



# Amnesty International

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The Right Honourable Stephen Harper  
Prime Minister of Canada  
80 Wellington Street  
Ottawa, Ontario  
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By fax and mail: 613 941 6900

October 4, 2007

Dear Prime Minister Harper,

The organizations signing on to this open letter have Intervenor status at the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin. We are writing because we are gravely concerned that this Inquiry has to date been both deeply unfair to the three men at the centre of its work, and lacking the transparency necessary to the public interest. We urge you to take steps now to help ensure this process is opened up so that the public interest, and the legitimate interests of these three men, can be met in a way that inspires public confidence.

Your government drafted the Inquiry's Terms of Reference, which indicate that portions of the Inquiry could be open to the public when necessary to ensuring the effective conduct of the Inquiry. To our knowledge the government has not called for any portion of the Inquiry to be open to the public, nor supported such requests from our organizations or *Messrs.* El Maati, Almalki or Nureddin. We are now calling on you to adopt the position that the effective conduct of the Inquiry does require a significant public dimension, and to instruct your counsel to communicate that position to the Commissioner.

In 2005 many of our organizations began to call for an Inquiry or credible review process to examine the troubling questions that arise in these three cases. Like the case of Maher Arar they raise concerns that Canadian law enforcement and security agencies contributed to their arrest, imprisonment and torture in foreign countries, and that Canadian diplomatic representatives failed to adequately protect their human rights. Even before the Arar Commission report was released, information already in the public pointed to a wider pattern or policy behind Mr. Arar's case. Our concerns were heightened by what Justice O'Connor's report, released in September 2006, revealed.

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We learned, for example, that the RCMP sent questions to the Syrian Military Intelligence to be asked of Abdullah Almalki, a Canadian citizen, who at the time was being held in incommunicado detention. This was a shocking revelation, especially given that we also learned that the questions were sent despite warnings by DFAIT officials about the well-documented record of the use of torture during interrogations in Syrian detention centres.

We were pleased that Justice O'Connor recommended further review of these three cases. While he suggested that it would likely not be advisable to do so through a "full-scale public Inquiry" he did highlight that the review process should be independent, credible and one that "inspires public confidence." We welcomed Public Safety Minister Stockwell Day's announcement in December 2006 that there would be a further review, under Commissioner Frank Iacobucci's direction. We have since been concerned, however, that the only sessions that have been open to the public were in March, dealing with applications for standing and funding, and April, dealing with the Rules of Procedure. Since those sessions and the subsequent rulings on these matters, there has been no communication with the public about the process.

Prime Minister, it is of crucial importance that this Inquiry process be opened to a greater level of public scrutiny and participation. It is a well established principle of human rights law that investigations — particularly where linked to compliance with human rights obligations — require public scrutiny to secure accountability in practice and in theory. In a climate where Canadian security concerns have escalated, there is an increasing need for greater openness and transparency so that public trust in our police and security forces can be restored.

In addition and very importantly, these three Canadian men very much need and deserve to be able to participate more fully in the process. In the context of the obligation to permit public scrutiny, while it is accepted that the degree of scrutiny required may well vary from case to case, in all cases the victims are entitled to be involved in the procedure to the extent necessary to safeguard their legitimate interests. We believe to date that standard has not been met. This Inquiry is the only opportunity they have had to determine why they were detained and tortured, and why Canadian officials used the media to accuse two of them of having terrorist links. This Inquiry offers a crucial opportunity for all of them to clear their names and restore their reputations.

However, this seems impossible given that to date, no documents or even parts of documents have been disclosed to the men, their counsel, Intervenor or the public. We have had no summary, detailed or abbreviated, of the information that has been gathered through interviews with RCMP, CSIS and Foreign Affairs officials. Although the Intervenor, the men and their counsel are supposed to be full participants in this Inquiry like the Attorney General of Canada, the Ontario Provincial Police and the Ottawa Police Services, unlike these agencies, we have been excluded from the proceedings, and unable to participate in a meaningful and constructive fashion.

We understand that not all hearings and documents can be public. We nevertheless agree with Commissioner O'Connor's recommendation that this should be a credible process that inspires public confidence. That requires that documents relevant to issues of

significant public importance should be released publicly, and that witnesses whose testimony is relevant to issues of significant public importance should be examined in public. Inspiring public confidence requires an active and ongoing effort to engage the public in the process in a meaningful way. The process, as it has been conducted to date, cannot inspire that confidence.

This Inquiry is being conducted in the wake of revelations, at the Arar Inquiry and now the Air India Inquiry, of wrongdoing, negligence and incompetence on the part of our police and security forces. Those two Inquiries have highlighted that national security confidentiality is often used to mask significant problems and inappropriate conduct. Just weeks ago, in August, public confidence was shaken again when previously censored portions of the Arar Commission's report were released. The newly released information was alarming. We learned, for example, that Canadian officials had used information from Syrian interrogators to justify warrants in Canada — information that was very likely the product of the torture of a Canadian citizen, Mr. El Maati. What disturbed Canadians most was that the government had argued in court that those portions of the Arar Commission's report should be kept secret in order to safeguard national security, but media reports, public commentary, letters to the editor and editorials demonstrated that much of the public very quickly concluded that this secrecy had really been about shielding public agencies and officials from embarrassment and accountability.

Given this context, and the very serious issues at stake at the Iacobucci Inquiry, the public interest is not well served by the ongoing highly secretive and restrictive process. It is not enough that the report from this Inquiry will be released to the public at the end of the process. The public needs to have an opportunity to gauge and follow information along the way as well. This is the only way to boost accountability and public trust in the process and help ensure public confidence in the outcome. The three men also need to have an opportunity to engage in the process to ensure, at the very least, that any disinformation and innuendo, which may contributed to their detention and torture, are not perpetuated in the final report of the Inquiry.

We respectfully ask you to demonstrate your government's commitment to transparency and accountability by informing the Commission that your government shares our view that the effective conduct of this Inquiry, and public confidence in its outcome, requires that there be a significant public dimension to its work. That public dimension must include the disclosure of documents relevant to issues of significant public importance and public hearings with witnesses whose testimony is relevant to issues of significant public importance. We believe that the failure to do so will only reinforce public concern that undue secrecy about national security practices stands in the way of protecting both human rights and public safety.

Sincerely,

A handwritten signature in blue ink that reads "Alex Neve". The signature is fluid and cursive, with the first name "Alex" and the last name "Neve" clearly distinguishable.

Alex Neve, Secretary General  
Amnesty International Canada

Shirley Heafey, Member of the Board  
British Columbia Civil Liberties Association

Khaled Mouammar, President  
Canadian Arab Federation

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Anwaar Syed, Executive Director  
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cc. Commissioner Frank Iacobucci  
Barbara Jackman, Hadayt Nazami, Counsel to Ahmad El Maati  
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