cross-examination by the special advocates of government officials.

Compliance with the* Charkaoui *decision

68. Canada is of the view that it has taken all measures necessary to comply with the *Charkaoui* decision.

69. There have been no cases where detention under the security certificate regime was found to have amounted to cruel or inhuman treatment.[14]

Question 5: In light of the State party's acceptance of the recommendation made in the course of the UPR to prevent and otherwise combat violence against women, in particular aboriginal women, please provide detailed information on:

(a) Measures taken to ensure that reports of violence against women are independently, promptly and thoroughly investigated, and that perpetrators are prosecuted and appropriately punished;
(b) The outcomes of the investigation into the cases of aboriginal women who have gone missing or been murdered. Please indicate whether the State party has carried out an analysis of those cases to address root causes and has taken the necessary steps to remedy the deficiencies in the system (A/HRC/11/17, para.33; CEDAW/C/CAN/CO/7, para.32).

[13] *Almrei (Re)*, 2009 FC 1263, at paragraph 489. Online: decisions.fct-cf.gc.ca/en/2009/2009fc1263/2009fc1263.html.
[14] In *Canada (Citizenship and Immigration) v. Li*, 2009 FCA 85, online: decisions.fca-caf.gc.ca/en/2009/2009fca85/2009fca85.html, the Federal Court of Appeal held that despite lengthy detention of the individual in question over the course of various immigration-related proceedings, including a Pre-Removal Risk Assessment, the Immigration and Refugee Board member had erred in concluding prematurely that the detention period would be indefinite and therefore contrary to either section 7 or 12 of the Charter.

(c) Data, including statistical data, on complaints, investigations, prosecutions, convictions and penalties imposed for acts of violence against women, in particular women from religious and ethnic minorities, as well as on any compensation provided to victims.

70. All governments in Canada are committed to ensuring that all women in Canada, including Aboriginal women, are safe and secure regardless of the community in which they live. The Government of Canada and the provincial and territorial governments – which are primarily responsible for policing – continue to work with each other and with Aboriginal peoples and other stakeholders to develop more effective and appropriate solutions and to mount collaborative responses to this pressing matter.

71. Canada has provided extensive information about its efforts in this regard to the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Elimination of Racial Discrimination (CERD). Canada refers the Committee to:

- Supplemental information provided to the CEDAW by Canada in November 2010; (www.pch.gc.ca/pgm/pdp-hrp/docs/cedaw-cedef7-rspns/suppl-info-suppl-eng.pdf);
- Canada's Interim Report to the CEDAW in follow-up to the review of Canada's Sixth and Seventh Reports (February 2010) (see in particular paragraphs 37-81) (www.pch.gc.ca/pgm/pdp-hrp/docs/cedaw-cedef7/cedaw-cedef-eng.pdf);
- Canada's Sixth and Seventh Periodic Reports to the CEDAW (see in particular paragraphs 61-75) (www.pch.gc.ca/pgm/pdp-hrp/docs/cedaw-cedef7/index-eng.cfm); and
- Canada's Nineteenth and Twentieth Periodic Reports to the CERD (paragraphs 44-59) (www.pch.gc.ca/pgm/pdp-hrp/docs/cerd/rpprts_19_20/index-eng.cfm).

72. Further information is provided below, in response to the Committee's specific questions.

Investigation, prosecution and punishment of violence against women

73. Law enforcement officials in Canada act with due diligence and independence in response to all reports of violence against women. Their policies and training on responding to such reports are constantly being updated to take account of the latest social science research and legal developments in this area.[15] The following are a few examples of measures being undertaken across the country.

74. The RCMP has a national policy on violence in relationships, which requires swift police intervention to protect victims. All complaints of violence in relationships must be investigated and documented. The onus is on the police to lay or recommend charges where there are reasonable grounds to believe that an offence has been committed, removing responsibility from victims who may feel threatened or intimated by their aggressor. Supervisors are directed in policy to ensure all investigative files are reviewed

[15] The UN Special Rapporteur on Violence against Women recently commended Canada for its efforts in this regard. See paragraphs 41-63, of the SR's 2010 Annual Report, Addendum, UN Doc. A/HRC/14/22/Add.1, online: www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.22.Add1.pdf
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after the initial 24 hours and then again after seven days and every 14 days thereafter. All persons reported missing will be considered at risk until information to the contrary is obtained and confirmed by investigators. All investigations of missing persons will be thoroughly investigated regardless of the person's gender, race, or lifestyle. There is no waiting period for reporting a missing person. Under no circumstances shall a reporting party be advised by police that they must wait a specific period of time before filing a complaint of a missing person.

75. In Saskatchewan, complaints of violence against any person are received and investigated by the police agency of jurisdiction. Offences of violence against women are prioritized and both government and non-government agencies operate to support women who are the victims of violence. Prosecutions and punishments for perpetrators are decided in independent and publicly accessible courts to ensure that justice is not only achieved but also conducted in full public view.

Outcomes of investigations into the cases of Aboriginal women who have gone missing or been murdered

76. The Government of Canada and provincial and territorial governments are working in partnership with Aboriginal people, and other stakeholders to develop more effective and appropriate solutions for responding to cases of missing and murdered Aboriginal women, and to mount collaborative responses to this pressing matter, such as improved police investigations. The following highlights just a few examples of initiatives that are being undertaken in this regard. More detailed information may be found in the reports to the CEDAW and CERD Committees noted above.

77. In October 2010, the Government of Canada announced its strategy to invest a further $10 million over two years to improve community safety and to ensure that the justice system and law enforcement agencies can better respond to cases of missing and murdered Aboriginal women. Several concrete steps were announced, including:

- a new National Police Support Centre for Missing Persons to help police forces across Canada by providing coordination and specialized support in missing persons investigations;
- a compendium of promising practices to help communities, law enforcement and justice partners in future work;
- support for the development of school and community pilot projects aimed at reducing vulnerability to violence among young Aboriginal women;
- support for the development and adaptation of victim services so that they are culturally appropriate for Aboriginal people;
- work with Aboriginal communities to develop community safety plans; and
- support for the development of public awareness materials to help end inter-generational cycles of violence and abuse affecting Aboriginal people.

78. In January 2012, the Missing Women Working Group, composed of officials from federal, provincial and territorial governments, released its report and recommendations on "Issues Related to the High Number of Murdered and Missing Women in Canada." The report discusses the Group's findings on root causes, including the findings of research suggesting that serial sexual predators consider three main components when targeting victims: availability, vulnerability and desirability. While desirability is generally determined by the offender's personal preferences, both situational factors (e.g. working in isolated areas, poverty) and marginalizing factors (e.g. characteristics that increase vulnerability, such as age, gender, perceived race, ethnicity, addictions and mental illness) affect a woman's vulnerability to serial sexual assault and murder. The report also discusses best practices in detecting potential serial murderers, as well as strategies to identify and protect marginalized persons from becoming victims. Responsible ministers have announced their support for the report's recommendations noting that some have already been implemented. Ministers have also asked the Group to bring forward an implementation plan, and reiterated their commitment to continue to co-ordinate their efforts on this important issue. In December 2011, the federal Parliamentary Standing Committee on the Status of Women released its report on "Ending Violence against Aboriginal Women and Girls: Empowerment – A New Beginning," which also explores root causes of the violence against Aboriginal women and proposing new approaches for the future.

79. At the operational level, the Royal Canadian Mounted Police (RCMP) has dedicated personnel and resources to investigate and analyse files regarding missing and murdered women. As a result of the RCMP's work, several cases have been resolved or advanced. For example, in mid-October 2011, a 21-year-old man from Prince George, British Columbia was charged with four counts of murder of women, three of whom were Aboriginal. In December 2011, the RCMP and the Assembly of First Nations signed a joint agreement that will see the two organizations working collaboratively on issues related to missing and murdered Aboriginal persons. Further, RCMP National Aboriginal Policing Services have a member dedicated to liaise with the Native Women's Association of Canada (NWAC). This collaborative partnership between the RCMP and the NWAC has led to the development of a community education tool kit, "Navigating the Missing Persons Process," to assist friends and family of missing persons.

80. The RCMP also leads several joint police task forces which are dedicated to actively reviewing files of missing women, including Aboriginal women, in Winnipeg, Manitoba, near Prince George, British Columbia and in Edmonton, Alberta. In 2001, the RCMP and the Vancouver Police Department established a project to investigate the cases of 68 missing or murdered women from the downtown eastside of Vancouver and surrounding areas. Thirty-three have been connected to convicted serial killer Robert Pickton. The project continues its commitment to the investigation of the cases of the remaining women and will continue until all possible avenues of investigation have been exhausted.

81. In Saskatchewan, a province with a relatively large Aboriginal population, over 1,000 Aboriginal women were reported missing in each of the reporting years from

January 1, 2008 to December 31, 2011. Of these, only one remains missing, and, according to the ongoing investigation, is believed to be the victim of foul play. From the previous period, there are four cases of Aboriginal women (three women, one child) that remain missing. Saskatchewan has designated investigators to continue to work collaboratively on these files of missing and deceased persons.

82. There have been 11 murders of Aboriginal women in Saskatchewan during the period from January 1, 2008 to December 31, 2011. In all 11 cases, charges of murder or manslaughter have been laid. There are still five cases of murdered Aboriginal women from previous years that have yet to result in a criminal charge.

83. In January 2006, Saskatchewan created a Provincial Partnership Committee on Missing Persons (PPCMP) that is led by government officials and has members from Aboriginal, police and non-government agencies. The PPCMP collaborates to better understand the issues around missing persons, prevention and response, and works with families of missing persons, investigators and responders to implement recommendations from the PPCMP reports of 2007, 2009 and 2011.

84. Nearly all of the over 20 areas of recommendation made by the PPCMP in the 2007 report have been acted upon, as well as the recommendations coming from the 2009 report, and the PPCMP is working on implementing the recommendations from the 2011 report of the Western Regional Forum on Supporting Families of Missing Persons. The Missing Person Protocol drafted in 2011 sets out standards for the police to ensure that all missing person cases are responded to in a consistent manner and all avenues of investigation are contemplated. Full implementation is expected in 2012.

85. In September 2010, British Columbia established the Missing Women Commission of Inquiry, out of the recognition that there are lessons to be learned from the investigation and circumstances surrounding the disappearance of women from Vancouver's Downtown Eastside between 1997 and 2002. The purpose of the inquiry is for the Commissioner to establish facts and determine potential causes of events through an inquisitorial rather than an adversarial process and then make recommendations to government based on the findings. The Inquiry has not yet concluded. The Commissioner's report to the Attorney General of British Columbia is due June 30, 2012.[16]

Complaints and investigations

86. Due to shared responsibilities for policing and prosecutorial responsibilities in Canada, the primary source for the type of data requested is statistical studies of self-reported victimization, and police-reported crime.

87. According to the General Social Survey (GSS) on Victimization in 2009, the most recent year for which such self-reported statistics are available, females in the provinces aged

[16] For more information on the Commission and its activities, see: www.missingwomeninquiry.ca/.

15 years or older reported 1.6 million incidents of violent victimization.[17] The rate of self-reported violent victimization in the provinces was lower for females than for males (112 incidents per 1,000 females compared to 125 incidents per 1,000 males). Data on self-reported violent victimization in the territories (Northwest Territories, Nunavut and Yukon), as collected by the GSS, show that rates of violent victimization were higher in the territories than in the provinces. However, in contrast to provincial findings, violent victimization rates in the territories were similar among males and females. Females in the provinces were most likely to report being a victim of physical assault, followed by sexual assault and robbery. Overall, females reported similar rates of physical assault and sexual assault in 2009 as reported in 1999. Rates of sexual assault, which were at 33 and 34 incidents per 1,000 population in 1999 and 2009 respectively, were approximately half those of physical assault. In total, only one-third of female victims in the provinces reported the incident to police.

88. In 2009, approximately 600,600 females aged 15 and over in the provinces reported experiencing spousal violence in the five years prior to the survey.[18] This estimate is similar to what was found in 2004 and 1999. In the territories, overall rates of spousal violence were higher, but similar to the provinces, females were more likely than males to fear for their lives as a result of the spousal violence. Female victims of spousal violence in the provinces were also more likely than males to report a physical injury, and to report chronic violence defined as 11 or more incidents of violence.

89. In 2009, 13 percent of all Aboriginal women aged 15 or older living in the Canadian provinces reported being the victim of violence in the previous 12 months. Overall, the rate of self-reported violent victimization among Aboriginal women was almost three times higher than the rate of violent victimization reported by non-Aboriginal women.

90. With respect to data on crime reported to the police, female victims accounted for half of all victims of police-reported violent crime in 2009. The most common offences perpetrated against females, accounting for 46 percent of all incidents with a female victim that were reported to police, were common assaults, including pushing, slapping, punching and face-to-face verbal threats. According to police-reported data from 2009, females were the most common victims of sexual assault and "other sexual violations" (representing 87 percent and 80 percent of incidents, respectively).

91. According to police, in 2009, 76 percent of spousal violence incidents against females resulted in charges being laid. Sixteen percent did not result in charges, for various reasons, including: the complainant indicated a strong preference not to have charges laid; there was a discretionary decision not to lay charges; or the accused or victim died. Finally, eight percent of incidents were not cleared by police, for example because there was not enough information available about the accused to issue a warrant for arrest.

[17] Data were collected on three violent crimes (sexual assault, robbery and assault).
[18] "Spousal violence" in this context includes violence between persons who were legally married, common-law, separated, divorced, or who had contact with an ex-spouse or partner in the five years preceding the study.

Prosecutions, convictions and sentencing

92. Prosecutions, convictions, and sentencing data are collected through the Integrated Criminal Court Survey (ICCS). This survey collects information on criminal charges that are processed by the adult criminal courts and youth courts in Canada. However, the survey does not collect data on victims (e.g. gender or ethnicity), nor on the relationship between the victim and accused. As such, Canada is not in a position to provide the data requested.

93. The following sources contain further information on statistical trends in violence against women:

- Statistics Canada - *Women and the criminal justice system* (released April 2011, covering up to 2009) (www.statcan.gc.ca/pub/89-503-x/2010001/article/11416-eng.htm);
- Statistics Canada - *Family Violence in Canada: A Statistical Profile* (released January 2011, covering up to 2009) (www.statcan.gc.ca/pub/85-224-x/85-224-x2010000-eng.pdf);
- 2007 CEDAW periodic report, paragraphs 24-29 (covering April 1999 - March 2006) (www.pch.gc.ca/pgm/pdp-hrp/docs/cedaw-cedef7/102-eng.cfm);
- Statistics Canada – *Shelters for abused women in Canada*, 2010, (www.statcan.gc.ca/pub/85-002-x/2011001/article/11495-eng.htm);
- Statistics Canada – *Violent victimization of Aboriginal women in the Canadian provinces,* 2009 – (www.statcan.gc.ca/pub/85-002-x/2011001/article/11439-eng.htm).

Compensation provided to victims

94. Provincial and territorial governments have primary responsibility for the delivery of victim services, including the provision of criminal injuries compensation to victims of crime, where such programs exist. Most Canadian provinces have some form of criminal injuries compensation. Links to and descriptions of the provincial Criminal Injuries Compensation Programs in Canada can be found at: canada.justice.gc.ca/eng/pi/pcvi-cpcv/prov.html. In addition, victim services are also delivered by non-governmental organizations and the federal government. The Federal Victim Strategy is a wide-ranging government initiative that aims to increase the voice of the victim of crime in the criminal justice system and includes a multi-million dollar Victims Fund available to local, regional and national non-governmental organizations, provincial and territorial governments and individual victims of crime.

95. To give some examples of criminal injuries programs, in Manitoba, under the authority of *The Victims' Bill of Rights*, the Compensation for Victims of Crime Program provides compensation for personal injury or death resulting from certain crimes occurring within Manitoba. A claim may be filed by a person who is an innocent victim of a criminal incident or a surviving dependant of a person killed as a result of a crime. Compensation can include income replacement, funeral expenses, training and rehabilitation expenses, medical/dental costs and grief counselling for survivors of homicide victims. If an injury is

suffered as a result of a criminal act in Manitoba, they could apply to the Compensation for Victims of Crime Program for medical expenses, loss of time from work, etc., but they would not receive any compensation for pain and suffering. An individual would have to file a civil suit against the offender if they wanted to receive financial compensation for pain and suffering.

96. In Alberta, the Victims of Crime Financial Benefits program provides a financial benefit to eligible victims of violent crime in Alberta. Injury benefits are based on the victim's verified injuries. Any costs of losses related to the crime are not covered by this program. A victim may be eligible for benefits if they were a victim of one of the offences set out in the *Victims of Crime Regulation*, which includes the crime of torture. A person may also be eligible for a benefit if they witnessed a crime that resulted in the death of a person they had a strong emotional relationship with. The Financial Benefits program also has a death benefit, which pays funerals costs of the victim who dies as a result of a violent crime in Alberta. This amount may be claimed by the person that paid the costs (www.canlii.org/en/ab/laws/regu/alta-reg-63-2004/latest/alta-reg-63-2004.html).

Question 6: Please provide detailed information on measures taken to enact legislation specifically addressing allegedly routine domestic violence, making it a criminal offense and ensuring that victims of domestic violence have access to immediate means of redress and protection and that perpetrators are prosecuted and appropriately punished. Please identify factors impeding such legislation. Also, please provide statistical data on complaints, investigations, prosecutions, convictions and penalties imposed for acts of domestic violence, disaggregated by province, ethnicity, and age.

97. The *Criminal Code* provides a robust and broad-based response to all forms of violence against women, including violence that occurs in the context of domestic abuse (laws.justice.gc.ca/en/C-46/). Measures include prohibitions on specific forms of violence such as assault, sexual assault and criminal harassment. Canada's approach to domestic violence recognizes the seriousness of spousal abuse and the fact that an assault against a spouse is just as deserving of state attention and intervention as an assault against a stranger. As a result, police and prosecution policies exist in all Canadian jurisdictions to ensure that spousal violence offences are treated as seriously as stranger violence. Canada also recognizes that the impacts of domestic violence on the victim can be more harmful than stranger violence. Spousal abuse and abuse of a position of trust/authority are therefore aggravating factors in sentencing under the *Criminal Code*.

98. Canadian responses to domestic violence are multidimensional, ensuring that the criminal justice system is able to respond to violence against women at all stages. These measures include not only those outlined above, but also crime prevention programs, preventative measures (e.g. restraining orders), procedural protections (e.g. the use of testimonial aids), civil domestic violence legislation, dedicated domestic violence courts, victim services, shelters, services for children exposed to domestic violence and offender treatment programs. Further details can be found in Canada's Sixth and Seventh Periodic Reports to the CEDAW, at paragraphs 61-68.

99. To give just a few examples, the Government of British Columbia has recently updated British Columbia's *Family Law Act* to include new protection orders to strengthen the court's ability to address domestic violence and to require all family dispute resolution practitioners to screen for violence in order to determine what processes are appropriate.

100. The Government of Nunavut has introduced legislation specifically focused on violence in the family. The *Family Abuse Intervention Act* (FAIA) created Community Justice Outreach Worker (CJOW) positions in each community in Nunavut. CJOWs help individuals obtain emergency protection orders, community intervention orders, assistance orders and/or compensation orders when necessary. The FAIA allows the abused individual to stay in the familial dwelling and removes the alleged abuser in order to prevent further victimization. This is one example from the nine jurisdictions that have specific civil family or domestic violence legislation.

Statistical data – self-reported and police-reported incidents

101. In 2009, six percent of people living in one of Canada's ten provinces with a current or former spouse reported being physically or sexually victimized by their spouse in the five years preceding the survey. The rate was similar in 2004, when the survey was last conducted. Overall, the seriousness of violence experienced in spousal incidents remained stable between 2004 and 2009. Similar to 2004, 22 percent of spousal violence victims reported the most serious forms of spousal violence, such as being sexually assaulted, beaten, choked or threatened with a gun or knife.

102. The proportion of Canadians who reported spousal violence was similar across the majority of provinces. Younger Canadians were more likely to report being a victim of spousal violence than were older Canadians. Those aged 25 to 34 years old were three times more likely than those aged 45 and older to state that they had been physically or sexually assaulted by their spouse in the previous 12 months. The proportion of Aboriginal females living in the ten provinces who reported spousal violence was double that of non-Aboriginal females. Approximately 15 percent of Aboriginal females reported spousal violence by a current or former marital or common-law partner in the past five years, compared to six percent of non-Aboriginal females.

103. With respect to police-reported incidents, spousal violence represented about 12 percent of all police-reported violent crime in Canada in 2007. Rates of police-reported incidents of spousal violence decreased by 15 percent between 1998 and 2007. The rate of violence against female victims fell 17 percent in that time frame. For female victims, the rate of spousal violence was highest among women aged 25 to 34, while for male victims, the rate was highest among those aged 35 to 44. The police-reported rate of spousal violence was lowest among adults aged 55 or older for both sexes.[19]

[19] The statistics cited in this response were drawn from two reports by Statistics Canada: *Family Violence in Canada: A Statistical Profile* (2011), see: www.statcan.gc.ca/pub/85-224-x/85-224-x2010000-eng.htm; and *Women and the Criminal Justice System* (2011), see: www.statcan.gc.ca/pub/89-503-x/2010001/article/11416-eng.htm.

