

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Canada has ratified The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) but not the Optional Protocol to the Convention.

Adoption: The CAT was adopted and opened for signature, ratification, and accession by General Assembly (resolution 39/46) on 10 December 1984. An Optional Protocol was adopted on 18 December 2002 (resolution A/RES/57/199) and entered into force on 22 June 2006.

Entry into force: 26 June 1987.

Number of signatories and ratifications/accessions: There are 157 state parties to the Convention. An additional 81 states have signed but not ratified the Convention. There are 77 state parties to the Optional Protocol to CAT. An additional 75 states have signed but not ratified the Optional Protocol.

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Summary information

The [Convention](#) promotes, protects, and ensures “the inherent dignity of the human person” providing that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Unlike other international agreements and declarations condemning the practice of torture, the CAT provides a definition of torture. [State parties are required to](#) “take measures to end torture within their territorial jurisdiction, and to criminalize all acts of torture.” In addition, they are forbidden from “expelling, returning, or extraditing a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.”

The Convention established the Committee Against Torture to review reports submitted by State parties in order to “monitor State compliance with Convention obligations, investigate allegations of systematic violations by State parties, make recommendations for improving compliance, and submit annual reports to CAT parties and the UN General Assembly.”

The [Optional Protocol to the Convention](#) establishes “a preventive system of regular visits to places of detention, convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature.”

The CAT was [adopted by the General Assembly of the United Nations](#) on 10 December 1984 (resolution 39/46). Consisting of 33 articles, the Convention entered into force on 26 June 1987 after it had been ratified by 20 states.

The Optional Protocol was adopted on 18 December 2002, after the UN General Assembly determined that further measures are necessary to achieve the purpose of the Convention. The Optional Protocol entered into force on 22 June 2006.

Canada has ratified the Convention but not the Optional Protocol.

History

[The development of the CAT](#) followed decades of horrific abuses and atrocities, plus growing efforts made by Amnesty International and other organizations to protect human rights, “recognizing torture as a crime against humanity, and calling upon regimes to respect, implement, and improve the national and international laws prohibiting torture.”

Between 1968 and 1980, Amnesty gathered reports from all over the world of people being tortured, and launched their first campaign against torture in 1972. In 1973, the UN denounced torture and in 1975 [adopted a non-binding Declaration against Torture](#) (the “Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”), proclaimed as a “guideline for all States and other entities exercising effective power.” However, depending upon voluntary domestic measures to uphold such guidelines was considered unrealistic. In response, Amnesty and others argued a need to adopt a legally binding Convention.

In 1977, the United Nations General Assembly took the first step toward the drafting and adoption of a legally binding instrument on torture, and used the principles enunciated in the 1975 Declaration as a guide for the Convention. The General Assembly adopted the CAT in 1984. After being ratified by 20 states, the Convention entered into force on 26 June 1987.

The CAT’s prohibition of torture was absolute: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” This blanket prohibition [was viewed by the drafters](#) of the CAT as “necessary if the Convention is to have significant effect, as public emergencies are commonly invoked as a source of extraordinary powers or as a justification for limiting fundamental rights and freedoms.”

Key Provisions

The purpose of the Convention is to affirm the right of every person not to be “subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

The [preambular paragraphs of the Convention](#) recall relevant parts of the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the 1975 Declaration against Torture, in order to affirm the equal and inalienable rights of all members of the human family, and the inherent dignity of the human person, as well as provisions that specifically provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Accordingly, State parties “shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

Some of the obligations of State parties include:

- Outlawing torture or other cruel treatment in all circumstances, and punishing acts of torture with appropriate penalties;
- Prohibiting their nationals from engaging in torture within territories not under their jurisdiction.
- Ensuring that education and information regarding the prohibition against torture are included in the training of public officials involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
- Ensuring that their legal systems provide victims of torture [with] the ability to obtain civil redress in the form of fair and adequate compensation including the means for as full rehabilitation as possible.
- Submitting a report to the committee detailing the “measures it has taken to give effect to the provisions of CAT [within a year of ratification], as well as supplementary reports every four years on any new measures taken, in addition to any other reports the Committee may request.”

Canada’s Commitments and Responsibilities

Canada has ratified the Convention but not the Optional Protocol.

Canada signed the CAT on 23 August 1985, and ratified the Convention on 24 June 1987.

On 13 November 1989, [Canada made declarations](#) under article 21 & 22 of the Convention, “recognizing the competence of the Committee against Torture to receive and consider communications (complaints) whereby a state party claims that another state party is not fulfilling its obligations under the Convention (article 21), and to receive and consider communications from or on behalf of individuals subject to its jurisdiction who

claim to be victims of a violation by a State party of the provisions of the *Convention* (article 22).”