Statistical data – restraining or protective orders, and charges laid

104. In 2009, one in ten victims of spousal violence (10 percent) stated that they obtained a restraining or protective order against their abuser. Females were three times more likely than males to state that they had obtained a restraining order against their spouse or ex-spouse (15 percent versus five percent). Of those who had obtained a restraining or protective order, nearly one-third of victims (30 percent) reported that their abuser violated its terms. Over two-thirds (67 percent) of these victims stated that they reported this violation to the police.

Statistical data –prosecutions, convictions and penalties

105. As noted above, the Integrated Criminal Court Survey, which tracks cases as they move through the courts, does not collect data on victims (e.g., gender or ethnicity), nor on the relationship between the victim and accused. As such, Canada is not in a position to provide the data requested.

Question 7: Please provide information on steps taken to further increase the protection and assistance provided to victims of trafficking, including prevention measures, social reintegration, access to health care and psychological assistance, in a culturally appropriate and coordinated manner, including by enhancing cooperation with non-governmental organizations and the countries of origin. Please provide statistical data on complaints, investigations, prosecutions and convictions for acts of trafficking.

106. Canada has shown a consistent commitment to responding to trafficking in persons through developing and supporting numerous anti-trafficking initiatives. Canada's ongoing efforts to combat human trafficking both domestically and internationally are guided by international standards. Moving forward, the Government of Canada will also be launching a National Action Plan on Trafficking in Persons. An Interdepartmental Working Group on Trafficking in Persons, consisting of 18 federal departments and agencies, coordinates Canada's federal efforts to address this complex issue. For an overview of recent federal anti-trafficking efforts, please see: canada.justice.gc.ca/eng/fs-sv/tp/2011/over-surv.html.

107. Social service delivery for victims of trafficking is primarily the responsibility of provincial and territorial governments. Numerous programs and services are available to victims of crime in Canada, including victims of trafficking. Social services such as emergency financial assistance, including food and housing allowances, are administered at the provincial and territorial levels and are available to those in need.

108. With respect to the protection of foreign national victims of trafficking, specific measures are also in place to ensure that eligible victims are able to secure temporary legal immigration status in Canada. Upon being identified as a possible victim without immigration status, a foreign national is issued with a Temporary Resident Permit (TRP) for up to 180 days (www.cic.gc.ca/english/resources/manuals/ip/ip01-eng.pdf). The objective is to provide victims with time to consider their desired next steps. This

reflection period helps victims of trafficking escape the influence of their traffickers, recover from their ordeal, and evaluate their immigration options. Victims of trafficking are not required to testify against their trafficker in order to gain temporary or permanent immigration status.

109. Permit holders have access to Canada's Interim Federal Health Program (IFHP), thus ensuring that they receive the immediate medical attention required. The IFHP provides temporary coverage of the cost of urgent and essential health care services if permit holders are not covered by a private or public health care plan. A victim may also apply for a work permit, if he or she does not have one already. Both the initial TRP and the work permit can be obtained free of charge. Long-term TRPs may also be issued for up to three years in cases where circumstances warrant.

110. TRP holders may qualify to remain in Canada under the permit holder class after three or five years depending on individual circumstances.

111. From January 2008 to December 2011, a total of 67 foreign national victims of trafficking received one or more TRPs. Of these, 48 were female, 16 were male and three were minor dependents of adult victims. The majority of the victims suffered labour exploitation. Key source countries included Thailand, Moldova and the Philippines.[20]

112. Other in-Canada immigration avenues include applying for permanent residence on humanitarian and compassionate grounds, or making a claim for refugee protection.

113. For additional information on Canada's approach to trafficking in persons, the Committee may also wish to consult the following documents provided by Canada to UN bodies with mandates more directly related to this issue:

- Canada's December 2011 reply to the UN Special Rapporteur on Trafficking in Persons, especially Women and Children;
- Canada's reply to the United Nations Office on Drugs and Crime in respect of the forthcoming United Nations Global Report on Trafficking in Persons, as mandated by UNGA Resolution 64/293 as well as CCPCJ Resolution 20/3; and
- Canada's Sixth and Seventh Periodic Reports to the CEDAW.[21]

Data on complaints, investigations, prosecutions and convictions for acts of trafficking

114. As of April 2012, there have been 25 convictions for trafficking in persons offences, which were enacted in 2005. This is in addition to the numerous convictions for trafficking-related conduct under other *Criminal Code* offences.

[20] It is important to note that this data does not include the number of trafficking victims who are Canadian citizens or permanent residents. Furthermore, data limitations do not permit a breakdown of the number of victims of trafficking who may have chosen to pursue other immigration options, such as applying for refugee protection or permanent residence for humanitarian and compassionate reasons. The numbers may be subject to change, as final data for 2011 is still being gathered.

[21] Paragraphs 79-84, available at: www.pch.gc.ca/pgm/pdp-hrp/docs/cedaw-cedef7/index-eng.cfm.

115. In addition, according to Royal Canadian Mounted Police data, as of April 2012, approximately 56 human trafficking cases, involving 85 accused, remain before the courts where the accused have been charged with specific human trafficking offences as well as other charges. In these cases, a total of 136 victims were identified and 26 were under 18 years of age at the time of the offence.

116. It is recognized that these statistics likely do not represent all trafficking cases being processed through the criminal justice system. This is due to a variety of factors including the challenge of identifying data reported by the police and by other sectors of the criminal justice system (e.g., courts) as "trafficking" cases. For example, charges and/or convictions in human trafficking cases may be laid and/or prosecuted under trafficking-specific or other non-trafficking-specific offences, such as kidnapping or aggravated sexual assault. In addition, the number and type(s) of charges laid and reported by police may subsequently change (either at the pre-court stage or during the court process) by the time of conviction.

117. Recognizing that there are a number of challenges in developing meaningful statistics on trafficking in persons, in June 2010, the Canadian Centre for Justice Statistics at Statistics Canada examined a range of approaches to the collection of data on human trafficking that have been developed and initiated in a number of European countries and in the United States. The report, *Towards the Development of a National Data Collection Framework to Measure Trafficking in Persons*, briefly outlines some examples of these international activities which may provide insights and offer lessons learned for Canada (www.statcan.gc.ca/pub/85-561-m/2010021/part-partie1-eng.htm).

Question 8: Please provide updated information and statistical data, disaggregated by crime, geographical location, ethnicity, age and gender, on complaints relating to torture, attempted torture and complicity or participation in torture and acts amounting to cruel, inhuman or degrading treatment, which have been filed during the reporting period, as well as related investigations, prosecutions, convictions and penal and disciplinary sentences.

118. Consistent with Canada's commitment to preventing torture, including through the many measures outlined in this response and in previous periodic reports, it is rare to see criminal prosecutions involving the torture offence set out in section 269.1 of the *Criminal Code*. Over the three-year period from 2007-2008 to 2009-2010, the Canadian Centre for Justice Statistics' Integrated Criminal Court Survey found less than five cases in which torture was listed as an offence charged in the case. There are no reported cases involving convictions or acquittals under this section for the period under review, meaning that these cases were resolved by other means such as the court's acceptance of a special plea or a withdrawal of the charge.

119. As noted above, data on ethnicity, age or gender of the victim are not collected by the Integrated Criminal Court Survey.

120. Canada is not aware of any disciplinary investigations into allegations of torture or CIDT committed by law enforcement agents. There have been disciplinary investigations into alleged excessive use of force by law enforcement agents, which while it does not amount to torture or CIDT, is taken very seriously by police forces. See the response to Question 29(e) below for more information in this regard.

121. With respect to complaints of torture or CIDT in federal penitentiaries, Canada's Correctional Investigator is mandated by Part III of the *Corrections and Conditional Release Act* (CCRA) as an Ombudsman for federal offenders. The primary function of the Office is to investigate and bring resolution to individual offender complaints. The Office also has a responsibility to review and make recommendations on the Correctional Service's policies and procedures associated with the areas of individual complaints to ensure that systemic areas of concern are identified and appropriately addressed.

122. The Office of the Correctional Investigator (OCI) tables an annual report in Parliament, which outlines specific issues of concern and provides information relating to the type and number of complaints received by the Office (www.oci-bec.gc.ca/rpt/annrpt/annrpt20102011-eng.aspx). In 2010-2011, the Office's team of investigators spent 341 days in federal institutions, interviewed more than 2,100 offenders, received over 5,700 complaints and inquiries from federal offenders and conducted 844 formal investigations. For 2010-2011, the Office received 741 complaints related to health care, 469 complaints related to the conditions of confinement, 346 complaints related to administrative segregation, 188 complaints related to correctional programming and 112 complaints related to mental health care. There were no specific complaints related to torture or CIDT.

123. In Newfoundland and Labrador, there were two incidents of mistreatment of inmates during the reporting period. One involved a delay in referral for medical treatment, and the second involved an assault by a correctional officer on an inmate. In terms of the delay, the duty to provide timely medical attention was reaffirmed with all employees. In terms of the assault, the matter was referred to the police and the staff person was prosecuted and convicted. Use of force training is ongoing.

124. In Québec, complaints concerning allegations of physical violence (physical abuse) by correctional staff are systematically sent to the Québec Ombudsman and analyzed by a Correctional Services representative from the Québec Department of Public Security. A written response is systematically provided to the complainant and, if the complaint is well-founded, corrective action is taken. Between 2007-2008 and 2010-2011, of all the complaints filed with the Québec Ombudsman concerning the Correctional Services and considered well-founded, six related to issues of physical violence. The Québec Ombudsman receives, on average, 428 well-founded complaints per year from individuals incarcerated in the detention facilities of the Québec Correctional Services.

ARTICLE 3

Question 9*:* In light of the Committee's previous recommendations (para.5(a)) and Follow-up Letter of 29 April 2009, please provide updated information on steps taken to unconditionally respect the absolute nature of article 3 of the Convention in all circumstances and to fully incorporate the provisions of article 3 into the State party's domestic law. How does Canada comply with its obligation under article 3 of the Convention, while its law provides legislative exceptions to the principle of non-refoulement (A/HRC/11/17/Add.1, para.42)?

125. The Government of Canada takes its obligations under Article 3 of the Convention very seriously. These obligations have been incorporated into national law, including for the purposes of determining who is a "person in need of protection" under the IRPA (see sections 97 and 115). Non-Canadian citizens who are identified as facing a risk of torture, a risk to life or a risk of cruel or unusual treatment or punishment can be recognized as persons in need of protection and, generally speaking, can apply to remain in Canada permanently. Canada has not removed anyone in a case where domestic processes had concluded that the individual faced a substantial risk of torture upon removal.

126. Most foreign nationals who are subject to a removal order (including failed refugee claimants, or those who have been found inadmissible on grounds of security, human or international rights violations, serious criminality or organized criminality) can apply for a Pre-Removal Risk Assessment (PRRA) (www.cic.gc.ca/english/refugees/inside/prra.asp). Subject to the circumstances of individual cases, the officer will consider:

- risk of persecution as defined in the 1951 *Convention Relating to the Status of Refugees*;
- risk of torture; and
- risk to the person's life or the risk that he or she may be subjected to cruel and unusual treatment or punishment.

127. Most persons whose PRRA applications are approved receive protected person status and may apply for permanent residence. However, for applicants who are serious criminals or security threats, an approved application results in a reviewable stay of removal. Rejected PRRA applicants may seek judicial review of the officer's decision.

128. Bill C-31, referred to above in response to Question 3, proposes to introduce a number of changes to Canada's refugee system, including with respect to the threshold for a finding of inadmissibility by reason of serious criminality and the streamlining of the PRRA process (including how soon a person can apply for a PRRA after receiving a negative refugee protection decision). However, the new legislation will continue to ensure, consistent with Article 3 of the Convention, that anyone removed from Canada under the IRPA does not face a substantial risk of torture or CIDT upon removal.

129. With respect to the extradition context, after a judge has determined that the evidence provided by the requesting state is sufficient to justify the committal of the person sought

for extradition, the Minister of Justice must personally decide whether the person sought ought to be surrendered. If the person sought for extradition has claimed refugee status or has been found to be a refugee under the IRPA, the Minister of Justice must consult with the Minister of Citizenship and Immigration before rendering his decision on surrender. At this phase, the Minister will receive and consider any submissions as to why the person sought ought not to be surrendered or concerning any conditions that should be attached to the surrender. Pursuant to section 44 of *Extradition Act*, the Minister of Justice must refuse surrender if the surrender would be unjust or oppressive or if the person sought will face a substantial risk of torture in the country seeking extradition. This test has been found by the Supreme Court of Canada to be sufficient to respect the principle of non-refoulement.[22]

130. For more information on Canada's extradition process, see: www.justice.gc.ca/eng/news-nouv/fs-fi/2003/doc_30902.html.

131. In the application of laws governing both immigration and extradition, the decisions of all officials and tribunals must be consistent with the Charter. In *Suresh*,[23] the Supreme Court of Canada found that section 7 of the Charter, interpreted in light of the Convention and other relevant international human rights instruments, generally prohibits deportation to torture. However, the Court left open the narrow possibility that in "exceptional circumstances," the Minister may remove a person if the serious threat the person poses to the security of Canada outweighs the risk that person would face if removed. While *Suresh* leaves open the theoretical possibility of removal to a risk of torture in exceptional circumstances, the ambit of any such exceptional circumstances remains undefined in Canadian law. As explained above, Canada has not removed anyone in a case where domestic processes had concluded that the individual faced a substantial risk of torture upon removal.

Question 10: Considering the State party's policy of resorting to the immigration process to remove or expel individuals rather than prosecuting in the framework of criminal procedure, please provide detailed information on cases of expulsion or removal initiated under Immigration and Refugee Protection Act (IRPA) on security grounds. Does the State party envisage removing the exclusions in the Immigration and Refugee Protection Act, namely the blanket exclusion of the status of refugees and the explicit exclusion of certain categories of persons posing security or criminal risks, thereby extending to currently excluded persons entitlement to the status of protected person, and protection against refoulement on account of a risk of torture?

132. Canada has no policy of resorting to the immigration process to remove or expel individuals instead of prosecuting them for crimes committed in Canada. If a foreign national commits a crime in Canada, he or she will be investigated and prosecuted according to the same process followed for Canadians. With respect to crimes committed wholly outside Canada, Canada can prosecute crimes for which universal jurisdiction exists, including torture, genocide, crimes against humanity and war crimes. For more

[22] For a recent discussion of section 44, see: *Németh v. Canada (Justice)*, 2010 SCC 56 (online: scc.lexum.org/en/2010/2010scc56/2010scc56.html); *Gavrila v. Canada (Justice)*, 2010 SCC 57.
[23] *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3.

information regarding the prosecution of such crimes, see the response to Question 17 below. Canada may also have jurisdiction to prosecute certain other offences committed outside Canada where Parliament has specifically established jurisdiction to do so, for example, in relation to certain terrorism offences.

133. The decision to initiate the removal process against an individual is made on the basis of the specific facts and circumstances of each individual's situation. The Government of Canada's use of immigration law to detain and deport non-citizens who pose a threat to public safety or national security has long been enshrined as a key component of the IRPA's broader objectives, including "promoting international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminal or security risks."

134. With respect to the exclusions set out in section 98 of the IRPA, this provision incorporates the relevant provisions of the 1951 *Refugee Convention*'s Exclusion Articles. Exclusion under section 98 of the IRPA is used to reject claimants who are found not to be entitled to protection, because they are persons who benefit from residence protection in another country or are persons who have engaged or been complicit in war crimes, crimes against humanity, serious non-political crimes or who are guilty of acts contrary to the purposes and principles of the United Nations.

135. As explained in response to Question 9, a claimant who is excluded pursuant to section 98 of the IRPA may still apply for protection (Pre-Removal Risk Assessment or PRRA) prior to removal from Canada. For exclusion cases (except those involving residence in another country), the PRRA assessment will be limited to risk of torture or risk to life or cruel or unusual treatment or punishment.

136. Between January 2004 and December 2011, Canada removed 34 persons for security reasons. Individuals can be inadmissible for security reasons for engaging in acts of espionage; engaging in the subversion by force of any government; engaging in terrorism; being a danger to the security of Canada; or being a member of an organization that will engage in acts of terrorism, espionage or subversion by force of any government. None of these 34 removals involved a situation where the person was found, in domestic processes, to face a substantial risk of torture upon removal.

Question 11: Please provide detailed information on (a) to what extent the State party provides for judicial review of the merits, rather than merely of the reasonableness, of decisions to expel an individual where there are substantial grounds for believing that the person faces a risk of torture, and (b) efforts made to improve the Pre-Removal Risk Assessment (PRRA) program (State party's report, paras.31 and 33).

137. Currently, an individual whose refugee claim is rejected by the Immigration and Refugee Board or whose PRRA application has been denied may apply to the Federal Court of Canada for judicial review of the decision on a number of grounds, including alleged errors of jurisdiction, natural justice or procedural fairness, fact or law. As in many legal systems around the world, in Canada, judicial review is best characterized as judicial supervision of

administrative decision-making, where the legislature has determined that for reasons of expertise, accessibility and efficiency, an administrative tribunal such as the Board should be the prime decision-maker in a particular type of case. The function of judicial review is to ensure the legality, the reasonableness, and the fairness of the administrative decision-making process and its outcomes.

138. The Federal Court reviews the administrative tribunal's decision for factual errors or errors involving both facts and law, generally on a reasonableness standard, in deference to the tribunal's expertise.[24] However, the Court may review any aspect of the tribunal's decision that involves questions of law of central importance to the legal system as a whole, and outside the tribunal's expertise, on a correctness standard.[25]

139. The Supreme Court of Canada, whose jurisprudence on this point guides judicial review by all Canadian courts, has explained the "reasonableness" and "correctness" standards of review as follows:

> Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.
>
> […]When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.[26]

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[24] The Federal Court's jurisdiction on judicial review is set out at section 18.1(4) of the *Federal Courts Act*. The Federal Court may make one of several possible remedial orders where it determines, on judicial review, that a tribunal: (*a*) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction; (*b*) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe; (*c*) erred in law in making a decision or an order, whether or not the error appears on the face of the record; (*d*) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it; (*e*) acted, or failed to act, by reason of fraud or perjured evidence; or, (*f*) acted in any other way that was contrary to law.

[25] *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at paras. 30-32, online: scc.lexum.org/en/2011/2011scc61/2011scc61.html.

[26] *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 49, online: scc.lexum.org/en/2008/2008scc9/2008scc9.html.

140. As such, the Federal Court does review the "merits" of an administrative decision, in the sense that it reviews both the law and the facts. However, the Court's review will be on a "reasonableness standard" regarding matters within the decision-maker's expertise.

Ongoing legislative and administrative reforms to the refugee determination and PRRA processes

141. The Government of Canada is undertaking significant reforms to the refugee process that will change some aspects of the review of refugee determinations. These reforms will improve Canada's asylum system and facilitate resettling more refugees from abroad. As part of these reforms, most refugee claimants will be able to appeal the initial refugee protection decision to a new Refugee Appeal Division (RAD) within the independent Immigration and Refugee Board. The RAD will review both facts and law and will be able to accept new evidence. For more information, see: www.cic.gc.ca/english/refugees/reform.asp.

142. With respect to ongoing efforts to improve the PRRA process, since January 2011, the PRRA program has undergone significant delivery improvements and the consolidation of decision making at specific centres with newly trained senior immigration officers. This new centralized system has allowed for decision makers to develop more country expertise, resulting in greater accuracy and efficiency. Relevant manual chapters have been updated and Standard Operating Procedures have been created for the senior immigration officers.

143. The PRRA program will be transferred to the Immigration and Refugee Board in order to further consolidate decision making processes concerning the protection of asylum seekers and of foreign nationals facing removal from Canada. However, certain PRRA applications will continue to be assessed by Citizenship and Immigration Canada (CIC) officials. These are PRRA applications from persons:

- who are inadmissible to Canada on grounds of serious criminality, security, human/international rights violations and organized criminality;
- who are described in Article 1F of the Refugee Convention (e.g. war criminals; those who have committed serious non-political crimes); orwho are named in a security certificate issued under the IRPA.

144. CIC will also continue to assess the risk upon removal for individuals who have refugee protection in a country to which they may be returned.

Question 12: With reference to paragraph 42 of the State party's report and in light of the Committee's previous concluding observations (para.5(e)), please clarify the issues of diplomatic assurances in the State party, inter alia (a) the minimum requirements are for diplomatic assurances or guarantees, (b) steps taken to guarantee effective post-return monitoring arrangements and the legal enforceability of the assurances or guarantees given, and (c) all cases where diplomatic assurances have been provided and all cases

where assurances have not been honoured, if any, since the consideration of the previous report.

Minimum requirements for diplomatic assurances or guarantees

145. What is required to sufficiently mitigate the risk that an individual might otherwise face upon their removal to a particular country is highly case-specific. Canada looks to comments provided by this Committee and other UN mechanisms, to the decisions of Canadian courts, such as the 2007 decision of the Federal Court in *Lai v. Canada*,[27] as well as to decisions from jurisdictions such as the United Kingdom and by the European Court of Human Rights as to the type of mechanisms that may assist in mitigating risk.

146. The Canadian system provides, in the immigration context, for assessments by independent administrative delegates of the risk that an individual would face if deported to a particular country, and, in the extradition context, for consideration by the Minister of Justice of the risks that an individual might face in the potential receiving state. All of these decisions are subject to judicial review by Canadian courts. The decisions of these executive and judicial decision-makers will determine whether a particular set of diplomatic assurances are sufficient in the cases before them.