Although Canada was involved in its drafting, Canada has not signed the [Optional Protocol](#), which establishes “a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.”

Canada’s responsibilities to the CAT are shared between the federal, provincial and territorial governments. According to the [Department of Canadian Heritage](#), “Each report is prepared under the auspices of the Continuing Committee of Officials on Human Rights, which includes representatives from all jurisdictions.”

International Monitoring and Implementation

The [Committee against Torture](#) carries out the functions of monitoring State compliance with Convention obligations, investigating allegations of systematic CAT violations by State parties, making recommendations for improving compliance, and submitting annual reports to CAT parties and the UN General Assembly.

Through the Secretary-General of the United Nations, States Parties must submit reports to the Committee on measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force and thereafter at least every four years or whenever the Committee so requests.

The Secretary-General of the United Nations shall transmit the reports to all States Parties. The Committee may decide to include any comments in its annual report, together with the observations thereon received from the State party concerned. According to the CAT, “If the Committee receives reliable information which appears to contain well-founded indications that torture is being systematically practiced in the territory of a State party, the Committee shall invite that State party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.”

Canada submitted its [sixth report](#) to the Committee on 4 October 2010 (covering the period 2004 to 2007), [noting that](#) “all levels of government in Canada are aware of - and take seriously - their treaty obligations, including under the Convention against Torture... [However] it is unreasonable to expect a country to respond effectively and efficiently to questions from multiple bodies at once... no matter what the circumstance, Canada will continue to stand up for the advancement of freedom, fundamental human rights, democracy, and the rule of law, and to take principled positions in support of these core Canadian values.”

Following Canada’s sixth report, the Committee released [Concluding observations](#), including recommendations on ways Canada could improve compliance with the CAT.

Positive aspects of the Committee's report

The Committee noted ongoing efforts by Canada to reform its legislation, policies and procedures in areas of relevance to the Convention, including:

The establishment of the Refugee Appeal Division within the independent Immigration and Refugee Board by the 2011 Balanced Refugee Reform Act;

The establishment of the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin (Iacobucci Inquiry), in December 2006;

The establishment of the Ipperwash Priorities and Action Committee by the Ontario Government in 2007 to work on the implementation of the Ipperwash Inquiry Report recommendations;

The establishment of the Provincial Partnership Committee on Missing Persons in Saskatchewan in January 2006; and

The Braidwood Inquiry, initiated by the province of British Columbia in 2008 to examine the case of Robert Dziekanski.

The Committee also noted with satisfaction (a) the official apology and compensation provided to Maher Arar and his family soon after the release of a report by the Commission of Inquiry into the Actions of Canadian Officials in relation to Maher Arar; and (b) the official apology by Royal Canadian Mounted Police to the mother of Robert Dziekanski for the loss of her son.

Principal subjects of concern for the Committee and recommendations

The Committee's report identified a number areas of concern, including Canada's incomplete incorporation of the Convention in the domestic legal order; non-refoulement (i.e. allowing deportation despite a risk of torture); use of security certificates under the Immigration and Refugee Protection Act; use of detention in immigration matters; the government's lack of application of the universal jurisdiction under War Crimes and Crimes Against Humanity Act; lack of effective measures for civil redress for victims of torture; torture and ill-treatment of Canadians detained abroad; use of intelligence information obtained by torture; the need for improved oversight mechanisms over security and intelligence operations; conditions for persons under detention; violence against women, particularly aboriginal women and girls; use of conducted energy weapons (e.g. "tasers"); police crowd-control methods; and a failure to adequately collect data related to implementation of the Convention.

Recommendations provided by the Committee include:

- That Canada incorporate all the provisions of the Convention into Canadian law in order to allow persons to invoke it directly in courts, give prominence to the Convention and raise awareness of its provisions among members of the judiciary and the public at large;