Effective post-return monitoring arrangements and the legal enforceability of the assurances or guarantees given

147. Whether a post-return monitoring arrangement is necessary and, if so, what might constitute an effective post-return monitoring mechanism is also highly case-specific.

148. Diplomatic assurances typically come in the form of a diplomatic note addressed to Canada from the receiving state. Diplomatic assurances are considered by the Government of Canada to be unilateral promises or guarantees by one state to another that a particular course of action will or will not be taken. As this is not considered to be a treaty for the purposes of international law, there is no legal recourse for Canada to take against the state that provided the assurances, in the event that the state in question fails to abide by the guarantees that were made in a particular case. However, diplomatic steps may be taken by Canada to address breaches by the receiving state. An individual who alleges that he or she has been mistreated by the receiving state may have legal recourse against that state in the domestic courts of that country.

Data on use of diplomatic assurances

149. Canada has relied on assurances pertaining to the treatment of a particular individual to facilitate removal in only four cases during the period covered by this response.

150. In March 2010, Canada obtained assurances from the People's Republic of China regarding the treatment of Mr. Lai Changxing upon his return to China. Mr. Lai had been in Canada

[27] Reported as: *Lai Cheong Sing v. Canada (Citizenship and Immigration)*, 2007 FC 361, online: decisions.fct-cf.gc.ca/en/2007/2007fc361/2007fc361.html.

for 12 years until his removal in July 2011. Canada also relied on assurances provided by the Kingdom of Thailand prior to 2008 to extradite Mr. Rakesh Saxena, an Indian national, to Thailand in October 2009, to face numerous fraud charges, and to extradite Mr. Michael Karas, a Canadian citizen, to Thailand in September 2011, to face murder charges.

151. In addition, in April 2009, Canada obtained assurances regarding fair trial, detention conditions and the abolition of the death penalty from Rwanda to facilitate the deportation of Léon Mugesera, who had been in Canada since 1994.[28] Mr. Mugesera was removed from Canada in January 2012.

152. Whether or not, and the extent to which, these states are abiding by the guarantees that they have made to the Government of Canada is more appropriately a matter for this Committee to take up with the states in question.

Question 13: Please provide information about whether the State party appealed the Supreme Court decision in *Amnesty International Canada et al. v Chief of the Defence Staff for the Canadian Forces et al.* to decline 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?

153. In response to the question regarding appeals, Canada wishes to clarify that the case brought by Amnesty International was resolved in 2009, when the Supreme Court of Canada refused leave to appeal in this case. By way of brief overview of the history of this case, Amnesty International Canada and the British Columbia Civil Liberties Association applied to the Federal Court of Canada in 2007 for judicial review of Canada's practices in transferring non-Canadians detained by the Canadian Forces in Afghanistan to Afghan authorities. In 2008, both the Federal Court and the Federal Court of Appeal dismissed their application.[29] Amnesty International then applied for leave to appeal to the Supreme Court of Canada. This application was dismissed in 2009.[30] This ended the litigation, since no appeal is possible from the Supreme Court's decision to refuse leave.

154. The main issue in the litigation was whether the Charter applied to non-Canadians detained by the Canadian Forces in Afghanistan. Canada's position, based on domestic and international law principles, was that the Charter did not apply extra-territorially to the transfer of non-Canadian detainees. This position was based in part on the fact that Canada did not have effective control of Afghan territory and therefore did not exercise some or all of the public powers of government in Afghanistan. Nor had the Government of Afghanistan consented to the extension of Canadian law over non-Canadians.

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[28] The assurances obtained by Canada were discussed in the Federal Court's decision refusing to stay the removal order against Mr. Mugesera. See: *Mugesera c. Canada (Citoyenneté et Immigration)*, 2012 CF 32, online : decisions.fct-cf.gc.ca/fr/2012/2012cf32/2012cf32.html.

[29] *Amnesty International Canada v. Canada (Minister of National Defence)*, 2008 FC 336, online: decisions.fct-cf.gc.ca/en/2008/2008fc336/2008fc336.html; *Amnesty International Canada v. Canada (Minister of National Defence)*, 2008 FCA 401, online: decisions.fca-caf.gc.ca/en/2008/2008fca401/2008fca401.html.

[30] *Amnesty International Canada v. Canada (Minister of National Defence)*, [2009] S.C.C.A. No. 63.

155. Canada also took the position (with which the Courts agreed[31]) that there was no legal vacuum with respect to human rights safeguards because international humanitarian law (IHL) applied to the Canadian Forces' operations in Afghanistan, and that IHL governed the transfer of detainees. As Canada explained in its submission to the Court: "Before transferring a detainee into Afghan custody, [the Canadian Forces] must be satisfied that there are no substantial grounds for believing that there exists a real risk that the detainee would be in danger of being subjected to torture or other forms of mistreatment at the hands of Afghan authorities."[32]

156. Furthermore, Canadian criminal law (including the offence of torture set out in section 269.1 of the *Criminal Code*) applied to members of the Canadian Forces during the mission in Afghanistan.[33]

Question 14: Please provide an update on the cases of (a) Mostafa Dadar (CAT/C/35/D/258/2004) who was removed to Iran despite a finding of a violation of the Convention; (b) Bachan Singh Sogi (CAT/C/39/D/297/2006) who was removed to India on security grounds despite the Committee's repeated requests for interim measures; (c) Ivan Apaolaza Sancho who was chained to his seat on the flight while deported to Spain after being detained for 16 months without charge in Canada; and (d) Adel Benhmuda who was deported to Libya in 2008 with his family, including two children born in Canada, and was allegedly ill-treated in a prison. Please explain the procedure followed, guarantees received and monitoring mechanisms, and how such practice is compatible with the State party's non-refoulement obligation under the Convention. To what extent has the State party conducted investigations into all allegations of violation of article 3 of the Convention and provided remedies to them?

157. As this Committee is aware, Canada has provided a follow-up response to its views in the two individual communications mentioned in this question (regarding Mr. Dadar and Mr. Sogi), in which Canada explained that it did not agree with the Committee's assessment of the risks faced by these individuals upon return to Iran and India respectively. In Canada's view, it would be inappropriate to provide further details about these or other specific cases in a public document and without the consent of the individuals in question.

158. By way of general response to some of the concerns raised by the Committee, no one may be detained in Canada without lawful authority or appropriate grounds. The IRPA provides for the detention of foreign nationals in certain specific circumstances, for example where an officer has reasonable grounds to believe a person is inadmissible to Canada and is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.[34]

[31] See the decision of the trial judge at paragraph 162 and the decision of the Federal Court of Appeal at paragraph 36.
[32] Noted by the trial judge at paragraph 64.
[33] See decision of the trial judge at paragraphs 344-345.
[34] IRPA, Division 6.

159. Regarding the treatment of individuals during return flights to their country of origin, a Canada Border Services Agency (CBSA) officer's presence is sometimes required when an individual under a removal order is being transported or travelling outside of Canada. Currently, individuals ordered to leave Canada require an escort when the deportee has been identified as a danger to the public (e.g. other travellers on the airplane) or a flight risk. This approach is in line with Transport Canada's Canadian Aviation Security Regulations and is described in a CBSA Removals Policy document that ensures that clear and uniform guidance is in place to support consultations and decision-making on these cases across Canada. Officers must exercise every caution to prevent the escape of foreign nationals in their custody and ensure the safety of the public and the individual being removed. Based on the risk assessment conducted by the officers and the training they have received, officers will decide whether handcuffs or other restraining equipment should be used according to the circumstances. CBSA officers conduct removals in a professional manner and with due regard for the dignity of the person being removed.

160. Current removal policy requires that officers complete a risk assessment to determine whether a foreign national should be escorted. The assessment focuses on many factors related to the level of risk likely to be present during the removal, including: the person's anticipated reaction to their return to the country of destination; the length of the trip and/or the transit point(s); the person's past criminal behaviour; and their physical and psychological condition. In some cases, a medical escort may be required.

161. The Removals Policy states that when it has been determined that there is a risk to the safety of the person being removed, the travelling public, transportation company personnel or the officer, two escort officers are assigned. This is consistent with Transport Canada's security guidelines. Current policy also provides the CBSA with the discretion to assign more than two escort officers to effect a removal should additional assistance be required.

Question 15: Please provide data, disaggregated by age, sex and nationality on:

(a) The number of asylum requests registered and approved
(b) The number of asylum seekers whose requests were granted because they had been tortured or might be tortured if they were returned to their country of origin;
(c) The number of forcible deportations or expulsions (please indicate how many of them involved rejected asylum-seekers), and the countries to which these persons were expelled.

Number of asylum requests registered and approved

162. The Refugee Protection Division of the Immigration and Refugee Board (IRB) determines claims for refugee protection made in Canada. According to the IRB, the number of new refugee claims filed grew nearly 20 percent from 2007-2008 to 2008-2009 (from 30,524 to

36,628), but then declined by 17 percent the following fiscal year (to 29,947) and fell again by 26 percent in 2010-11 (to 22,700).[35]

163. Regarding the number of asylum requests approved, over 40 percent of in-Canada refugee claims were accepted for each of the fiscal years between 2007 and 2009, meaning that the claimant was found to be a refugee as defined in the IRPA (which incorporates the Refugee Convention definition) or a "protected person" at risk of torture, at risk to their life or at risk of CIDT should they be returned to their country of origin. In 2010-2011, 37 percent of in-Canada applicants' claims were accepted.[36]

164. In response to the Committee's request for disaggregated data, Canada is not in a position to share data disaggregated by age, sex and nationality for privacy reasons in a public document because of the risk it might be used to identify individuals in some cases.

Number of asylum seekers whose requests were granted because they had been tortured or might be tortured if they were returned to their country of origin

165. Canada's data on asylum claims do not distinguish between requests for asylum relating to torture, and requests for asylum by reason of a well-founded fear of persecution. Canada is therefore not in a position to respond specifically to this question.

Number of forcible deportations or expulsions

166. For calendar years 2008-2011, the annual total number of persons removed from Canada was as follows:

- 2008: 12,827
- 2009: 14,840
- 2010: 15,336
- 2011: 15,490

167. For this same period, the annual overall number of persons removed after their refugee claims were rejected are as follows:

- 2008: 9,230
- 2009: 10,964
- 2010: 11,225
- 2011: 11,126

168. Failed refugee claimants therefore represented approximately three quarters of the total number of removals in each of these years.

[35] See Departmental Performance Reports of the IRB for the years 2009-2010 and 2010-2011, online: www.tbs-sct.gc.ca/dpr-rmr/2010-2011/inst/irb/irb02-eng.asp#s2.2 and www.tbs-sct.gc.ca/dpr-rmr/2009-2010/inst/irb/irbtb-eng.asp.
[36] *Ibid.*

ARTICLE 4

Question 16: What is the competency at the provincial level with regard to enforcement and prosecution of offenses of the main provisions of the Convention which have been incorporated into federal law? What are the penalties for the crime of torture, attempted torture and complicity or participation in torture and which provisions of the penal code apply?

Shared jurisdiction over prosecutions

169. The federal and provincial governments share jurisdiction over criminal prosecutions. This makes cooperation and coordination essential to the effective enforcement of the law. As discussed above, torture is an offence under section 269.1 of the *Criminal Code*. Provincial prosecution services are responsible for a prosecution of the offence of torture committed in the provinces. This was the case with the Royal Canadian Mounted Police (RCMP) officer prosecuted in British Columbia, referred to at paragraph 50 of Canada's Sixth Report. The federal Public Prosecution Service of Canada (PPSC) is responsible for the prosecution of this offence within the territories.

170. When the offence is committed outside Canada, but a decision is made to prosecute based on special jurisdictional rules set out in section 7(3.7) of the Code, the prosecution service in the province with the strongest connection to the offence would most likely conduct the prosecution, subject to certain exceptions where concurrent jurisdiction applies. In addition, if the accused is not a Canadian citizen, the consent of the Attorney General of Canada is required.

171. In relation to prosecutions under the *Crimes Against Humanity and War Crimes Act* (CAHWCA), the PPSC is the prosecuting authority.

Penalties for the crime of torture under the Criminal Code and the Crimes Against Humanity and War Crimes Act

172. Section 269.1(1) of the *Criminal Code* provides that the penalty upon being found guilty of committing the offence of torture is a maximum penalty of imprisonment for a term not exceeding 14 years. By virtue of section 24 of the *Criminal Code*, it is an offence to attempt to commit any of the offences contained in the Code, including the offence of torture. Anyone convicted of an attempt to commit torture is liable to a term of imprisonment not exceeding seven years (section 463(b)). Anyone who conspires with another to commit torture is subject to imprisonment for up 14 years (section 465(c)).

173. Under the Code, a person may be found to be a party to an offence that is committed (i.e., a participant) on a number of possible bases, including:

- if the person does or omits to do anything for the purpose of aiding a person to commit the offence or if the person abets (encourages) the person to commit the offence (section 21(1)(b) and (c));
- if the person carries out a common purpose with two or more persons in committing an offence (section 21(2)); or
- if the person counsels another to commit the offence (section 22).

174. Any party to an offence is subject to up to the same maximum penalty as the principal who actually commits the offence. In addition, section 464 of the *Criminal Code* provides that one can commit the offence of counselling even if the offence being counselled has not been committed. Counselling under section 464 "requires that the statements, viewed objectively, actively promote, advocate, or encourage the commission of the offence described in them". A person may also be found an "accessory after the fact" if the person, knowing that a person has been a party to an offence, receives, comforts, or assists that person for the purpose of enabling that person to escape (section 23).

175. Anyone who is either an accessory after the fact to someone who commits torture or anyone who counsels the commission of torture where the torture is not committed is liable to a term of imprisonment not exceeding seven years (by the application of section 464 and section 463 (b) of the *Criminal Code*, one-half of the maximum of fourteen years' imprisonment for the committed offence).

176. The CAHWCA criminalizes torture as an underlying offence for crimes against humanity and war crimes committed either inside or outside Canada, as provided in sections 4(3) and 6(3) of the CAHWCA. The CAHWCA also criminalizes cruel, inhumane or degrading treatment, as such conduct may constitute a crime against humanity (which includes "other inhumane acts") or a war crime (which includes inhuman treatment or wilfully causing great suffering, or serious injury to body or health, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; committing outrages upon personal dignity, in particular humiliating and degrading treatment are war crimes).

177. Individuals who aid or abet or carry out a common purpose in the commission of an offence under the CAHWCA can be prosecuted under the CAHWCA. In addition, sections 4(1.1) and 6(1.1) of the CAHWCA criminalize conspiring or attempting to commit, being an accessory after the fact in relation to, and counselling in relation to, the commission of a crime against humanity or war crime, including the underlying offence of torture. Sections 5(1) and (2) and 7(1) and (2) also create offences for a military commander or superior whose breaches of responsibility result in a crime against humanity or war crime.

178. The punishment for a finding of torture as a crime against humanity or war crime pursuant to the CAHWCA is a maximum sentence of life in prison (see sections 4(2)(b) and 6(2)(b)).

ARTICLES 5, 7 and 8

Question 17: Please provide (a) detailed information on how the State party has exercised its universal jurisdiction over persons responsible for acts of torture, wherever they occurred and regardless of the nationality of the perpetrator or victim, and (b) specific examples and texts of any decisions on the subject, including the outcomes of reviews by the Program Coordinating Operations Committee (PCOC) and the two cases referred to in paragraph 49 of the State party's report. In that regard, please comment on reports before the Committee that Canada has chosen the path of deportation rather than criminal prosecution against perpetrators of international crimes and has failed to take effective measures to exercise its universal jurisdiction over persons responsible for acts of torture, while its law, through provisions in the Criminal Code and the Crimes against Humanity and War Crimes Act, provides for universal jurisdiction and thus allows domestic prosecution.

179. With respect to specific prosecutions under the CAHWCA, the Public Prosecution Service of Canada's first prosecution under the Act resulted in the conviction of Désiré Munyaneza of genocide, crimes against humanity, and war crimes in relation to events that occurred in Rwanda in 1994. Mr. Munyaneza received a life sentence in 2009. An appeal is ongoing. A second case, *R. v. Mungwarere*, which is ongoing, concerns a Rwandan national residing in Windsor, Ontario, who was charged in 2009 with two counts of genocide. Additional charges of crimes against humanity were added in 2010. A trial date of April 30, 2012, has been set. The accused, Jacques Mungwarere, remains in custody.

180. Canada's War Crimes Program is based on the dual underlying purposes of ensuring that Canada will not become a safe haven for persons involved in war crimes, genocide or crimes against humanity, as well as making an effective contribution to the global effort to reduce and eventually eliminate impunity for such crimes. A committee composed of members of each department of the War Crimes Program reviews and scrutinises all allegations of genocide, crimes against humanity and war crimes, including torture, to ensure compliance with existing and emerging international obligations to extradite or prosecute. In order for a case to be investigated and/or prosecuted through the criminal justice system, a combination of factors needs to be present:

- the allegation discloses personal involvement or command responsibility;
- the evidence pertaining to the allegation is corroborated; and
- the necessary evidence can be obtained in a reasonably uncomplicated and speedy fashion.

181. While the criminal investigation and prosecution of war crimes committed abroad is resource-intensive and will therefore only be pursued where the above criteria are satisfied, the ability to conduct criminal investigations and to prosecute is an important element of the War Crimes Program. In some cases, a criminal justice response is the most appropriate action and sends a strong message to Canadians and the international

community that the Government of Canada does not tolerate impunity for war criminals or for persons who have committed crimes against humanity or genocide. War Crimes prosecutions, including prosecutions for torture, are closely managed by the PPSC. For example, a National co-ordinator monitors all such prosecutions, there is a special process for the assignment of prosecutors to such cases and special rules to ensure management and oversight apply.

182. Should a file not meet the selection criteria for being pursued through the criminal process, the War Crimes Program considers immigration measures, including the following:

- Preventing suspected war criminals from reaching Canada by refusing their immigrant, refugee or visitor applications abroad; and
- Detecting those who have managed to come to Canada and taking the necessary steps to: exclude them from the refugee determination process; prevent them from becoming Canadian citizens; revoke their citizenship should they be detected after acquiring that status; and, ultimately, remove these individuals from Canada.

183. In some cases it is more desirable to remove an individual suspected of having a role in war crimes and/or crimes against humanity through immigration enforcement means so that they may face justice in their country of citizenship. These instances arise when there has been a change in country conditions and there has been recognition of legal reform (e.g., independence of the judiciary) and capacity building within the justice system, and, as a result, these countries are capable of carrying out efficient and effective prosecutions of suspected criminals.

Question 18: Please provide information on whether the State party has rejected, for any reason, requests for extradition by a third state for an individual suspected of having committed an offense of torture, and thus engaged its own prosecution as a result. Please provide information on any new cases that have reached trial and with what result.

184. There have been no cases between 2008 and 2011 where Canada has rejected a request for extradition in the circumstances described in this question.

ARTICLE 10

Question 19: Please provide updated information on:

(a) Educational and training programmes of law enforcement personnel, penitentiary staff and staff of detention centres, members of the judiciary and prosecutors as well as consular officers on the State party's obligations under the Convention;
(b) The training of forensic doctors and medical personnel, especially on the use of the Istanbul Protocol; and
(c) Steps taken to develop and implement a methodology to evaluate the implementation of its training/educational programmes and its effectiveness and impact on the reduction of cases of torture and ill-treatment. Please provide information on the content and

implementation of such methodology as well as on the results of the implemented measures.

185. As explained above, in keeping with Canada's federal structure, Canada's law enforcement and justice system is decentralized. It is beyond the scope of this response to provide a comprehensive overview of the many different educational and training programs offered to the various actors listed above. However, below are some recent examples of training being offered that is relevant to Canada's obligations under the Convention. Where available, information about evaluation methods has been provided in relation to the specific examples discussed.

Training for police and border services officers

186. Law enforcement personnel across the country receive training on the legal framework that governs their operations, including the Charter's constitutional protection against torture and cruel and unusual treatment or punishment and other relevant safeguards applicable on arrest or detention. For example, RCMP cadet training on Canada's *Criminal Code* includes the sections addressing what the Code terms "excessive force" and "use of force," and also includes section 269.1 on the offence of torture. RCMP training also continues to reinforce the application of the Charter as it pertains to interviews, detention, arrests, and imprisonment. For example, the RCMP's Investigative Interviewing Course and other courses related to criminal investigation are delivered in alignment with the Charter, case law, and RCMP operational policy regarding interview and interrogation. Operational policy, in turn, is consistent with the Convention and specifically states that a cautioned statement must be voluntary, i.e., "cannot be induced by threats, promises, an atmosphere of oppression, or trickery that has the potential to shock the community."

187. In Ontario, the Ontario Police College delivers the Basic Constable Training program to all new recruits. Components of this training include diversity and professional practice, use of force, ethics, leadership, race relations, and information about the Special Investigations Unit. Members of the Ontario Provincial Police (OPP) attend mandatory annual Use of Force training. Human Rights training is also available to recruits, supervisors, and experienced officers, including a human trafficking component in the Highway Enforcement Training course, which provides officers with an awareness of the negative effects of torture. Additionally, OPP Polygraph members receive Polygraph Examination training at the Canadian Police College. These members provide interview/interrogation training to the General Investigative Techniques Course.

188. The issue of torture is also covered in international training modules, such as in the RCMP's new *UN Mission Pre-deployment Training* module on "effective mandate implementation", which aims to provide peace operations personnel with a general understanding of how missions can implement their mandates effectively by applying international humanitarian and human rights rules, principles and policies in their everyday tasks.

189. The module outlines that conflict can only be addressed effectively when peace operations ensure respect for international humanitarian and human rights law, including the rights of women and children in conflict. Specific learning objectives include:

1. List the essential rules of International Humanitarian Law (IHL).
2. Define and give examples of human rights protected under international law.
3. Identify who is protected by, and who is bound by international human rights law and international humanitarian law.
4. Recognize and identify human rights violations or abuses that occur in the conflict or post-conflict mission environment.
5. Discuss Peace Operations policies on human rights that are relevant to peace operations settings.
6. Describe the practical relevance of human rights to their work and ways to promote and protect human rights through their tasks.
7. Explain the importance of coordinating human rights-related actions with the mission's human rights component.
8. Explain the different impacts of conflict on women/girls and men/boys.

190. The *UN Mission Pre-deployment Training* was first piloted in January 2011. Although preliminary feedback about the course was very positive, there is not enough data yet to draw any conclusions about the effectiveness of this training.

191. The Canada Border Services Agency (CBSA) includes training on Canada's relevant obligations under the Convention in its curriculum for a range of CBSA operational staff and managers:

- Hearing Officers: CBSA personnel engaged in the assessment of refugee claims are trained to recognize "Persons in need of Protection," including due to the danger of torture. To this end, the Hearing Officer Intervention Training outlines the international human rights and Canadian legislative instruments that define and prohibit torture, with a particular focus on the Convention (provisions and relevant domestic Convention-related court decisions). In-class exercises help to ensure that participants fully understand the material.
- Field Immigration and Inland Enforcement Officers: Training modules for these officers also discuss "Persons in need of Protection" due to the risk of torture. Inland Enforcement training specifically identifies the risk of torture or cruel and unusual punishment as a key consideration in Canada's pre-removals risk assessment process, and specifies that this risk is to be assessed under the Convention, in particular.
- Ministerial Delegates and Immigration Chiefs and Directors: Training modules for these personnel discuss the definition of "Persons in need of Protection" and the need to pay particular attention to refugee claimants who may be the victims of torture.

Intelligence personnel

192. The Canadian Security Intelligence Service (CSIS) opposes in the strongest possible terms the mistreatment of any individual for any purpose. It does not condone the use of torture or other unlawful methods in responding to terrorism and other threats to national security.

193. Intelligence Officers receive training on Charter and human rights issues during their initial training and are sensitized to these matters throughout their careers at CSIS. CSIS provides instruction on the Convention to all Intelligence Officer recruits and Foreign Collection Officers as a part of a standardized training regime. This includes a discussion of policy implications and broad commitments to the national and international rules regarding detention and mistreatment.

194. With respect to evaluation of this training, the Security Intelligence Review Committee (SIRC) recently reviewed the activities of CSIS in relation to processing detainees in Afghanistan. In its 2010-2011 Annual Report, it concluded that CSIS has made great strides in promoting consistent awareness of the possibility of torture-derived information and in enhancing accountability regarding the exchange and use of such information.

Corrections Staff

195. Corrections staff receive extensive training on the laws that govern their conduct. For example, front-line Correctional Officers working in federal institutions are provided with training on the key concepts of Canada's Constitution, the Charter, and the duty to act fairly. Specific training modules include: The Law and Policy, Segregation, Search and Seizure, Detainment (i.e., restraint equipment, segregation), and Use of Force. The methodology used to evaluate training programs at Correctional Service of Canada (CSC) is the "Kirkpatrick/Phillips" model, which measures reactions to the training, learning outcomes, application of learning on the job, business impact, and return on investment.

196. Although no direct evaluation of the impact of training programs "on the reduction of cases of torture and ill-treatment" has been undertaken at CSC, a recent evaluation of the effectiveness of the core program delivered to all new correctional officers has assessed the level to which new recruits are gaining knowledge and skills in the areas of use of force, arrest and control, self-defence, and so on. In addition, CSC has examined the extent to which staff have retained and applied what they have learned by conducting follow-up reviews with them after four to six months on the job. The results of this evaluation are currently being finalized.

197. In Ontario, training and orientation is provided to update correctional staff on new protocols, policies and procedures, and the effective use of non-physical intervention. Basic Training for new Correctional Officers has curriculum dedicated to Human Rights Training. New correctional officers must pass knowledge-based examinations, which include Human Rights and Workplace Discrimination and Harassment Prevention training, before they are eligible to be employed by the Government of Ontario.

198. The Government of Saskatchewan's "Corrections and the Law" training package focuses on the requirements under the Constitution as well as the Charter. Targeted groups have received the training and plans are in place to extend the training to all Adult Corrections employees.

199. Saskatchewan has introduced "A Professional Code of Conduct and a Commitment to Excellence" document to all Adult Corrections employees. The Conduct Document serves a number of important purposes that supports and provides overall direction with respect to role expectation and accountability, as well as a statement of ethics and principles to which all Adult Corrections employees are required to adhere to including the principles of the duty to act fairly, the rule of law, and, the commitment to the use of least restrictive measures.

200. Saskatchewan's training for Young Offenders personnel adheres to the *Youth Criminal Justice Act* and teaches a range of verbal de-escalation skills as well as strategies for restraining acting out youth. The focus is on using the minimal force required to contain the situation and keep staff and other youth held in custody safe. The mandate is to seek and extend every opportunity to resolve the situation without the use of force.

201. The Young Offenders Programs of Saskatchewan has not completed any evaluations of programs that reduce cases of torture and ill-treatment as there has been no evidence that torture or ill treatment has occurred. The policies in place prohibit inappropriate use of force or treatment of youth in care. Research has been completed and the findings demonstrate that there is a reduction of incidents of misconduct in the custody facility as a result of the implementation and training of staff with Core Correctional Practices (CCP). CCP are a combination of cognitive behaviour interactions and interventions that staff use with the youth.

Judiciary

202. Members of the Canadian judiciary may obtain training on topics relating to human rights, including the Convention, through a variety of means, including through courses offered by the courts, the National Judicial Institute, or by other continuing legal education providers. For example, in October 2012, the Federal Court of Canada will hold a seminar on immigration law, including a number of sessions on the risk of torture and its effect on immigration proceedings, as well as on Canada's obligations under international human rights law with respect to refugees.

Prosecutors

203. Prosecutors in Canada are subject to ongoing continuing legal education requirements imposed by the self-governing bodies of which they are members. They may receive training from a wide range of continuing legal education providers, including on international and domestic human rights law as it relates to criminal prosecutions. In addition, jurisdictions with a large number of prosecutors may offer in-house training. For example, new federal prosecutors receive "Prosecution Fundamentals" training – including

on relevant domestic human rights standards that implement the Convention and other international human rights law treaties to which Canada is a party – through the School for Prosecutors. The school is run by the Public Prosecution Service of Canada (www.ppsc-sppc.gc.ca/eng/spr-epo/index.html).

Consular officers

204. Canada provided considerable information on a workshop on torture awareness for consular officers at paragraphs 19-21 of the Sixth Report. The Department of Foreign Affairs and International Trade continues to offer a workshop on "Dealing with Allegations of Torture and Abuse," delivered by Dr. Jim Young, former Chief Coroner of Ontario and by Dr. Louise Nolet, Chief Coroner of Québec. The workshop is mandatory for new Management and Consular Officers recruits who will be deployed on mission abroad. Since the filing of the Sixth Report, an additional 240 officers were trained on the protocols for dealing with such cases and ensuring proper follow-up. The course remains in line with the recommendations which resulted from the O'Connor Inquiry Report. It is offered regularly, in both official languages, to consular staff at headquarters or abroad.

Medical personnel and the Istanbul Protocol

205. Most provinces and territories do not specifically train medical personnel on the use of the Istanbul Protocol or a protocol for medical investigations where torture is alleged; however, training of medical personnel is provided by post-secondary institutions, with oversight provided by independent accrediting agencies, which take domestic and international developments into account in their ongoing review and development of training modules.

206. For example, in the province of Ontario, the Ontario Forensic Pathology Service, in partnership with the University of Toronto and with funding support from the Ministry of Health and Long-term Care, offers the Forensic Pathology Residency Training program that leads to certification in forensic pathology by the Royal College of Physicians and Surgeons of Canada. Forensic pathology residents, as part of their one year training, are exposed to the Istanbul Protocol and its methodologies.

207. In terms of training of non-medical personnel, the Immigration and Refugee Board (IRB) has developed a training manual for its staff that draws upon the Istanbul Protocol, among other sources. The Training Manual on Victims of Torture provides guidance to IRB Members and Refugee Protection Officers of the Refugee Protection Division on dealing with victims of torture in the context of refugee status determination proceedings. The manual was developed in collaboration with the Canadian Centre for Victims of Torture and the Réseau d'intervention auprès des personnes ayant subi la violence organisée (www.irb.gc.ca/eng/tribunal/rpdspr/victorture/Pages/index.aspx).

ARTICLE 11

Question 20: Please indicate how the State party has kept under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing any cases of torture. Please indicate any relevant amendments to these rules and instructions.

208. Canada again emphasizes that it opposes the use of torture by any state or agency for any purpose. All interrogation rules, instructions, methods and practices as well as arrangements for custody and treatment of persons who have been arrested, detained or imprisoned are reviewed regularly by the responsible agencies, as well as by independent oversight bodies, in order to ensure ongoing consistency with the law as it develops in relation to human rights protections and safeguards, with a view to preventing incidents of torture in Canada.

209. These reviews may be accomplished through a variety of means, including periodic review and revision of Ministerial Directives, policies, guidelines and training manuals. The following are examples of reviews that have recently been undertaken in a variety of contexts, including: intelligence, police services, corrections and immigration.

Review of intelligence policies and procedures

210. On a periodic basis, the Minister of Public Safety issues Ministerial Directives (MDs) on the conduct and management of CSIS operations. In 2011, the Minister of Public Safety issued a comprehensive MD on "Information Sharing with Foreign Entities." It replaces guidance on information sharing provided by the previous and current Ministers in 2009 and 2010, respectively.

211. The 2011 MD describes Canada's legal obligations with respect to sharing information, reiterating that the Government of Canada does not condone the use of torture and specifically referencing Canada's obligations under the Convention. Within that context, the MD identifies the principles that CSIS must follow in sharing information with foreign agencies. The principles specify that "CSIS must act in a manner that complies with Canada's laws and legal obligations," and that "it is to avoid any complicity in mistreatment by foreign entities." The MD requires the involvement of senior officials in making decisions about whether to share information as the risk of mistreatment increases. It emphasizes that all decisions to share CSIS information with a foreign agency must be "in accordance with this Direction and with Canada's legal obligations."

212. The following policies and procedures governing the Canadian Security Intelligence Service's (CSIS) operations have recently been reviewed and updated:

- The Deputy Director, Operations Directive on Detention Interviews in Foreign Countries (2011) outlines procedures to minimise the possibility of inappropriate activity, or allegations of inappropriate activity, by CSIS employees. Meetings with

detained persons must only occur when the person is under the lawful detention of a foreign entity in accordance with international and Canadian law; and

- A protocol between the Department of Foreign Affairs and International Trade (DFAIT) and CSIS concerning cooperation in respect of consular cases involving Canadians detained abroad as part of a national security or terrorism-related case (2007), which specifies that interviews with persons detained by a foreign entity can only be approved in the absence of information suggesting that the detainee, whether a Canadian citizen or not, may have been subjected to mistreatments while in detention. If there is credible information that a Canadian citizen detained by a foreign entity is being or has been subjected to acts of mistreatment, DFAIT should be informed and involved in decisions relating to the Canadian response. A CSIS employee will not meet with a Canadian citizen detained abroad until after a consular officer has gained access, unless there are urgent national security or terrorism-related considerations. In such cases, the Service will consult with DFAIT before seeking access.

Review of police policies and practices

213. The province of Québec has adopted mechanisms for oversight and control of police activities. Numerous measures have been established, including two types of oversight and control measures:

    - Institutional controls intended to provide oversight of police organizations take the form of inspections of police services. Legislation authorizes the inspection of police forces every five years and also requires police services to periodically provide various types of information to the department.
    - Individual controls are intended to provide oversight of the work of police officers. The director of a police force must notify the Minister, without delay, of any allegation against a police officer concerning a criminal offence. In addition, the police ethics system allows any member of the public to file a complaint against a police officer whose actions contravene the *Code of ethics for Québec police officers*. Finally, the third control measure consists in conducting independent investigations of incidents involving the police during which any person died or sustained a potentially life-threatening injury.

214. Québec also has a police ethics regime that ensures application of the *Code of ethics for Québec police officers*. This code governs the conduct of all Québec police officers, wildlife protection officers, special constables and highway controllers. It also applies to Québec police officers when performing their duties in another province or territory and, following certain adaptations, to police officers from other provinces and territories who are authorized, under an authorization issued in accordance with the Québec *Police Act*, to perform their duties in Québec.

215. The regime, governed by the *Police Act*, is designed to ensure better protection of the public by ensuring that their rights and freedoms are respected. It is also intended to foster and uphold high standards of service and professional conscience within police departments.

216. In Ontario, the Office of the Independent Police Review Director (OIPRD) was established under the *Independent Police Review Act, 2007*. The OIPRD, which began work on October 19, 2009, is responsible for receiving, managing and overseeing all public complaints about the police in Ontario. It operates as an arms-length agency of the Ontario Ministry of the Attorney General, and is staffed by civilians.

217. The OIPRD deals with all public complaints regarding the conduct of a police officer, the policies of a police service or the services provided by the police. In addition, the OIPRD works to identify systemic and ongoing issues in the police service, and will perform audits to ensure the complaints system is administered effectively.

218. In Alberta, the Policing Standards and Audits Unit has evaluated the performance of police organizations against the provincial standards – including guidelines for the use of Conducted Energy Weapons – and has issued reports on their performance to the organizations and their oversight bodies (police commissions or boards). When areas for improvement are noted, the Policing Standards and Audits Unit conducts follow-up audits to ensure the police agencies make the necessary corrections.

219. The Policing Standards and Audits Section and the police have worked to produce a standardized, electronic force reporting system for the province of Alberta. The system was designed to facilitate oversight of individual use of force by police supervisors and managers; to facilitate the oversight of police agency use of force by police managers and executive; and to enhance the oversight of police agencies by their oversight bodies, local government and the provincial government. The standardized provincial force reporting system is in the testing stage and should be operational in 2013.

220. Since the Government of Alberta introduced the *Security Services Investigators Act* in 2010, the regulatory unit for the Provincial Standards for Private Investigators and Security Guards has been evaluating performance against standards including such areas as evaluating and licensing of organizations permitted to hire security guards and evaluating and licensing individuals who will act as security guards or private investigators (www.canlii.org/en/ab/laws/regu/alta-reg-71-1991/latest/alta-reg-71-1991.html). The unit also conducts audits of the performance of organizations licensed to employ security guards. When areas for improvement are noted the unit conducts follow-up audits to ensure the organizations make the necessary corrections.

Review of corrections legislation, policies and procedures

221. In the corrections context, sections 3 and 5 of the federal *Corrections and Conditional Release Act* (CCRA) state that the Correctional Service of Canada's (CSC) mandate is to carry out sentences imposed by the courts through the safe and humane custody and supervision of offenders. Sections 68 and 69 of the CCRA state that "no person shall apply an instrument of restraint to an offender as punishment", and "no person shall administer, instigate, consent or acquiesce in any cruel, inhumane or degrading treatment or

punishment of an offender." These provisions are implemented following more specific guidance provided by CSC Commissioner's Directives, which are regularly reviewed.

222. Every actual incident involving use of force is reviewed by the Institutional Head (person in charge of the penitentiary), with additional oversight from various other areas such as Regional and National Headquarters staff, including those in the Health Services and the Women Offender Sector. As well, internal investigations are convened where required.

223. Newfoundland and Labrador has a new *Correctional Services Act* (not yet proclaimed), which includes a new disciplinary process that ensures procedural fairness and is in line with principles of fundamental justice. A full-time hearing adjudicator outside of corrections will adjudicate all offences in which internal charges have been laid against an inmate. A decision of the hearing adjudicator may be appealed to an independent appeal adjudicator appointed by the Minister of Justice (www.assembly.nl.ca/Legislation/sr/statutes/c37-00001.htm).

224. In the fall of 2011, the Government of Saskatchewan introduced a new *Correctional Services Act* in the Legislative Assembly. One of the provisions of the Act will authorize regulations to prescribe when restraining devices can be used on inmates in provincial correctional facilities and which restraining devices are permitted.

Review of immigration detention policies and procedures

225. In the context of immigration detention, the Canada Border Services Agency (CBSA) is actively involved in the process to improve its detention program and to maintain an environment without any form of mistreatment. In November 2006, the CBSA signed a Memorandum of Understanding with the Canadian Red Cross Society (CRCS). The objective is to assist the CBSA in ensuring, to the fullest extent possible, that persons detained pursuant to the IRPA are held and treated in compliance with domestic standards and international instruments to which Canada is signatory, including the Convention. The CRCS is permitted to have unlimited access to detainees in all CBSA-run facilities and in several provinces' correctional facilities (British Columbia, Québec and Alberta), in order to conduct private and confidential interviews regarding detainees' treatment and conditions. Once a year, a report is provided to CBSA identifying discrepancies between CBSA detention practices and Canadian and international standards. CBSA welcomes the CRCS's detention recommendations and considers them when determining whether any of its detention program practices need to be changed. Further, United Nations High Commissioner for Refugees representatives and local non-governmental organizations are provided access upon their initiative and upon the request of an immigration detainee. The CBSA also welcomes and considers their suggestions with respect to the prevention of torture or mistreatment at the local or national level.

226. Since January 2008, the CBSA has created and updated the following national policies related to the custody, arrest, detention or imprisonment:

- Investigations and arrests (updated September 2010)

- Vehicular Transport of Persons Under Arrest or Detention (published February 2009);
- Arrest and Detention of Young Persons (revised July 2011); and
- Care and Control of Persons In Custody (revised September 2009).

Question 21: Please provide updated information on the impact of various programs, including the Segregation Intervention Strategy (SIS), undertaken by the State party in reducing major inter-prisoner violent incidents in detention facilities. Also, please provide (a) statistical data on complaints, investigations, prosecutions, convictions and penalties imposed for such incidents, and (b) the number of prisoners in Canadian prison facilities as well as the degree to which the number of prisoners in each facility exceeds design capacities.

Update on the Segregation Intervention Strategy and other strategies to reduce inter-prisoner violence

227. In 1999, CSC's six segregation units implemented an intervention strategy, the main purpose of which was to motivate segregated offenders to change their problematic behaviours and reintegrate into a less restrictive environment.

228. In 2010, a CSC evaluation found that, although the goals of the motivational element of this intervention were consistent with the correctional priorities, there was no positive effect on offenders' motivation levels. Reviews of other components of this intervention strategy similarly indicated minimal impact. Thus, in August 2010, the decision was taken to cease its delivery as originally implemented; however, CSC continued to provide funding for segregation interventions with the original mandate to help motivate and support offenders to leave segregation and be reintegrated into the regular institutional population. The current segregation interventions are based on this mandate and are available in seven institutions.

229. In the provinces and territories, various methods are used to reduce major incidents of inter-prisoner violence in detention facilities. For example, in Newfoundland and Labrador, a restricted range has been created to address inter-prisoner violence. This range contains those inmates with a greater propensity for violence and those who have assaulted others. Other than their movement being restricted, these inmates retain the same rights as other inmates.

230. In Québec, inmates in detention facilities who believe that they have been victims of violence by a fellow inmate have various avenues to assert their rights. They can file a complaint with the police or with the courts. They can also contact the Québec Ombudsman at any time and they also have access to an internal complaint processing system.

231. Various mechanisms are in place within the correctional system for identifying and managing problem situations, including potential incidents of abuse. There is an administrative procedure for reporting and managing incidents that are disruptive to operational activities in a correctional institution. There is also another procedure to allow

for an administrative investigation to be conducted by a branch of the Department of Public Security independently of the correctional institution.

232. Other mechanisms are in place in order to prevent potential incidents of inter-prisoner violence, for example instructions on offender classification and discipline.

233. In Ontario, whenever possible, inmate riots and disturbances are brought under control through negotiations. Force is used only when there is an immediate threat or potential risk to the safety of any person or to the safety and security of the institution or community and there is no reasonable alternative to re-establish a safe, secure and orderly environment. Detailed and comprehensive Crisis Management Plans are maintained at each institution and their respective regional offices to ensure the provision of timely and effective operational responses to emergency situations. These Plans state, wherever possible, that negotiations and other peaceful means shall resolve institutional crises and all employees receive training to ensure that they are familiar with them.

234. The Government of Ontario has created Institutional Crisis Intervention Teams to assist in the peaceful resolution of an institutional crisis through a disciplined show of force. It has also developed crisis negotiation capability through identification and development of a team of crisis negotiators within each institution. The objective of a Crisis Negotiation Team is to resolve institutional crisis situations through verbal communication without the necessity of using force.