- The Committee urged Canada to amend relevant laws, including the Immigration and Refugee Protection Act, with a view to unconditionally respecting the absolute principle of non-refoulement [allowing deportation despite a risk of torture] in accordance with article 3 of the Convention;
- Canada should adopt a policy for future military operations that clearly prohibits prisoner transfers to another country when there are substantial grounds for believing that he or she would be in danger of being subjected to torture;
- That Canada reconsider its policy of using administrative detention and immigration legislation to detain and remove non-citizens on the grounds of national security, inter alia, by extensively reviewing the use of the security certificates and ensuring the prohibition of the use of information obtained by torture, in line with relevant domestic and international law;
- That Canada modify Bill C-31 (the Protecting Canada's Immigration System Act), in particular its provisions regulating mandatory detention and denial of appeal rights, given the potential violation of rights protected by the Convention;
- That Canada take all necessary measures with a view to ensuring the exercise of universal jurisdiction over persons responsible for acts of torture, including foreign perpetrators who are temporarily present in Canada, in accordance with article 5 of the Convention. Canada should enhance its efforts, including through increased resources, to ensure that the "no safe haven" policy prioritizes criminal or extradition proceedings over deportation and removal under immigration processes.
- Canada should ensure that all victims of torture are able to access remedy and obtain redress, wherever acts of torture occurred and regardless of the nationality of the perpetrator or victim. In this regard, it should consider amending the State Immunity Act to remove obstacles to redress for all victims of torture.
- In light of the findings of the Iacobucci Inquiry, the Committee recommends that Canada take immediate steps to ensure that Abdullah Almalki, Ahmad Abou Elmaati and Muayyed Nureddin receive redress, including adequate compensation and rehabilitation. Furthermore, the Committee urges Canada to promptly approve Omar Khadr's transfer application and ensure that he receives appropriate redress for human rights violations that the Canadian Supreme Court has ruled he experienced;
- The Committee recommends that Canada modify the Ministerial Direction to CSIS [that allows intelligence information that may have been derived through mistreatment by foreign States to be used within Canada] to bring it in line with Canada's obligations under the Convention;
- That Canada do more to implement proposals made in the Policy Report from the Arar Inquiry to strengthen the oversight mechanism over security and intelligence operations;
- That Canada should take all necessary measures to ensure that detention conditions in all places of deprivation of liberty are in conformity with the

Standard Minimum Rules for the Treatment of Prisoners. It should, inter alia:

- (a) Strengthen its efforts to adopt effective measures to improve material conditions in prisons, reduce the current overcrowding, properly meet the basic needs of all persons deprived of their liberty and eliminate drugs;
 - (b) Increase the capacity of treatment centres for prisoners with intermediate and acute mental health issues;
 - (c) Limit the use of solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review; and
 - (d) Abolish the use of solitary confinement for persons with serious or acute mental illness.
- That Canada enhance its efforts to end all forms of violence against aboriginal women and girls by, inter alia, developing a coordinated and comprehensive national plan of action, in close cooperation with aboriginal women's organizations, which includes measures to ensure impartial and timely investigation, prosecution, conviction and sanction of those responsible for disappearances and murder of aboriginal women;
 - Taking into consideration the lethal and dangerous impact of conducted energy weapons on the physical and mental state of targeted persons, which may violate articles 2 and 16 of the Convention, the Committee recommends Canada to ensure that such weapons are used exclusively in extreme and limited situations. . . . Furthermore, Canada should consider relinquishing the use of such conducted energy weapons as "tasers";
 - That Canada strengthen its efforts to ensure that all allegations of ill-treatment and excessive use of force by the police are promptly and impartially investigated by an independent body and those responsible for such violation are prosecuted and punished with appropriate penalties. Furthermore, Canada and the government of the Province of Ontario should conduct an inquiry into the Ontario Provincial Police's handling of incidents at Tyendinaga and into all aspects of the policing and security operations at the G8 and G20 Summits.
 - That Canada should compile statistical data at the national level relevant to the monitoring of the implementation of Convention obligations.

In an August 2013 [Interim Report in follow-up to the review of Canada's Sixth Report](#), Canada provided follow-up information requested by the Committee in its Concluding Observations with respect to four areas of concern.

References

[UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85](#)

[UN General Assembly, Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 9 January 2003, A/RES/57/199](#)

[Canadian Heritage, Basic Information: United Nations Convention against Torture \(2013\) Government of Canada](#)

[Congressional Research Service, Report for Congress, U.N. Convention Against Torture \(CAT\): Overview and Application to Interrogation Techniques, 26 January 2009, United Nations, Congressional Research Service, 7-5700, RL32438](#)

[Danelius, Hans. Introductory Note: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, The UN Audiovisual Library of International Law: Historic Archives](#)

[Lippman, Matthew. The Development and Drafting of the United Nations Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment \(1994\) 17 B.C. Int'l & Comp. L. Rev. 275](#)

[Office of the High Commissioner for Human Rights, Committee against Torture](#)

[Canadian Heritage, Sixth Report of Canada to the Committee against Torture, covering the period 2004 to 2007](#)

[United Nations Committee against Torture, CAT/C/CAN/CO/6, Concluding observations of the Committee against Torture, 25 June, 2012](#)

[Canadian Heritage, Interim Report in follow-up to the review of Canada's Sixth Report, August 2013](#)