235. Manitoba's corrections facilities employ a Gang Separation strategy that reduces inter-prisoner violence by keeping rival gangs separate from each other.

236. Saskatchewan's adult corrections policy requires that the police must be called to investigate if there is evidence of an assault on an inmate. This combined with "Core Correctional Practices" training and the opening of newly designed correctional facilities that improve staff-inmate interactions and surveillance has significantly reduced incidents of inter-prisoner violence. Inmates who disagree with a decision or wish to lodge a complaint have multiple avenues of redress including internal review by a supervisor, manager or the facility director; or external review by the Provincial Ombudsman or the Human Rights Commission. The Saskatchewan Ombudsman investigates complaints from any person who believes that the government has dealt with them unfairly.

237. Saskatchewan's Youth Offender Programs front line staff complete assessments on youth to determine unit compatibility for safety. A situation from time to time may occur where youth resolve issues with violence. Based on the supervision model in the facility, these situations are minimal and staff intervenes immediately. Efforts are made to teach skills to the youth so that the conflict can be resolved effectively and in a socially acceptable manner. Police services will be contacted where an assault has occurred and the youth wishes to proceed with charges. Every effort is made to ensure the youth is separate and safe from the perpetrator.

Statistical data – inter-prisoner violence

238. Federally, CSC continually monitors operational performance and gathers a variety of statistics based on specific criteria and definitions. For example, CSC monitors the incidents of inmate assaults and fights by institutional security level. CSC has in place a number of interventions as a means of controlling violence within its institutions, including dynamic security, population management strategies, and preventing the entry of drugs into institutions. Despite these interventions, the development of a more complex and diverse offender population in recent years is having a direct impact on the safety and security of institutions. Many offenders have gang affiliations; there is an increase in offenders demonstrating poor institutional adjustment, more anti-social behaviour and disrespect for authority, as well as an increase in the proportion that are assessed at intake as requiring maximum security. There is a high prevalence of substance abuse problems with the resulting higher risk of violence associated with drugs. CSC will continue to work towards implementing more targeted approaches for higher-risk and higher-needs offenders to address these challenges.

239. The following table, on inmate injuries due to assaults by inmates, reflects updated statistics from those appearing in Canada's Sixth Report (paragraph 67). The table shows an overall increase in cases of inmate injuries over the last 10 years; however, the rate (percentage) of cases has remained relatively constant in relation to a growing federal prison population.

	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
Inmate Injuries	483	422	431	492	497	496	511	486	631
3-year average	483	457	445	448	473	495	501	498	543
Institutional Flow through	18,588	18,532	18,623	19,039	19,490	20,021	19,959	19,968	20,233
3-year average	18,628	18,567	18,581	18,731	19,051	19,517	19,823	19,983	20,053
Rate	2.6%	2.3%	2.3%	2.6%	2.6%	2.5%	2.6%	2.4%	3.1%
3-year average	2.6%	2.5%	2.4%	2.4%	2.5%	2.5%	2.5%	2.5%	2.7%

Source: Offender Management System (April 10, 2011)

240. With respect to updates regarding provincial corrections institutions, New Brunswick has no major inter-prisoner violent incidents to report over the relevant period.

241. In the Northwest Territories, there have been two incidents of inter-prisoner violence. In 2009, one inmate at a correctional centre stabbed another inmate in the neck. No information is available regarding penalty for that stabbing. In the same year, an inmate of a correctional centre threw a mug of boiling liquid into the face of another inmate. The inmate in this second incident was sentenced to 11 months custody.

Statistical data - population and capacity

242. As of January, 2012, there were a total of 14,889 federal inmates in Canada. As of January 10, 2012, CSC's rated capacity was 15,065. CSC policy identifies single cell accommodation as the most desirable and appropriate method of accommodating offenders. CSC defines its rated capacity as the number of its cells that can accommodate offenders. Rated capacity does not include cells permanently used to accommodate segregated inmates, cells used for suicide watch, or health care cells in non-psychiatric centres.

243. Since March 2010, the Canadian federal in-custody population has shown an upward trend in growth. At the national level, CSC is nearing its rated capacity (98.8 percent) and two regions (Ontario and Prairie) have exceeded their rated capacity. Consequently, there is little or no room for growth and double-bunking has become more prevalent. In order to meet this challenge, CSC is expanding its operations by adding more than 2,700 accommodation spaces to men's and women's federal prisons across the country by the end of 2014.

244. New Brunswick operates six adult provincial correctional institutions that hold both remanded and sentenced offenders (males and females). Their total rated capacity is 364 offenders. The average daily adult custody population in 2010-2011 was 452, representing an over-capacity of 24 percent that is managed through double-bunking. Two new facilities have been under construction, which will increase capacity to a total of 504. Of these, one is now open, and the other will open in the Spring 2012.

245. In Québec, a planning framework for projects involving the building, expansion and upgrading of prison infrastructure over 15 years was developed. Implementation of the Québec framework began in 2006 with financial cost analyses, and approval of the renovation or construction of detention facilities in 2007. The primary objective of all these projects is to reduce overpopulation in Québec prisons and to provide a safer and more functional environment for inmates and correctional staff.

246. The prison overpopulation ratio has declined since 2007-2008, for a second consecutive year. The 2010-2011 ratio is three one-hundredths (0.03) lower than the 2009-2010 ratio and nine one-hundredths (0.09) below the 2008-2009 ratio.

2010-2011	2009-2010	2008-2007
1.08	1.11	1.17

247. As of January 2012, the province of Manitoba had 1,492 rated beds for adult prisoners in custody – 158 percent of capacity.

248. In 2011-2012, the inmate average daily count was 1,406 in Saskatchewan. With only 865 single cells in Saskatchewan's four adult correctional centers, the overcrowding requires considerable double bunking. For youth, the average daily facility count is approximately 175 youth. As the capacity for youth in the province is 260, the facilities have not exceeded capacity for many years.

249. In the Northwest Territories, the number of prisoners in each facility is within design capacity.

250. In the Nunavut territory, the Baffin Correctional Centre currently houses 91 inmates, but has reached a maximum of 110 inmates in the last year (2011). It is designed to house a maximum of 66 inmates.

Question 22: **Please provide information on the progress made in implementing 109 recommendations of the Report of the Correctional Service of Canada (CSC) Independent Review Panel, released in 2007 (State party's report, para. 66).**

251. In 2008, CSC launched an ambitious Transformation Agenda to enhance public safety for Canadians and improve conditions in federal institutions. In doing so, CSC has responded to the majority of the Independent Review Panel's recommendations. For the vast majority of the recommendations, implementation is underway or completed. Some recommendations are still pending as legislation has yet to pass; a few are not being pursued at this time as they are beyond CSC's mandate. Through a number of initiatives, CSC is becoming a more efficient and effective correctional system, better equipped to manage a diverse and complex offender population. CSC has identified a number of key areas for improvement to its operations, including: enhancing offender accountability; enhancing correctional programs and offenders' employment skills; eliminating drugs from institutions; and modernizing physical infrastructure.

Enhancing offender accountability

252. Responsibility and accountability for safe reintegration must be shared between CSC and offenders. CSC is taking steps to ensure offenders actively participate in their correctional plan and demonstrate pro-social behaviour; it provides opportunities for rehabilitative engagement and motivational support.

253. To enhance offender accountability, CSC is strengthening the inmate discipline process and adding more structure to the institutional routine to ensure inmates fully use their time in custody to address factors that led to their incarceration.

254. Bill C-10, the *Safe Streets and Communities Act*, received Royal Assent in March 2012. It supports enhanced offender accountability as recommended by the Report of the Independent Review Panel. Part 3 of the Bill contains legislative amendments to the *Corrections and Conditional Release Act* (CCRA), the *Criminal Records Act* and the *International Transfer of Offenders Act*.

255. Amendments to the CCRA will modernize the current disciplinary system by:

- addressing disrespectful, intimidating, and assault behaviour by inmates towards any staff member or other person. The legislative wording will be updated to streamline

the description of disciplinary offences. In particular, it separates "abusive" and "disrespectful" behaviour, and clarifies their meaning; and

- providing that inmates convicted of serious disciplinary offences who are segregated from other inmates could also be subject to restrictions on visits.

256. Furthermore, the CCRA will now require completing a correctional plan for each offender. This underscores the importance of having a plan in place that includes elements such as behavioural expectations, objectives for program participation, and an offender meeting their court-ordered obligations, such as restitution to victims or child support.

Enhancing correctional programs and employment skills of offenders

257. CSC has made considerable progress in providing correctional and rehabilitative programs to offenders. During the past three years, the Service has invested over $30 million toward programming. Due in part to the new Integrated Correctional Program Model (ICPM), program enrolments increased by more than 24 percent in 2010-2011 from the previous year, and offenders now have access to correctional programming earlier in their sentence. The ICPM is an innovative and holistic approach to correctional program delivery, designed to enhance program efficiencies, program effectiveness, and ultimately, public safety results. Initial results have been very encouraging.

258. Addressing offender employment needs is a key factor in safe reintegration. CORCAN, a Special Operating Agency of CSC, continues to expand and enhance the employment and vocational training offered to offenders in the institution and communities, including initiatives through strategic partnerships with private sector businesses. Particular focus is being placed on increasing opportunities for women, Aboriginal offenders and offenders with mental health issues.

Eliminating drugs from institutions

259. Stopping the flow of drugs creates safer institutions for staff, the inmates and the public. It helps inmates concentrate on work, programs and other interventions identified in their correctional plan, which will assist with their successful return to the community.

260. To help eliminate the flow of drugs entering institutions, CSC is implementing a consistent national approach to managing the principal entrances and vehicle service entrances. New search and surveillance technology have been added to allow for improved screening and detection of drugs.

Modernizing physical infrastructure

261. CSC is developing an integrated long-term capital strategy. This will facilitate and support the Service's transformation initiatives and provide a more effective, efficient and sustainable physical infrastructure, while simultaneously meeting the significant interim challenges posed by a changing and increasing offender population and an aging asset base. As noted previously, CSC is expanding its operations by adding more than

2,700 accommodation spaces to men's and women's federal prisons across the country by the end of 2014.

Question 23: Please address the situation of women prisoners and the State party's cross-gender staffing policy in correctional services system. Please provide updated information on whether an external redress and oversight mechanism for federal women prisoners has been established and whether girls are continued to be held in mixed-sex youth detention centers.

Update regarding women prisoners in the federal system

262. At the federal level, in 2008, a Cross-Gender Staffing Audit was conducted on federal correctional institutions. The Audit found a few areas requiring attention, including: certain procedures within the institution, the training and recruitment of Primary Workers, and women-centred information offered to contractors and commissionaires who work in women offender institutions. All the Audit recommendations were implemented. A revised national policy was promulgated in August 2011 to incorporate the Audit's recommendations within institutional procedures.

263. As is the case with all offenders, women offenders are entitled to submit grievances through CSC's internal Offender Redress System. As well, Canada's Correctional Investigator acts as an Ombudsman for federal offenders and his main responsibilities include providing external oversight of CSC's policies and procedures and investigating and bringing resolution to offender complaints. All offenders can also submit complaints to other external bodies, such as the Canadian Human Rights Commission and the Canadian Association of Elizabeth Fry Societies.

264. The Safer Institutional Environment (Anti-Bullying) Strategy for women offenders was launched in September 2008. This national initiative provided strategic direction to regional sites by offering evidence-based research on the cause and effects of bullying among inmates. Regional sites then utilized the national initiative as a guide to inform their own individual strategies to prevent and deal with bullying behaviour in their institutions. At each institution, a Safer Institutional Environments Committee was established and individualized anti-bullying strategies were developed.

265. The Correctional Training Program and Women-Centred training programs now feature separate modules on bullying among offenders. Information sessions were provided by the national Women Offender Sector (of CSC's National Headquarters) to all the regional sites in order to ensure consistency in staff approaches to bullying behaviours, minimize the effect of complacency and ensure staff was up to date on the latest research.

266. The institutional Inmate Handbooks now include a section detailing the institution's anti-bullying strategy. In addition to this information, Safer Institutional Environments Committees are encouraged to provide orientation and awareness sessions to women who may potentially be at risk. As well, programs for women offenders include sections related to bullying among offenders, the reasons why people bully and how to effectively cope

with and respond to bullying behaviour. Talking circles and house meetings are being used to check in with the women and continually monitor the climate of the house/unit.

Update on women prisoners in provincial corrections institutions, including youth detention centres

267. The Newfoundland and Labrador Correctional Centre for Women is predominantly staffed by women. While males are permitted to work there, certain safeguards are put in place to ensure the dignity and privacy of the female inmate. For example, personal searches are done by female staff, as all efforts are made to ensure that female inmates are supervised by female correctional officers.

268. As of February 2011, female youth offenders in New Brunswick are housed in a separate unit at the same facility as male youth (the New Brunswick Youth Centre). This unit is staffed by female officers and programs are gender-specific.

269. Québec has only two detention centres for women. Correctional officer positions are open to both men and women in all Québec detention facilities.

270. Various practices have been put in place to ensure that the dignity of inmates is respected. For example, in women's detention centres, the majority of correctional officers on duty in each shift are female, and only women work in the areas where strip searches are most likely to be carried out. In addition, there are standards governing inmate searches.

271. In Québec, in the majority of cases, rehabilitation centres for young offenders include several rehabilitation units, some of which are intended solely for boys or solely for girls, and others that are mixed-gender. Certain rehabilitation units intended for secure custody or temporary detention under the *Youth Criminal Justice Act* (YCJA) are mixed-gender.

272. Owing to organizational imperatives, a few rehabilitation centres have opted for a mixed-gender unit; otherwise the young offenders would be located far from their family and social network, which would make their reintegration into their community more difficult. It should be noted, however, that some centres have very few cases where girls are kept in custody under the YCJA (sometimes one case a year).

273. That being said, there are rules intended to minimize any risk of victimization. For example, the dormitories and bathrooms are segregated by gender, with male and female inmates coming together only for activities and meals. In addition, there is no mixing of boys and girls when this is contraindicated from a clinical perspective. Finally, a working group has been established to study the issue of when and where to allow mixing of the genders.

274. In Ontario, in order to provide for greater protection in terms of personal modesty, only female officers may perform frisk searches on female inmates. In emergency situations, where there is reasonable cause to believe the female inmate has dangerous or harmful contraband and a female officer is not available, a male officer can conduct the frisk

search. When a male officer frisk searches a female inmate an occurrence report must be completed.

275. The Government of Manitoba still utilizes mixed-sex youth facilities and has carefully examined, and developed a policy on Cross Gender Staffing designed to ensure, to the greatest extent possible, that the dignity and privacy of female offenders/young persons in the Manitoba Adult and Youth Correctional facilities are respected and that cross-gender staffing situations in the workplace do not expose staff or female offenders/young persons to vulnerable situations.

276. Saskatchewan recognizes the unique needs of incarcerated female offenders, including the need for privacy and dignity to foster the most effective environment for their rehabilitation. Saskatchewan implements a cross-gender staffing policy that prohibits the staffing of male corrections workers in the living units of female offenders. The policy also requires same-gender staffing for front line corrections worker positions, the duties of which are intimate in nature and impact on the privacy and dignity of female offenders.

277. Female youth are housed on units of females separate from males and adult females. Saskatchewan Youth Offender Programs have recently completed a jurisdictional scan and literature review with regard to best practices for a staffing model for female youth. This review will guide the branch as it moves forward to enhance services for female youth.

278. In the Northwest Territories, there is one youth correctional facility and it is mixed-gender, however, the government has plans to construct a separate facility for women and girls.

279. In Nunavut, the Nunavut Women's Correctional Centre is staffed solely by women. Girls are held in the Isumaqsunngittukuvik youth facility, a mixed-sex youth detention centre.

280. For more information about the situation of women and youth being held in provincial and territorial correctional institutions, see Canada's response the advance questions of the Committee on the Elimination of Discrimination against Women for the review in 2008 of Canada's Sixth and Seventh Reports on the CEDAW (www.pch.gc.ca/pgm/pdp-hrp/docs/cedaw-cedef7-rspns/cedaw-cedef7-rspns-eng.pdf).

ARTICLES 12 AND 13

Question 24: In light of the Committee's previous concluding observations (para.5(i)), please provide updated information on: (a) The competence of the Commission for Public Complaints Against the Royal Canadian Mounted Police (RCMP) to investigate and report on all activities of the RCMP falling within its complaint mandate; and (b) Measures taken to ensure that external, independent mechanisms exist for the investigation of complaints regarding the conduct of law enforcement personnel in all jurisdictions.

281. The Canadian judicial system provides an overarching external and independent mechanism for reviewing complaints regarding the conduct of law enforcement personnel, where the complaints allege violations of the Charter or other legal protections.

282. In addition, there are external, independent oversight mechanisms with the specific mandate to receive and investigate complaints regarding the conduct of law enforcement personnel in all jurisdictions.

283. For example, the Commission for Public Complaints Against the RCMP (CPC) is an independent agency created in 1988 by Parliament under Part VI of the *RCMP Act*. It has the vital role of providing independent civilian oversight of RCMP members' conduct in performing their duties. Its mandate is to receive complaints from the public about the conduct of RCMP members; conduct reviews when complainants are not satisfied with the RCMP's handling of their complaint; hold hearings and investigations (for public interest or Chair-Initiated complaints); and report findings and recommendations to the RCMP Commissioner and the Minister of Public Safety that are aimed at correcting policing problems and preventing their recurrence. In order to maintain public accountability, an annual report relating to the CPC's investigations is tabled in Parliament by the Minister of Public Safety.[37]

284. Additionally, where the RCMP is the police force of jurisdiction in a province where there is an already established civilian oversight body, the actions of the RCMP fall under this review body. This is the case in Alberta, for example.

285. The Government of Canada recognizes the importance of independent civilian review and the promotion of greater police accountability and transparency. The Government will consider reintroducing legislation that achieves the objectives of former Bill C-38, *Ensuring the Effective Review of RCMP Civilian Complaints Act*, to enhance the RCMP complaints regime. This Bill was tabled in the House of Commons on June 14, 2010, but died on the order paper in the last Parliament. The proposed legislation would establish a strengthened independent civilian review and complaints commission for the RCMP that would be in line with other modern international, federal and provincial review bodies.

286. Under the proposed legislation, the new commission would have greater access to RCMP information as well as enhanced investigative powers. It would be able to undertake policy reviews, conduct joint investigations and share information with other police review bodies, as well as provide reports to provinces and territories that contract policing services from the RCMP. The proposed legislation goes beyond strengthening the RCMP public complaints regime. It would establish a mechanism to improve transparency and accountability of serious incidents (e.g., serious injury or death) investigations involving RCMP members, which would substantively address the issue of who's policing the police. The Bill would also impose a statutory requirement on the RCMP to refer serious incident investigations involving its members to a civilian investigative body or to another police service. In addition, an independent civilian observer could be appointed to review and report on the impartiality of those investigations taken on by police.

[37] For example, see the CPC's 2010-2011 annual report at: www.cpc-cpp.gc.ca/nrm/nr/2011/20111007-eng.aspx.

Oversight of provincial and territorial law enforcement agencies:

Police forces

287. In Newfoundland and Labrador, the Royal Newfoundland Constabulary Public Complaints Commission is an independent review authority established under statute to hear and investigate complaints against members of the provincial police, when appropriate, to conduct public hearings in respect of particular complaints.

288. The New Brunswick Police Commission is the independent body that receives and investigates complaints about the conduct of law enforcement personnel. Police forces are required to record all complaints with advice to the Police Commission.

289. In Nova Scotia, the new Serious Incident Review Team was established in September 2011. The team will investigate matters such as death, serious injury, sexual assault or other public-interest concerns involving police. It can independently launch an investigation or begin an investigation after a referral from a chief of police, the head of the RCMP in Nova Scotia or the Minister of Justice (www.gov.ns.ca/just/sirt.asp)

290. In Québec, in the event of a serious incident during which someone dies or sustains a potentially life-threatening injury in the course of an incident involving the police or while in police detention, a police investigation is conducted by a different police force from the one involved in the incident. This independent investigation deals with all the facts surrounding an incident, in particular to determine whether the evidence indicates that a criminal offence was committed by the police officers involved. Following this investigation, as with all other police investigations, an investigation report is prepared.

291. In December 2011, in response to questions from some members of the public concerning the guarantees of the impartiality of independent investigations, the Québec Department of Public Security tabled a bill in the National Assembly concerning independent police investigations, which aims to establish a clear legal foundation for the process, provide greater oversight of the process and establish a civilian oversight office called the *Bureau civil de surveillance des enquêtes indépendantes*.

292. The Government of Ontario does not tolerate police misconduct in any form, whether it is violence, corruption or racism. There are three independent, arms-length agencies of the government that combine to provide civilian oversight pursuant to the *Police Services Act* (PSA).

293. The Ontario Civilian Police Commission (OCPC) is committed to serving the public by ensuring that adequate and effective policing services are provided to the community in a fair and accountable manner. To ensure compliance with the PSA and its supporting regulations, the OCPC has the authority to hold hearings and investigate policing-related matters. This includes the authority to investigate the conduct or work performance of police officers, chiefs of police and members of local police services boards. The OCPC also investigates the administration of police services and the policing needs of a municipality (www.ocpc.ca/english/index.asp).

294. The Office of the Independent Police Review Director (OIPRD), established in October 2009, is responsible for receiving, overseeing, monitoring and dealing with all public complaints about the conduct of specific police officers, or the services or policies of a particular police service. The Director's decisions are independent from the government, the police and the community. If, after a disciplinary hearing, an officer is found to have committed misconduct as set out in the PSA, the officer faces penalties ranging from reprimand to dismissal (www.oiprd.on.ca/cms/).

295. The Special Investigations Unit (SIU) is a civilian agency with the responsibility to independently investigate circumstances involving police and civilians that result in death, serious injury or allegations of sexual assault (www.siu.on.ca/en/index.php).

296. In Manitoba, the Ombudsman and the Manitoba Human Rights Commission continue to be primary vehicles for external investigation and review. In addition, the Children's Advocate and the Child Protection Branch of Family Services review complaints of force used against youth in custody.

297. The Manitoba Law Enforcement Review Agency (LERA) is an independent civilian agency established under *The Law Enforcement Review Act* to investigate public complaints of abuse of authority by municipal and local police. A registrar, clerk and four investigators assist the commissioner of LERA in handling complaints about municipal and local police conduct that arise in the execution of police duties. LERA does not investigate criminal matters. Such matters are referred to the appropriate law enforcement agency.

298. *The Police Services Act* (the Act) was given Royal Assent on October 8, 2009 and replaces the antiquated *Provincial Police Act* (PPA). The Act fulfills the Government's commitment to modernize police governance and ensures that Manitoba has a comprehensive independent investigation process for serious police incidents and investigations of alleged criminal conduct by police officers. The Act provides several ways to resolve complaints: informal resolution (mediation); admission of disciplinary default by the respondent police officer; or where evidence exists, referral to a Provincial Court judge for public hearing.

299. *The Police Services Act* covers a wide range of issues; however, the core elements of the Act are:

    (a) creation of a provincial police commission to provide advice to the Minister on policing Standards and Regulations, as well as other functions specified by the Act;
    (b) creation of an independent investigation unit (IIU) to respond to deaths by or serious allegations against a police officer; and,
    (c) mandatory civilian police boards for each municipality operating its own police service.

300. The provisions regarding the Manitoba Police Commission (MPC) were proclaimed in November of 2010; the Commission is composed of nine persons appointed from across

Manitoba and reflects the gender and cultural diversity of the province. Proclamation of a number of sections of the Act is dependent on the MPC being established and conducting the necessary research and consultations to properly advise the Minister on Regulations and Standards, as per the implementation plan to phase in proclamation.

301. Section 7 of the Act identifies the Police Commission's statutory duties as:

(a) providing advice to the minister on regulations dealing with the operation of police services and the conduct of police officers, including regulations prescribing standards for police services and police officers;
(b) consulting with the public on matters relating to law enforcement and policing, and providing the results of those consultations to the minister;
(c) developing a policy and procedures manual for police boards and a code of ethical conduct for members of police boards;
(d) arranging for training to be provided to members of police boards and civilian monitors; and
(e) performing any other duties assigned by the minister.

302. Section 8 of the Act authorizes the Minister to direct the Police Commission to complete a study on a specific issue relating to policing and law enforcement.

303. *The Police Services Act* requires that the Independent Investigation Unit (IIU) be led by a civilian director who is not a current or former member of a police service or the Royal Canadian Mounted Police. The Unit must investigate all incidents where someone dies or is seriously injured following contact with a police officer, or where it appears that a police officer has contravened a prescribed section of the *Criminal Code* or a prescribed federal or provincial statute. The Unit must also be notified of all other allegations of unlawful activity involving a police officer and may decide to assume responsibility for the investigation of such incidents or monitor an investigation conducted by the police service of jurisdiction.

304. The Manitoba Police Commission must appoint civilian monitors to mandatory investigations undertaken by the Unit or where the civilian director has requested the assignment of a civilian monitor to specific investigations.

305. In Saskatchewan, any person who is dissatisfied with the action or inaction of police has the ability to make a complaint to a number of agencies, including the Public Complaints Commission (PCC), which is a five-person, non-police body appointed by the Government of Saskatchewan. It is responsible for ensuring that both the public and police receive a fair and thorough investigation of a complaint against the police or an investigation of a possible criminal offence by a police officer.

306. Complaints about municipal police may also be made, in person or by writing, to the police service, Board of Police Commissioners, Saskatchewan Justice, Federation of Saskatchewan Indian Nations, Special Investigations Unit, and any RCMP detachment.

307. In Alberta, the Provincial Public Complaints Director worked with all police agencies to standardize the reporting of complaints against police. The efforts resulted in the development and implementation of a standardized, electronic report system that allows the Provincial Public Complaints Director to access aggregated data for all police agencies in Alberta.

308. In May 2011, the Alberta *Police Act* was updated and the following provisions were made to enhance the public complaint process within the province:

- Better definition of who may file a complaint about police service or police officer conduct. The Act in this regard is now more modern and inclusive. Specifically, any person may file a complaint about the service provided by or a policy of a police service. With regard to police conduct, any person affected, a family member of a person affected or an agent of a person affected may file a complaint.
- The Act now allows police commission and policing committee members to be appointed to terms not exceeding 10 years to preserve valuable professional expertise and continuity.
- Provisions were made to allow the public complaint director of an established policing committee to serve as public complaint director for more than one policing committee. This will address geographic, training/recruitment issues with this position and ensure the right person for the job.

309. The amendments address the needs identified during consultation to better define the role and scope of public complaint directors and enhance the position's purpose as civilian oversight. The role of public complaint director as clarified is now:

- to act as a liaison between the commission, policing committee, the chief of police, the officer in charge of a police service and the complainant as applicable;
- to review the investigation conducted in respect of a complaint during the course of the investigation and at the conclusion of the investigation; and
- to provide reports to the commission or policing committee, as required by the commission or policing committee.

310. Amendments to the Act set out the position of Provincial Public Complaint Director with parallel and additional duties to the public complaint directors. The duties include:

- The ability to act in the event no Public Complaint Director or Regional Public Complaint Director has been designated for the municipality in which a complaint arose and to perform the functions of a Public Complaint Director or Regional Public Complaint Director in respect of the complaint.

311. The amendments also give Alberta Serious Incident Response Team the ability to self-initiate their authority and investigation expertise in an ongoing directed investigation (www.solgps.alberta.ca/programs_and_services/public_security/ASIRT/Pages/default.asp).

312. In May 2011, British Columbia introduced legislation to establish the Independent Investigations Office (IIO), a civilian-led body mandated to conduct criminal investigations into incidents of death and serious harm involving on- or off-duty RCMP and municipal police officers in the province. The IIO is expected to begin operations in mid-2012. The work of the IIO will complement that of the existing Office of the Police Complaints Commissioner, an independent office of the legislature that oversees the investigation and adjudication of complaints of misconduct against municipal police officers, but does not have a mandate to engage in criminal investigations.

Independent oversight of corrections agencies

313. Canada has many independent oversight mechanisms already in place at the federal, provincial and territorial levels with a mandate to investigate complaints of ill treatment in correctional institutions. The role of the federal Office of the Correctional Investigator, for example, is discussed in response to Question 8 above.

314. In Québec, inmates in detention facilities who believe that they have been victims of abuse have various redress mechanisms to assert their rights. They can file a complaint with the police or with the courts. They can also contact the Québec Ombudsman at any time and they also have access to an internal complaint processing system.

315. Complaints concerning allegations of physical violence (physical mistreatment) by correctional staff are systematically sent to the Québec Ombudsman and analyzed by a Correctional Services representative from the Québec Department of Public Security. A written response is systematically provided to the complainant and, if the complaint is well-founded, corrective action is taken.

316. Various mechanisms are also in place within the correctional system for identifying and managing problem situations, including potential incidents of mistreatment. There is an administrative procedure for reporting and managing incidents that are disruptive to operational activities in a correctional institution. There is also another procedure to allow for an administrative investigation to be conducted by a branch of the Department of Public Security independently of the correctional institution. Finally, the coroner investigates all deaths that occur in a detention facility.

317. In Saskatchewan, the Office of the Ombudsman and the Human Rights Commission have legislative authority to conduct thorough investigations into any complaint or concern raised by inmates about conditions of correctional facilities or the decisions made, or actions taken, by correctional personnel. Inmates have ample opportunity to contact either investigative office, or any lawyer, should they wish to report any abuse by law enforcement or correctional personnel. Saskatchewan's policy requires the director of a correctional facility to contact the police if there is evidence of a criminal assault. All complaints of mistreatment from young offenders implicating division staff are investigated. Additionally all young offenders have unfettered access to the Children's Advocate Office, which has investigative powers. Admissions to custody facilities require the appropriate person searches. During searches, any bruising, markings, or signs of

abuse will be documented and discussed. If youth disclose how these occurred, the appropriate response will occur whether police services or child protection services are contacted to complete an investigation.

Question 25: Please provide detailed information about the status of implementing several recommendations made by Justice Dennis O'Connor following of the Commission of Inquiry into the case of Maher Arar (State party report, para.20), in particular as to the establishment of a comprehensive review and oversight mechanism for security and intelligence operations in Canada. Has the State party prepared an implementation plan with a timeline for all of these recommendations? What measures would prevent Canadian officials from repeating the acts that led to this transfer and alleged complicity in the abuses while he was in custody in Syria.

318. As the Committee has noted, in 2004, the Government of Canada created the "Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar." Mr. Arar, a telecommunications engineer with dual Syrian and Canadian citizenship, was arrested and deported by the United States to Syria in 2002. Led by Ontario Court of Appeal Justice Dennis O'Connor, the Commission's mandate was to investigate and report on the actions of Canadian officials in relation to Mr. Arar, and to make any recommendations on an independent review mechanism for the activities of the RCMP with respect to national security. Justice O'Connor's *Report of the Events Relating to Maher Arar* (Part I, Factual Inquiry) was released in September 2006 and contained 23 recommendations.

319. The Government of Canada accepted all of the recommendations contained in Part I of Justice O'Connor's report and took immediate action to address them. This process is nearly complete, with 22 of the 23 recommendations having been implemented. Government initiatives taken in response to Justice O'Connor's recommendations have improved inter-departmental cooperation on national security files, enhanced safeguards on the sharing of information with other countries, implemented more robust training activities for national security agencies, and resulted in greater investment in consular services for Canadians abroad.

320. The Government also provided a formal apology to Mr. Arar and his family, and a settlement in the amount of $10.5 million, plus legal costs, for the ordeal they suffered.

321. Part II of Justice O'Connor's report (Policy Review) was released in December 2006 and contained 13 recommendations. The Government of Canada remains committed to addressing the recommendations made therein.

322. Work is ongoing to implement the remaining recommendation (number 10), which is also the focus of the recommendations made in Part II of the Commission's report. Recommendation 10 states that the "RCMP's information sharing practices and arrangements should be subject to review by an independent, arms-length review body." This recommendation would be addressed by changes to the oversight mandate of the Commission for Public Complaints Against the RCMP proposed in Bill C-38, discussed above in response to Question 24.

323. The Government is also examining options for modernizing and strengthening Canada's national security review framework as a whole, including creating a mechanism to facilitate inter-agency review of national security activities. The commitment for such a framework was reaffirmed in the December 2010 Air India Action Plan and work is ongoing in this regard. Any proposal to enhance the external review of security and intelligence agencies needs careful consideration to appropriately take into account a number of key principles, including: proportionality between the demands of review and the degree of intrusiveness of the activity being reviewed; promoting public confidence in national security agencies; and safeguarding operational effectiveness of national security agencies.

324. While this work continues, a number of measures and other review mechanisms are already in place. In addition to the RCMP Public Complaints Commission, the following bodies are also specifically involved with the review of national security activities in Canada: the Security Intelligence Review Committee, the Commissioner of the Communications Security Establishment, and a number of Parliamentary committees.

Question 26: Please provide information about the outcomes of the inquiry into the case of three Arab-Canadians, carried out by former Supreme Court Justice Frank Iacobucci and the efforts made by the State party to guarantee the independent, public and transparent inquiry and to implement his recommendations. According to the information before the Committee, the men affected and their lawyers were shut out of the process and have had no access to information. Please comment on this allegation and also outline any relevant cases in this regard, including the Khadr case mentioned in the Committee's Follow-up Letter of 29 April 2009, and any measures taken to remedy rights of nationals to whom access was improperly restricted while in detention.

Update in respect of the Iacobucci Commission of Inquiry

325. In response to one of Justice O'Connor's recommendations, in December 2006, the Government of Canada created the "Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin," who were detained in Syria or Egypt. This Inquiry was led by former Supreme Court of Canada Justice Frank Iacobucci, whose report was released in October 2008. Commissioner O'Connor had recommended that these cases be reviewed, and that the review be done through a credible process, but not by a public inquiry. Commissioner Iacobucci therefore conducted an internal inquiry, but held public hearings on specific issues. He and his counsel had access to all information deemed relevant. Commissioner Iacobucci summarized the internal inquiry process in the Inquiry Report as follows:

> The Inquiry was required to be internal and presumptively private. The Terms of Reference were very specific in describing the Inquiry as an "internal inquiry" and in requiring that I take all steps necessary to ensure that the Inquiry was conducted in private, except to the extent that I

> determined that, to ensure the effective conduct of the Inquiry, specific portions should be conducted in public.
>
> The requirement that the Inquiry be conducted in private originated in the comments of Justice O'Connor in the Report of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar. Justice O'Connor recommended that the cases of Mr. Almalki, Mr. Elmaati and Mr. Nureddin be reviewed, but in a manner more appropriate than a full scale public inquiry, which, when national security issues are involved, can be complicated, unduly protracted and expensive.[38]

326. The Inquiry Report contains extensive, publicly available summaries of the information reviewed by the Commissioner. Commissioner Iacobucci did not make specific recommendations, but did make certain findings regarding the actions of Canadian and foreign officials (although not to a legal standard of proof). As explained in response to Question 25, Canada has made a number of changes to guidelines and policies regarding information sharing among different agencies, as well as enhancing training for consular officials. These changes respond to many of the concerns raised in both the O'Connor and Iacobucci Commission reports.

327. A Parliamentary Committee of the House of Commons reviewed Commissioner Iacobucci's report and provided its recommendations, to which the Government responded in 2009 (www.parl.gc.ca/HousePublications/Publication.aspx?Mode=1&Parl=40&Ses=2&Language=E&DocId=4144670&File=0). The response emphasized progress that has been made in implementing the recommendations of the O'Connor inquiry, including the measures described above regarding changes to the practice of the RCMP, CSIS and other agencies, as well as proposed changes to the oversight of national security and intelligence activities. As noted in the response, however, Canada is unable to provide further information on its response to Commissioner Iacobucci's findings in relation to Messrs. Almalki, Elmaati and Nureddin at this time, as these matters are currently the subject of litigation before Canadian courts.

Update on Khadr case

328. With respect to the case of Omar Khadr, in 2008, the Supreme Court of Canada (SCC) found that Canadian officials who interviewed Mr. Khadr while he was detained at Guantanamo Bay had participated in foreign state conduct that violated Canada's international human rights obligations. As such, the principles of fundamental justice protected by section 7 of the Canadian Charter required disclosure of information obtained in those interviews to Mr. Khadr.[39] Canada subsequently provided such disclosure.

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[38] Final Report, Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmed Abou-Elmaati and Muayyed Nureddin, October 2008, at p. 30. A more detailed explanation of the Inquiry process may be found in Chapter 2 of the Report, available at: epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/internal_inquiry/2010-03-09 www.iacobucciinquiry.ca/pdfs/documents/final-report-copy-en.pdf.

[39] *Canada (Justice) v. Khadr*, 2008 SCC 28, online: scc.lexum.org/en/2010/2010scc3/2010scc3.html.

329. Mr. Khadr then sought an order that Canada request his repatriation from the United States as a remedy for these same interviews, conducted in 2003 and 2004 by Canadian officials in Guantanamo Bay. In 2010, the SCC issued a declaration that interviews conducted by Canadian officials in Guantanamo Bay breached Mr. Khadr's rights under section 7 of the Charter and contributed to his ongoing detention, but left it "to the government to decide how best to respond to this judgment in light of current information, its responsibility for foreign affairs, and in conformity with the Charter."[40] In response to that decision, Canada sought assurances from the US that information derived from the interviews conducted by Canadian officials would not be used against Mr. Khadr in his Military Commission trial.[41]

330. On April 27, 2010, the US responded that the Military Commission process provides protection against the use of statements improperly obtained, but did not provide the specific assurance sought. On July 5, 2010, the Federal Court allowed Mr. Khadr's application for judicial review of Canada's response to the Supreme Court's declaration, and ordered the government to consult with Mr. Khadr and continue to advance potential remedies for the breach of his rights until the breach was cured, ameliorated or all remedies were exhausted. Canada appealed this judgment. On March 9, 2011, the Federal Court of Appeal determined the appeal was moot in light of Mr. Khadr's guilty plea before the Military Commission, pursuant to which Mr. Khadr remains detained at Guantanamo Bay.

ARTICLE 14

Question 27: In light of the Committee's previous concluding observations (para. 5(f)), please provide updated information on measures taken to ensure the provision of compensation through its civil jurisdiction to all victims of torture. Please include the number of requests filed, the number granted, and the amounts ordered and those actually provided in each case.

331. If a Canadian official were to commit, or participate in, an act of torture as defined in the Convention, any victim of such an act would have a number of possible avenues of recourse through the civil justice system. These include bringing an action for a remedy pursuant to section 24(1) of the Charter for a violation of the Charter's relevant provisions, such as sections 7 or 12. The Supreme Court of Canada recently confirmed the availability of compensation (damages) as a possible remedy for Charter violations in *Ward*,[42] where it upheld an award of damages against the City of Vancouver for a strip search conducted in violation of section 8 of the Charter (right to be free from unreasonable search or seizure).

332. Other recourses would include a civil action in tort in common law jurisdictions or pursuant to civil law in Québec.

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[40] *Canada (Prime Minister) v. Khadr*, 2010 SCC 3 at paragraph 39, online: scc.lexum.org/en/2010/2010scc3/2010scc3.html.
[41] Statement by Minister of Justice in response to the SCC's decision online: www.justice.gc.ca/eng/news-nouv/nr-cp/2010/doc_32482.html.
[42] *Vancouver (City) v. Ward*, 2010 SCC 27, [2010] 2 S.C.R. 28, online: scc.lexum.org/en/2010/2010scc27/2010scc27.html.

333. Canada is not aware of any cases where individuals have sought compensation through the civil justice system for torture allegedly inflicted by Canadian law enforcement or other officials in Canada.

334. There have been a limited number of cases brought over the past three years in which individuals have sought compensation for alleged participation by Canadian officials in acts of torture committed abroad by foreign officials. With respect to cases that have been concluded, the claimants have been unsuccessful as their claims have been found to be unsubstantiated in respect of alleged Canadian involvement in the acts alleged.[43]

335. Canada is aware of ten civil lawsuits currently ongoing in which individuals are claiming compensation for alleged participation by Canadian officials in their detention and mistreatment abroad by foreign officials. As these claims are not yet resolved, it would be inappropriate to comment further.

336. Laws and programs intended to facilitate access to compensation for victims of crime, also discussed in response to Question 5 above, may provide an additional recourse for victims of the offence of torture. For example, in Québec, victims of torture can request compensation under the *Crime Victims Compensation Act* (www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/I_6/I6.HTM). Section 3 of this Act states as follows:

> **3.** A crime victim, for the purposes of this Act, is any person killed or injured in Québec:
> (a) by reason of the act or omission of any other person occurring in or resulting directly from the commission of an offence the description of which corresponds to the criminal offences mentioned in the schedule to this Act.

337. Although torture is not listed in this schedule, the definition of torture, as it appears in section 269.1 (1) of the *Criminal Code*, provides for victims of torture to be compensated under the following criminal offences: assault, aggravated assault, assault with a weapon or causing bodily harm, sexual assault, sexual assault with a weapon, aggravated sexual assault and intimidation by violence. All these offences are listed in the schedule to the *Crime Victims Compensation Act*. Hence, any person who is the victim of any of these offences can be compensated under the compensation plan for victims of crime (IVAC).

338. In terms of statistics, pages 24 to 26 of the 2010 annual report of the IVAC shows: (a) the number and breakdown of claims accepted, by *Criminal Code* sections listed in the schedule to the *Crime Victims Compensation Act,* for 2008, 2009 and 2010; and (b) the benefits paid, in Canadian dollars, by type of compensation, such as medical assistance, rehabilitation or temporary or permanent disability (www.ivac.qc.ca/PDF/Rapport_annuel_IVAC_2010.pdf).

[43] See for example: *Moufid v. Canada*, 2008 FCA 357, application for leave to appeal dismissed [2009] S.C.C.A. No. 34 (regarding torture allegedly experienced by Mr. Moufid in Morocco).

339. With respect to victims of acts of torture committed outside Canada by foreign officials, as explained in Canada's Sixth Report, Canada's position is that Article 14 does not impose an obligation on Canada to provide recourse for such victims through Canada's domestic civil legal system. There continues to be ongoing domestic litigation in this regard.[44]

340. For more detailed comments by Canada on the Committee's draft General Comment on the obligation of States Parties to implement Article 14 of the Convention, Canada refers the Committee to the written comments it provided on February 29, 2012 in response to the Committee's invitation.

341. As explained in Canada's Sixth Report, Canada has many programs that provide funding and support to individuals who were victims of torture abroad and are now in Canada. This includes support for the Canadian Centre for Victims of Torture, for which the Government of Canada, provincial and municipal governments, among others, continue to provide significant funding.[45]

ARTICLE 16

Question 28: Please provide information on measures taken to adopt legislation to remove the existing authorization of the use of "reasonable force" in disciplining children and explicitly prohibit all forms of violence against children within the family, in schools and in other institutions where children may be placed. Has this led to Canada's repeal of Section 43 of the Criminal Code, as recommended repeatedly by the Committee on the Rights of the Child (CRC/C/15/Add.215, para.32)? What prosecutions, convictions and remedial measures have been taken against those found responsible and how has the State party ensured that those responsible are removed from schools and institutions so the alleged acts cannot be repeated?

342. Canada has strong sets of laws to protect children both at the provincial level (where child protection laws protect children from abuse), and in the federal *Criminal Code*. Because the offence of assault is very broadly defined as the non-consensual application of force and includes threats, parents and those acting in their stead could be subject to the criminal law for many actions within their daily duties toward the child in the absence of section 43 of the *Criminal Code.* Section 43 provides a defence to parents, caregivers and teachers who are charged with assault in disciplining a child where they can show that the force used is reasonable in all of the circumstances.

[44] *Kazemi v. Iran*, 2011 QCCS 196, on appeal to Quebec Court of Appeal; *Bouzari v. Bahremani*, [2011] O.J. No. 5009 (Ont. S.C.J.) (QL).

[45] For more information, see for example: the CCVT's 2010-2011 Annual Report: ccvt.org/wp-content/uploads/2011/12/AGM-Report-2010-2011-FINAL.pdf.

343. In 2004, the Supreme Court of Canada upheld section 43 as consistent with both the Charter and the *Convention on the Rights of the Child*.[46] The Court provided interpretative guidance that significantly narrowed the scope of section 43 to apply only to minor corrective force of a transitory and trifling nature. This specifically excludes section 43's application to, among others, the use of corporal punishment by way of objects, such as rulers or belts, as well as all cases involving the use of corporal punishment toward children under two years or teenagers, as they are not capable of benefiting from the educative goal of the correction. The Court also clearly stated that teachers may not use corporal punishment under any circumstances, but may use reasonable corrective force to maintain order or enforce school rules. As explained by the Court, when section 43 is properly interpreted, including in light of international human rights treaties to which Canada is a party, reasonable corrective force under section 43 "will seek to avoid harm to the child and will never include cruel, inhuman or degrading treatment."[47]

344. A fact sheet entitled "The Criminal Law and Managing Children's Behaviour" provides a plain language explanation of the current law (canada.justice.gc.ca/eng/pi/fv-vf/facts-info/mcb-cce.html). For further information on section 43, Canada refers the Committee to Canada's Third and Fourth Reports on the *Convention on the Rights of the Child* (2009).[48]

Question 29: **In light of the Committee's previous concluding observations (para.5(h)) and the State party's acceptance of the recommendation made in the course of the UPR (A/HRC/11/17/Add.1, para.55), please provide detailed information on whether the State party has conducted a public and independent study and a policy review of continued allegations of use of excessive force by the police, including inappropriate use of chemical, irritant, incapacitating and mechanical weapons, often in the context of crowd control at federal and provincial levels. Furthermore, please provide information on:**

(a) the outcomes of the investigation into allegations of police misconduct and ill-treating during land-related protests at Tyendinaga, Ontario. Also, please indicate steps taken to implement the recommendations of the Ipperwash Inquiry following its examination in the killing of an unarmed indigenous man involved in a land protest by an Ontario Provincial Police sharpshooter;
(b) The policing response to large scale public protests in Toronto when Canada hosted the G8 and G20 Summits in June 2010. Please indicate to what extent the State party has carried out a public inquiry to examine all aspects of the security operation:
(c) The outcomes of investigation into death of individuals after being tasered, including the case of Robert Dziekanski who died after being hit by a Taser gun from the Royal Canadian Mounted Police (RCMP) on 14 October 2007 at Vancouver International Airport;
(d) The State party's view on reports before the Committee regarding the lack of training of law enforcement personnel on use of tasers; and

[46] *Canadian Foundation for Children, Youth and the Law v. Canada (A.G.)*, [2004] 1 S.C.R. 76, online: scc.lexum.org/en/2004/2004scc4/2004scc4.html.
[47] *Ibid.* at paragraph 32.
[48] See paragraphs 63-64. Available at: www.pch.gc.ca/pgm/pdp-hrp/docs/pdf/canada3-4-crc-reports-nov2009-eng.pdf.

(e) Statistical data on any complaints, investigations, prosecutions, convictions and penalties imposed for alleged excessive use of force by law enforcement personnel.

345. Canadian governments at all levels work to ensure that peaceful protest can occur. Canada's police services receive training on human rights and work to ensure that lawful and peaceful protest can occur safely and securely. For example, when significant protests are expected, including those that give rise to a high risk of violent behaviour or rioting, Canadian police services engage in active community outreach and dialogue with potential demonstrators and other stakeholders prior to the event, in part to work to assure everyone's safety during the protest. In carrying out their duties, police officers must, at all times, conduct themselves within their powers and consistent with the law. Canada recognizes that sometimes, due to the circumstances of a particular protest, opinions may differ as to whether the appropriate balance between the freedom to protest peacefully and ensuring public safety and security was indeed reached. Where this is the case, various domestic mechanisms are in place to ensure accountability of government and police services. These include judicial remedies under the Charter, as well as various non-judicial mechanisms, such as Parliamentary oversight committees, statutory bodies created to administer particular legislation, police review mechanisms at all levels (federal, provincial and municipal), ombudsmen, civil liberties organizations, inquiries and a free press.

346. In terms of recent independent research with respect to police use of force, the Canadian Police Research Centre (CPRC) is funding a project entitled *"RESTRAINT: Risk of dEath in Subjects That Resist: Assessment of Incidence and Nature of faTal outcomes."* This is an epidemiologic study of sudden in-custody death in North America. The study includes police agencies and emergency medical services in several urban centres across Canada since 2008. Data have been collected in situations where individuals experience police use of force using a standardized police use of force form; prospective data collection will continue until June 2013.

347. The data collected are being used to inform policy makers, law enforcement agencies, the medical community and the public about the epidemiology of police use of force, and medical outcomes following police use of force. This study has resulted in several large scale international collaborations, including the Seattle Working Group on Excited Delirium, the Less Lethal Weapons Medical Safety Advisory Board and the American College of Emergency Physicians White Paper on Excited Delirium.

348. The following paragraphs address the Committee's request for specific information about the events and activities referenced in this question.

Tyendinaga

349. The Ontario Provincial Police (OPP) conducts operational de-briefings of all major incidents, such as the protests at Tyendinaga. The OPP approach recognizes the need to balance individual rights and freedoms with the need to maintain public peace and order. The OPP consistently reviews its internal policies, procedures and operations to ensure they are best meeting the needs of the public and the police service. The OPP approach

during the 2007-2008 protests was guided by the Framework for Police Preparedness for Aboriginal Critical Incidents and, in this context, the OPP operational response was measured, appropriate and consistent with its policies.

Ipperwash Inquiry

350. In 2007, the Government of Ontario established the Ipperwash Priorities and Action Committee (IIPAC) to work on the implementation of the Ipperwash Inquiry Report recommendations jointly with First Nations. Under this process, the Ministry of Community Safety and Correctional Affairs (MCSCS) and the Ministry of Aboriginal Affairs continue to work collaboratively with First Nations to address the recommendations of the Ipperwash Inquiry. MCSCS continues to work with justice partners, First Nations communities, First Nations police services and the Government of Canada to enhance and improve the relationship between Aboriginal communities and the police. Justice Linden's Report of the Ipperwash Inquiry is helping the Government of Ontario build on the progress already made in its relationship with First Nations in Ontario.

Policing response when Canada hosted the G8 and G20 Summits

351. In hosting the G8 and G20 Summits in June 2010, Canada had to achieve an appropriate and delicate balance between rights, interests and objectives that can, at times, conflict: respecting the constitutional right and freedom to protest peacefully, while at the same time maintaining security and public order, including ensuring the protection of several heads of State and other dignitaries ("Internationally Protected Persons" or "IPPs") in attendance at the Summits. Numerous police services and security agencies covering multiple jurisdictions co-operated in establishing the security plan and carrying out operations. As Canada's police force, the RCMP was mandated with the co-ordination of the security measures for the G8 and G20 Summits, as well as the security of the IPPs and the Summit sites. The Ontario Provincial Police, Peel Regional Police, and Toronto Police Service were responsible for public order in their respective jurisdictions, outside of the Summit sites.

352. Following the Summits, a number of public processes examined or are continuing to examine all aspects of the security operations put into place both by Ontario and at the federal level. Key initiatives in this regard are highlighted below.

353. In Ontario, the Office of the Ontario Ombudsman announced on July 9, 2010 that it would review the process by which the Government of Ontario passed a Regulation under the *Public Works Protection Act* (PWPA), which temporarily extended certain police powers around the G20 Summit security zone and its subsequent communication. It is worth reiterating that ultimately, only two individuals were arrested on the basis of this Regulation. In December 2010, the Ontario Ombudsman released his report on the investigation into the Ministry of Community Safety and Correctional Services' conduct in relation to Ontario Regulation 233/10 under the *Public Works Protection Act* (www.ombudsman.on.ca/Files/sitemedia/Documents/Investigations/SORT%20Investigations/G20final-EN-web.pdf). In response to the recommendations contained in the report, the

government has developed a Protocol for Public Notification when Modifying Police Powers. This protocol ensures that the public is adequately informed of changes to subordinate legislation or ministerial approvals that modify powers of police.

354. In September 2010, the Government of Ontario announced an independent review of the PWPA by the Honourable Roy McMurtry. The review was released on April 28, 2011. In response to both the McMurtry and Ombudsman's reports, the government made a public commitment to repeal the PWPA and introduce replacement legislation. Bill 34, the *Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act*, 2012 was introduced on February 22, 2012. The Bill, if passed, would repeal PWPA and replace it with more focused legislation that protects courthouses, nuclear and other power generating facilities.

355. Additionally, the Office of the Independent Police Review Director (OIPRD), which is an arm's length body that reports to the Attorney General of Ontario, announced that it will be conducting a systemic review of policing at the G20 Summit. The terms of reference for the Review are available at: www.oiprd.on.ca/CMS/Publications/Reports-(1).aspx.

356. The Toronto Police Service announced in June 2010 that it would undertake an internal review and produce a Summit Management After Action Review Team ("SMAART") report. The SMAART operational review examined how the Toronto Police Service, the OPP and the RCMP worked together. The report was released in June 2011 (www.torontopolice.on.ca/publications/files/reports/g20_after_action_review.pdf).

357. Finally, on September 23, 2010, retired judge John Morden was appointed by the Toronto Police Services Board (TPSB) to conduct an Independent Civilian Review into Matters Relating to the G20 Summit, specifically issues raised by the public and TPSB members with respect to oversight, governance, accountability, transparency, communication and supervision of G20-related policing. Public hearings were held on June 1, 6 and 13, 2011. The Review is currently ongoing with an expected completion date of June 29, 2012 (www.g20review.ca).

358. At the federal level, in the House of Commons of Canada's Parliament, the Standing Committee on Public Safety and National Security ("SECU") studied the issues surrounding the security and policing at the G8 and G20 Summits. SECU released its report in March 2011. It drew some critical conclusions and made 12 recommendations (www.parl.gc.ca/content/hoc/Committee/403/SECU/Reports/RP5054650/securp09/securp09-e.pdf).

359. The Commission for Public Complaints against the RCMP is also carrying out a public interest investigation into G20 policing. Its Terms of Reference may be found online (www.cpc-cpp.gc.ca/nrm/nr/2010/20101105-eng.aspx). The investigation is ongoing.

360. As a final note regarding ongoing public inquiry processes, the Canadian Civil Liberties Association and the National Union of Public and General Employees hosted public hearings in November 2010 in Toronto and Montreal to examine police activity during the

G20 Summit. These non-governmental organizations invited members of the public to share their stories. A report on these public hearings was released on February 28, 2011 (ccla.org/wordpress/wp-content/uploads/2011/02/Breach-of-the-Peace-Final-Report.pdf).

361. Ultimately, Canadian courts have jurisdiction to determine whether any elements of the police response amounted to violations of the Charter. Allegations that Charter rights and freedoms were infringed may be brought in the course of criminal trials and may lead to stays of proceedings if established. Similar allegations can be brought in civil proceedings where courts of competent jurisdiction can provide an "appropriate and just remedy," which could include judicial declarations and damages. As criminal and civil proceedings are ongoing at this time, Canada cannot comment further in this regard.

Investigations and studies into the use of CEWs

362. RCMP databases indicate that from January 2008 to December 2011, there were three deaths proximal to the use of Conducted Energy Weapons (CEWs) such as Tasers in Canada (one in 2008, two in 2009 and none in 2010-2011). In all three cases, subsequent medical examinations determined the deaths to be attributed to other causes. As with any case where an individual dies or suffers serious injury as a result of the action of law enforcement or other government officials, inquiries have been conducted.

363. In November 2007, Mr. Howard Hyde died while in custody at a correctional facility in Nova Scotia, following physical altercations with police and correctional officers, which included the use of a CEW. A Fatality Inquiry found Mr. Hyde's death to be accidental and put forward recommendations for improved mental health services at the provincial level.

364. In addition to inquiries or reviews that have occurred in individual cases, both federal and provincial governments, as well as law enforcement agencies, have undertaken several reviews and studies regarding the use of CEWs in the past five years.

365. In 2008, British Columbia initiated a Commission of Inquiry, led by Justice Thomas R. Braidwood, which reported in two phases. The first Commission report, entitled "Restoring Public Confidence: Restricting the Use of CEWs in British Columbia," inquired into the use of CEWs by constables, sheriffs and corrections staff in British Columbia. Released in July 2009, the report made recommendations relating to CEW policies and procedures including standards for use, medical assistance, training, testing and research. It recommended that the CEW should not be deployed unless the subject's behaviour meets the threshold of "causing bodily harm" or "will imminently cause bodily harm" (www.braidwoodinquiry.ca/report/P1Report.php).

366. The second Commission report, entitled "Why? The Robert Dziekanski Tragedy," inquired specifically into the actual events surrounding the death of Mr. Dziekanski at the Vancouver International Airport. Released in June 2010, the report called for better monitoring of airport passengers during processing for entry, and for police and emergency services to develop a plan of action for dealing with police use-of-force incidents at the

airport that evolve into medical emergencies (www.braidwoodinquiry.ca/report/P2Report.php).

367. In 2009-2010, the Policing Standards and Audits Section of the Government of Alberta conducted audits of police policy and practices relating to CEW use. All police were in compliance with the Alberta Guidelines for the Use of Conducted Energy Weapons.

368. In Ontario, inquests are mandatory in cases where a death occurs while a person is in custody or being detained (unless the death is from natural causes while committed to a correctional institution). An inquest is directed by a physician-coroner, and recommendations are made by a jury. Between 2008 and 2011, three inquest juries made recommendations pertaining to the use of CEWs. Included among the recommendations was the importance of:

- training, including training on the use of judgement when using CEWs;
- distribution of product warnings/information to trained members of police services'
- up-to-date procedures and technology;
- research, including research on the advisability of using CEWs in situations of excited delirium; and
- giving consideration to whether all front line police officers should be authorized to have access to or carry a CEW.

369. The Office of the Chief Coroner (OCC) directs inquest recommendations to appropriate agencies for response. Implementation of the recommendations by receiving agencies is not mandatory, and the receiving agencies are invited by the OCC to respond to the recommendation(s).

370. In 2007, the federal Minister of Public Safety asked the Commission for Public Complaints Against the RCMP (CPC) to review the use of CEWs by the RCMP. The CPC released its interim report in December 2007 (www.cpc-cpp.gc.ca/af-fr/pdf/InterimTaserReport.pdf) and its "Final Report Concerning RCMP Use of the Conducted Energy Weapon," in June 2008 (www.cpc-cpp.gc.ca/af-fr/PDF/FinalCEWReport_e.pdf). The Standing Committee on Public Safety and National Security (SECU) undertook its "Study of the Conducted Energy Weapon-Taser," which looked at CEW use by the RCMP and the death of Robert Dziekanski. The report was released in June 2008 (www.parl.gc.ca/Content/HOC/Committee/392/SECU/Reports/RP3582906/392_SECU_Rpt04_PDF/392_SECU_Rpt04-e.pdf.)

371. These reports included recommendations on the following topics:

- reclassifying the CEW as an "impact weapon";
- limiting its use with respect to the officers to whom it should be issued;
- deployment procedures and medical services (e.g., seeking immediate medical assistance for the subject); and
- data collection, analysis, reporting and accountability.

372. In November 2007, at the same time as the various studies and reviews were launched, Federal/Provincial/Territorial (FPT) Ministers Responsible for Justice (FPT Ministers) directed the creation of an FPT Working Group on CEWs, led by the federal Department of Public Safety, to support ongoing dialogue and information sharing on CEW policies and practices among jurisdictions. In 2009, FPT Ministers further directed the Working Group to develop national guidelines on CEW use and a research agenda.

Outcomes and implementation of recommendations

373. With respect to the case of Mr. Robert Dziekanski, the RCMP has formally apologized to Ms. Cisowski for the loss of her son, and has settled her outstanding civil lawsuit. In response to Justice Braidwood's recommendation that an independent prosecutor be appointed to review the actions of the RCMP officers involved in the Dziekanski incident, British Columbia appointed Mr. Richard Peck to carry out this review. On May 9, 2011, Mr. Peck recommended that perjury charges be laid against each of the four RCMP members in relation to their testimony given during the Braidwood Inquiry. Their trials are pending.

374. New national Guidelines for the Use of CEWs have also been developed and approved. They were posted to the website of the Department of Public Safety in October 2010 (www.publicsafety.gc.ca/prg/le/gucew-ldrai-eng.aspx). The Guidelines address: when to use a CEW, training, testing, supervision, and, reporting. They provide guidance to jurisdictions and police services in developing their respective CEW policies and practices. To date, the provinces and territories, as well as the RCMP have taken steps to meet, or exceed, the guidelines.

375. For example, on December 16, 2011, British Columbia announced approval of the new *Use of Force Provincial Policing Standards*, which are binding, province-wide, and meet all of the Braidwood Commission recommendations focusing on CEWs, addressing: threshold and circumstances of use; intermediate weapons and restraints approval process; operator training; crisis intervention and de-escalation training; medical assistance to CEW discharges; testing; internal controls and monitoring; and use of force reporting and data collection. Most of the standards come into effect on January 30, 2012, while others will be phased in at later dates to allow for budgeting, planning and staged implementation. All are expected to be implemented by January 30, 2013. The RCMP will meet or exceed these standards.

376. In Newfoundland and Labrador, the Provincial Police Tactics and Rescue unit is the only unit that has access to conducted energy devices (CED's). All members of the provincial police force are required to complete a use of force report form when any level of force is applied, except compliant handcuffing. There is immediate review by the supervisor followed by a quarterly review by a use of force committee. Incidents of excessive use of force are investigated by the provincial police professional standards section, for disposition by the Chief of Police. Appeals can be made by a member of the public to the Public Complaints Commission.

377. The province of Nova Scotia issued Guidelines on CEWs in June 2011 (www.gov.ns.ca/just/global_docs/CEW_Guidelines.PDF).

378. In October 2010, federal, provincial and territorial governments also endorsed a national CEW research agenda, focused on the following priorities:

- developing a comprehensive CEW test procedure that could be applied by civilian authorities and law enforcement;
- conducting an independent evaluation, by a panel of medical experts, of existing research to examine the physiological impact of CEWs, with a view to identifying gaps in the research and making recommendations on how to address them; and
- developing a Less Lethal Weapons Approval Framework for Canada that could be applied by civilian authorities and police services to other emerging less lethal technologies.

379. The Canada Border Services Agency has implemented recommendations made by the Braidwood inquiry specifically in relation to the experience of travellers arriving to Canada by airplane, including by: improving the efficiency of the customs process so travellers can proceed out of airport security zones as quickly as possible; taking measures to facilitate communication between arriving passengers and greeters awaiting them; improving access to interpretation services where needed; and promoting greater coordination among those responding to medical and security emergencies.

Training of law enforcement personnel on use of CEWs

380. Canada is of the view that law enforcement personnel in all jurisdictions are receiving appropriate training on the use of CEWs, in line with the guidelines described above.

381. For example, the RCMP has conducted an in-depth analysis of recommendations and guidelines stemming from such sources as the Commission for Public Complaints against the RCMP (CPC) and various provincial CEW guidelines. This has influenced new national policy, divisional policy, and national training. The RCMP has made a number of important changes related to the use of conducted energy weapons. These changes include:

- restricting their use to incidents when a subject is causing bodily harm, or the member believes on reasonable grounds that the subject will imminently cause bodily harm as determined by the member's assessment of the totality of the circumstances;
- annual re-certification of trained officers;
- completion of a Subject Behaviour / Officer Response (SB/OR) report every time a CEW is used; and
- a rigorous testing regime that takes into account Provincial CEW Testing requirements.

382. Additional training is provided to RCMP members on the Incident Management Intervention Model, a national use of force framework, to ensure that the officer

continuously assesses risk and applies the necessary intervention to ensure public and police safety. The RCMP has implemented systematic reporting on use-of-force incidents to monitor the level of force used by officers and to better identify related training requirements. Policy reviews have taken place and amendments have been made in support of the above noted changes.

383. Since these changes were made, the use of CEWs by the RCMP has declined significantly. According to CPC annual reports on the use of the CEW, usage dropped by 30 percent between 2007 and 2008, and by another 38 percent between 2008 and 2009.

384. To give another example, under the New Brunswick Municipal/Regional Operational Police Policies - Use of Force, the National Use of Force Framework applies so that officers may make an informed decision when interacting with subjects, and to provide for the compulsory reporting by officers on use of force incidents. Additionally, police forces provide annual certification training for CEW-issued officers.

385. In February 2006, the Québec Department of Public Security issued a communiqué outlining certain rules for the use of conducted energy devices (CEDs) until a police practice governing their use was established.

386. In December 2007, the Standing Advisory Subcommittee on the Use of Force (SCCPEF) tabled its report entitled *Analysis and recommendations for a Québec police practice on the use of conducted energy devices* in order to identify all the relevant elements that should be included in a police practice. A communiqué was sent to police department heads the same day in order to inform them of the new rules governing the use of such devices following the review by the SCCPEF. The recommendations contained in the communiqué dealt, in particular, with the specific rules for the use of conducted energy devices, the assurance that only police officers who have received proper training are permitted to used CEDs, and the requirement to keep CED utilization records for the purposes of compiling provincial records. The communiqué also recommended that the use of CEDs be avoided on highly agitated persons and that medical services be called before intervening physically with such persons, that police officers use physical intervention techniques that interfere as little as possible with breathing when using CEDs, and that they refrain from using CEDs in drive-stun mode on persons offering passive resistance.

387. Since 2008, the École nationale de police du Québec [Québec national police academy] has been providing training adapted to the various contexts in which CEDs are used, as well as training for monitors responsible for ensuring that the skills of CED users are maintained. Police department heads ensure that all police officers to whom they issue CEDs requalify at least once a year, in accordance with the standards established by the École nationale de police du Québec.

388. Specific police practices in relation to CEDs were incorporated in the *Guide de pratiques policières* [Guide to police practices] in March 2008.

389. In March 2010, the Government of Ontario released a new operational guideline and training standards on CEWs to the policing community. The guideline sets out procedures that should be followed by police officers that include: circumstances and limitations regarding use; post-deployment procedures; medical considerations; reporting and accountability. The training standards outline the topics to be addressed in police service training for both CEW users and instructors, and they include academic, proficiency and judgment-based components as well as assessment tools.

390. The Ontario Police College (OPC) delivered a course for new CEW trainers in September 2010 as well as transition training for existing CEW trainers. In December 2011, the OPC delivered a course for Instructor Trainers who will be providing training to other CEW Instructors within their own police services. All training delivered by the OPC or within individual police services is to be in compliance with the training standards issued by the government as well as the CEW Trainer's Manual.

391. In Alberta, all sworn police officers may use CEWs and are trained in their use in recruit training. Police operators who use CEWs after recruit training receive "refresher" training at least once every two years. Some agencies choose to provide CEW refresher training annually. Further, all police officers receive annual training in the use of force, which includes the decision making process police must engage in to determine if 1) force is necessary and 2) what level of force is necessary.

Statistical data on complaints, investigations, prosecutions, convictions and penalties

392. Canada was unable to obtain comprehensive, updated data on criminal investigations or prosecutions of law enforcement personnel for alleged excessive use of force in the brief time allotted for responding to the Committee's List of Issues.

393. With respect to public complaints regarding excessive or improper use of force, these may generally be found in the reports of the various independent oversight bodies that review the conduct of law enforcement agents. For example, the following are RCMP statistics for the past three years on the number of complaints received of improper use of force:

- 2009: 507 Public Complaints in this category
- 2010: 484 Public Complaints in this category
- 2011: 449 Public Complaints in this category.

394. In 2008-09, there were eight disciplinary proceedings against RCMP officers related to excessive use of force. In 2009-2010, there were six disciplinary proceedings against RCMP officers related to excessive use of force.[49]

[49] Data extracted from appendix G in the RCMP Annual Report Management of the Disciplinary Process. The reports are available on the Adjudicative Services Branch: www.rcmp-grc.gc.ca/pubs/adj/ann-08-09/index-eng.htm (2008-2009 report); and www.rcmp-grc.gc.ca/pubs/adj/ann-09-10/index-eng.htm (2009-2010 report).

395. In Newfoundland and Labrador, the Royal Newfoundland Constabulary Public Complaints Commission identified the following data by year on complaints of alleged excessive use of force:

- 2008 (4 complaints: 3 dismissed/1 withdrawn)
- 2009 (3 complaints: 2 dismissed/1 settled)
- 2010 (3 complaints filed and under investigation)
- 2011 (4 complaints filed and under investigation).

396. The annual reports of the New Brunswick Police Commission provide information on complaints (www.gnb.ca/0075/index-e.asp).

397. In Ontario, the Office of the Independent Police Review Director (OIPRD) provides an independent civilian oversight of the police public complaints system. According to the OIPRD 2010-11 Annual Report, about 4,083 complaints were filed against the police between April 2010 and March 2011. Of this number, the OIPRD screened out 2,021 complaints. These complaints were screened out for a variety of reasons including being abandoned, bad faith, frivolous, complaint form incomplete, no jurisdiction, unable to contact complainant, vexatious and matter better dealt with under another law.

398. Between April 2010 and March 2011, the OIPRD screened in 1,972 complaints for investigation. Of this number, 1,881 complaints involved matters of police conduct, 26 referred to policies, and 65 involved police services. It is important to note that these complaints covered a variety of issues and that many did not involve allegations of use of excessive force. According to the Annual Report, the OIPRD received about 275 complaints in 2010-2011 containing allegations of excessive or unnecessary use of force by police. The majority of complaints of use of force were in the context of an arrest. The *Criminal Code* allows police officers to use reasonable force to make an arrest (www.oiprd.on.ca/CMS/oiprd/media/image-Main/PDF/6022_OIPRD_AR2011_EN_Final.pdf).

399. There are other ways in which excessive use of force by police may also be supervised and remedied by the courts in the course of criminal proceedings against an accused, where he or she alleges that police used excessive force in the course of an arrest or detention. In *R. v. Nasogaluak*,[50] the Supreme Court of Canada provided guidance as to how the excessive use of force during police operations may constitute a violation of section 7 of the Charter. While the victim might also bring a Charter challenge in the civil justice system, the Court also indicated that violations of the Charter's protections of life, liberty and security of the person due to excessive use of force may be taken into account at the sentencing stage and may mitigate the sentence imposed on an accused who was the victim of such treatment. Such conduct may also, in egregious circumstances, provide the basis for a staying of the charges against the accused.[51]

[50] 2010 SCC 6, online: scc.lexum.org/en/2010/2010scc6/2010scc6.html.
[51] See for example: *R. v. Jackson*, 2011 ONCJ 228; *R. v. Tran*, 2010 ONCA 471; *R. v. Walcott*, (2008) 57 C.R. 6th 223 (Ont. SCJ).

OTHER ISSUES

Question 30: Please update the Committee with the information on (a) whether and how the Anti-terrorism Act and other anti-terrorism measures have affected human rights safeguards in law and practice; and (b) how those measures comply with the State party's obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

400. The *Anti-terrorism Act* (ATA), enacted in 2001, was designed to balance the need to protect the security of Canadians while at the same time protecting their rights and freedoms. It was drafted with a view to ensuring consistency with the Charter and with Canada's international obligations in the areas of combating terrorism, international human rights, international humanitarian law and refugee law. As a result, the ATA contained numerous safeguards designed to protect rights and freedoms, including specific *mens rea* or mental fault requirements such as knowledge or purpose for new terrorism offences enacted.[52] The ATA did not in any way alter the protection provided in section 269.1(4) of the *Criminal Code* to the effect that "any statement obtained as a result of the commission of an offence [of torture] under this section is inadmissible in evidence, except as evidence that the statement was so obtained." Moreover, the Charter provides the same constitutional protections and remedies to a person charged with a terrorism offence as to any other accused. As explained in response to Question 2 above, Canada has also taken measures to ensure that anyone accused of a terrorism offence is provided with state-funded legal assistance where needed to ensure a fair trial.

401. As of March 2012, 14 persons have been convicted of criminal offences under the ATA. There have now been several terrorism prosecutions in Canada in which the prosecution has successfully defended certain *Criminal Code* and related legislative provisions as consistent with the Charter and human rights safeguards.

402. In *R. v. Khawaja*, for example, the Court of Appeal for Ontario concluded that the motive clause in the definition of "terrorist activity," which is that the act or omission must be committed for a political, ideological or religious motive or cause, did not violate the freedom of expression guarantee under the Charter and held that it was constitutional.[53] This decision has been appealed to the Supreme Court of Canada (SCC).

403. In 2001, the ATA also enacted two new tools – the investigative hearing and the recognizance with conditions – to assist in the investigation of, and to deter, terrorism offences and terrorist activity. In 2004, the SCC held that the investigative hearing was

[52] Further information on the ATA may also be found at: www.justice.gc.ca/antiter/actloi/perspectivep3-perspectivesp3-eng.asp.
[53] *R. v. Khawaja*, 2010 ONCA 862, paragraphs 95-135, online: www.ontariocourts.on.ca/decisions/2010/december/2010ONCA0862.htm.

constitutional, because of the numerous safeguards found in the legislation. For example, the Court ruled that there was no infringement of the right to self-incrimination, given the robust provision for use and derivative use immunity found in section 83.28(10) of the Code.[54] Both the investigative hearing and the recognizance with conditions provisions sunsetted in March, 2007 and are therefore no longer in effect. In February 2012, the Government tabled Bill S-7, the *Combating Terrorism Act*, which proposes, in part, to re-enact these tools with additional safeguards, such as an expanded annual reporting requirement on the use of these tools.

404. The *Criminal Code* also provides for the listing of a "terrorist group," defined as an entity that has as one of its purposes or activities the facilitating or carrying out of terrorist activity or that is an entity set out in a list established by regulation. For listed entities, the fact of being listed establishes them as terrorists groups. It is important to emphasize that being on the list does not itself constitute a criminal offence, although it can lead to criminal consequences. Where charges are laid, each element of the offence would have to be proven beyond a reasonable doubt, except for the issue of whether the entity constitutes a "terrorist group."

405. The list supports the application of other provisions in the Act, including:

- terrorism offences;
- crimes relating to the financing of terrorism;
- requirements to freeze terrorist property and procedures for the courts to order seizure and forfeiture of that property; and
- the removal or denial of the charitable status of organizations that engage in or support terrorism.

406. Safeguards are built into the listing process. On the recommendation of the Minister of Public Safety, the Governor in Council may list an entity if he or she is satisfied that there are reasonable grounds to believe that the group or person has knowingly carried out, attempted to carry out, participated in, or facilitated a terrorist activity; or is knowingly acting on behalf of, at the direction of, or in association with a terrorist group. Once approved, the decision is published in the Canada Gazette. The *Criminal Code* also provides for an appeal process in that a listed entity can apply to the Minister of Public Safety to be removed from the list. If the Minister refuses to do so, the matter can then be brought for judicial review before the Federal Court. Further, the list is subject to review by the Minister every two years. The names of the listed entities can be found at: www.publicsafety.gc.ca/prg/ns/le/cle-eng.aspx.

407. With respect to training on the ATA, the *National Security Criminal Investigations Course* is mandatory for all RCMP employees working within the National Security Criminal Investigations Program and is also made available to partners who work with the Program.

[54] *Application under section 83.28 of the Criminal Code (Re)*, [2004] 2 S.C.R. 248, paragraphs 72-73, online: scc.lexum.org/en/2004/2004scc42/2004scc42.html.

Since 2007, this 10-day course has drawn on subject matter experts and case studies to cover a range of topics including:

- The terrorism offences set out in section 83 of the *Criminal Code*;
- The governance and accountability structure of the NSCI program including human rights safeguards;
- Domestic and international information sharing obligations and concerns;
- Cultural diversity; and
- The RCMP's legal authorities.

408. An online course is also available to all RCMP members, to ensure that they are properly trained in the stringent safeguards of Canada's anti-terrorist regime. The course includes:

- The definition of terrorist activity under section 83.01(1) of the *Criminal Code*;
- A listing of the 10 UN anti-terrorism conventions;
- Examples of 'Acts or Omissions' that would actually be prohibited under Canada's anti-terrorist regime;
- An emphasis on the importance of Bias-Free Policing and an explanation about 'why profiling does not work';
- A link to the 'currently listed entities' on the Public Safety Canada website; and
- A description of the provisions under sections 83.01-83.04 and 83.18-83.22 of the *Criminal Code*.

409. With respect to the impact of anti-terrorism measures on human rights safeguards in law and practice in the immigration context, Canada refers the Committee to the answers provided to Question 4 in respect of security certificates.

Question 31: With reference to paragraphs 13-14 of the State party's report, please provide whether the amended Anti-terrorism Act includes an explicit anti-discrimination clause and a more precise definition of terrorism, as recommended by the Committee on the Elimination of Racial Discrimination (CERD/C/CAN/CO/18, para.14) and the Human Rights Committee (CCPR/C/CAN/CO/5, para.12).

410. Canada did not accept the recommendation made during its first Universal Periodic Review to include an anti-discrimination clause in the ATA, since the Act in its content and application is subject to the constitutional prohibition against discrimination set out in section 15 of the Charter. Canada's law enforcement and security intelligence professionals investigate threats to national security and criminality based on available intelligence and information and do not target any particular community, group, or faith.

411. With respect to the definition of terrorism, the general definition of "terrorist activity" in Canadian criminal law includes a reference to what is commonly called the "motive requirement," which requires that the act or omission must be committed for a political, religious or ideological purpose or cause. "Terrorist activity" is defined as an act or omission undertaken, inside or outside Canada, for a political, religious or ideological purpose that is intended to intimidate the public with respect to its security, including its

economic security, or to compel a person, government or organization (whether inside or outside Canada) from doing or refraining to do any act, and that intentionally causes one of a number of specified forms of serious harm. These harms include causing death or serious bodily harm, endangering life, causing a serious risk to health or safety, causing substantial property damage where it would also cause one of the other harms listed above, and, in certain circumstances, causing serious interference or disruption of an essential service, facility or system, whether public or private. As well, that aspect of the definition that relates to seriously interfering with or disrupting an essential service contains an exception for advocacy, protest, dissent and stoppage of work, providing this is not intended to cause most of the other forms of harm referred to in the definition. This exception recognizes that even unlawful protests and strikes that could lead to the disruption of an essential service do not constitute terrorist activity under the *Criminal Code*.

412. The legislation does not target any particular ethnocultural or religious group. Further, political, religious or ideological activities are not criminalized in and of themselves. Rather, only acts or omissions of the extreme and harmful type referred to under the definition of "terrorist activity," which are undertaken specifically for political, religious or ideological purposes, fall under the definition of "terrorist activity." In effect, the reference to "political, religious or ideological purposes" is a limiting aspect of the definition that helps distinguish terrorism from other types of criminal activity, such as organized crime.

413. Please see Canada's July 2009 *Interim Report to the CERD in follow-up to the review of Canada's Seventeenth and Eighteenth Reports*,[55] for further information on the efforts undertaken by Canada to ensure that anti-terrorism efforts are pursued without discrimination of any kind.

414. Since that report was submitted, the Ontario Court of Appeal upheld the constitutionality of the motive requirement, agreeing with the government's position that there was no evidence that the motive requirement had a chilling effect on minorities:

> "There are many potential explanations for why people might feel a chilling effect when it comes to expressing extremist Islamic views. Perhaps, most obviously, there is the reality of the world we live in. Terrorism and the fear and uncertainty terrorism creates are facts of life. Fear can generate many things, including suspicion based on ignorance and stereotyping. […].
>
> In making these observations, we do not intend to condone profiling or stereotyping. We do, however, mean to say that the most obvious cause of any "chilling effect" among those whose beliefs would be associated in the public mind with the beliefs of terrorist groups is the temper of the times, and not a legislative provision that in all probability is unknown to

[55] At paragraphs 1-18. Available at: www.pch.gc.ca/pgm/pdp-hrp/docs/cerd/f-rppr_17_18/index-eng.cfm.

the vast majority of persons who are said to be "chilled" by its existence."[56]

415. While the ATA does not contain an explicit anti-discrimination clause, other amendments made by the Act included specific provisions intended to send a strong message against acts of hatred and discrimination. For example, the *Criminal Code* authorizes a court to order the deletion of publicly available on-line hate propaganda stored on a computer server within its jurisdiction. The *Criminal Code* also contains an offence of public mischief in relation to places primarily used for religious worship, or objects associated with religious worship, if the act of mischief is motivated by bias, prejudice or hate based on religion, race, colour, or national or ethnic origin.

416. In addition, in February 2005, the Government created the Cross-Cultural Roundtable on Security to engage Canadians and the Government of Canada in a long-term dialogue on matters related to national security. The Roundtable brings together a maximum of 15 citizens who are leaders in their respective communities and have extensive experience in social and cultural matters. It focuses on emerging developments in national security and their impact on Canada's diverse and pluralistic society. In so doing, it supports outreach activities across the country. It has also examined Parliamentary recommendations to amend the ATA, providing advice to Ministers or senior officials with respect to: racial profiling and ethno-cultural community issues; the definition of terrorist activity; security certificates; review and oversight; special advocates; and the passenger protect program.

Question 32: What measures have been taken to ensure independent review of all cases of Canadian citizens who are suspected terrorists or suspected of possessing information relating to terrorism, and who have been detained in countries where it is feared they have undergone or may undergo torture or ill-treatment?

417. See the responses above to Questions 25 and 26 regarding the O'Connor and Iacobucci inquiries.

Question 33: In light of the recommendations made by the Committee (para.5 (j)) and by the UPR working group (A/HRC/11/17, para. 86(2)) as well as the State party's pledges made to the Human Rights Council in 2006, please update the Committee with the outcome of the long outstanding discussion on whether to ratify the Optional Protocol to the Convention. If the State party has not yet made a decision, please indicate (a) the outcomes of the analysis on the implications of the ratification of the Optional Protocol in Canada and (b) steps taken to set up or designate a national mechanism which would conduct

[56] *R. v. Khawaja*, 2010 ONCA 862, on appeal to the Supreme Court of Canada. Also, in *R.c. Namouh*, the Québec Court of Justice ruled that the accused had failed to prove that the motive requirement was unconstitutional: *R. c. Namouh*, 2009 QCCQ 5833, online: www.jugements.qc.ca/php/decision.php?liste=58030521&doc=D1DE3CDE284917122B2B26CEBB968021236DF2FF1CD5F58E8BCE67AE983CF343&page=1.

periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment.

418. The government is currently reviewing the *Optional Protocol to the Convention against Torture* (OP-CAT) in order to make an informed decision on whether or not to become a party to this treaty. This is in keeping with the commitment Canada made during its first Universal Periodic Review.

419. Canada takes its international human rights obligations seriously. The general practice is to ensure that human rights treaties are only ratified once Canada is satisfied that its domestic laws and policies meet the obligations under the treaty. This requires an extensive internal legislative and policy review exercise that requires the participation of a number of federal departments. It also includes consultations with the provinces and territories when aspects of the treaty fall within their jurisdictions. Where the treaty may potentially impact on Aboriginal rights or interests, the Government of Canada may also seek the views of Aboriginal governments or groups. In addition, the government may consult with civil society, non-governmental organizations, Aboriginal organizations and other interested parties to seek the views of Canadians before adhering to the treaty.[57]

420. At this time, federal officials are working to complete a comprehensive review of the OP-CAT and the implications to Canada of becoming a party to it. In June 2010, as part of Canada's ongoing follow-up to the Universal Periodic Review, the Government of Canada consulted civil society organizations on specific questions about Canada's potential adherence to the OP-CAT. This input is being considered and is a part of the review process.

421. Canada has many oversight mechanisms already in place at the federal, provincial and territorial levels to prevent torture and other forms of ill-treatment. These include ombudsmen, correctional investigators and police oversight agencies, many of which have been referred to in response to questions above.

Question 34: Please indicate if there is any legislation in place aimed at preventing and prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. If so, please provide information about the content and implementation of such legislation. If not, please indicate whether the adoption of such legislation is under consideration and any steps have been taken to demonstrate this commitment.

422. As has been repeatedly noted by experts in the field,[58] torture may be inflicted using an almost unlimited number of methods and instruments, which may otherwise have

[57] For more information on Canada's treaty adherence process, including in respect of the OPCAT, see: canada.justice.gc.ca/eng/pi/icg-gci/ihrl-didp/index.html.

[58] For example, see the 2010 report of UN Special Rapporteur on Torture, Manfred Nowak, Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, A/HRC/13/39/Add.5, at paragraphs 50-57.

legitimate purposes and uses. This makes it very difficult to regulate the production, trade, export and use of "equipment specifically designed to inflict torture or CIDT."

423. However, Canada does impose significant controls on the import of weapons and export of weapons and other strategic items, including by means of Canada's Export Control List, a regulation enacted pursuant to the *Export and Import Permits Act*.